

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 464/JP/2019
निर्धारण वर्ष/Assessment Year : 2008-09.

Shri Ganesh Lal Mehra, 44, New Indrapuri Colony, Brahampuri, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 5(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AKXPM 5455 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vedant Agarwal, (Advocate)

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 10/08/2022
उदघोषणा की तारीख / Date of Pronouncement: 29/08/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 31.01.2019 of Id. CIT (A)-4, Jaipur passed under section 250 of the Income Tax Act, 1961 for the assessment year 2008-09. The assessee has raised the following grounds :-

1. On the facts & circumstances of the case and in law also Id. Assessing Officer grossly erred in initiating reassessment proceeding under section 147 of the Act.
2. On the facts & circumstances of the case and in law also Id. Lower authorities grossly erred in making and confirming addition of Rs. 2,00,592/- under the head of Short Term Capital gain.

3. On the facts & circumstances of the case and in law also Id. Lower authorities grossly erred in making and confirming estimated addition of Rs. 46,345/- in business income.

The assessee has also sought permission to raise the following additional ground :-

“ On the facts & circumstances of the case and in law also Id. A.O. grossly erred in relying on affidavit of Amar Singh Kotiya against the assessee without providing opportunity of cross examination to Shri Amar Singh Kotiya.”

2. The brief facts of the case are that the assessee runs business in the name of Ganesh Bhojnalaya. The assessment order under section 144/147 of the IT Act, 1961 was passed by the AO after making additions on the ground that the assessee had sold property located at Purani Basti, Dhobi Ghat, New Indrapuri Colony, Kakiro Ka Tiba, Jaipur, Khasra No. 415 at the sale value of Rs. 6,00,592/- as taken by the Stamp Duty Authority as 'market value' under section 50C(1) of the IT Act for calculation of Capital Gain and also additions were made by estimating the income of the assessee. Aggrieved by the order of the AO, assessee preferred appeal before the Id. CIT (A), who dismissed the appeal filed by the assessee thereby upholding the order of the AO.

3. Now, aggrieved by the order of the Id. CIT (A), the assessee preferred present appeal before us.

4. Before us, the Id. Counsel appearing on behalf of the assessee straightway pressed ground no. 2 which relates to challenging the order of Id. CIT (A) in upholding the additions made by the AO of Rs. 2,00,592/- under the head Short Term Capital Gain. The Id. A/R reiterated the same submissions as raised by him

before the lower authorities and the Id. D/R relied upon the orders passed by the lower authorities.

5. We have heard the rival contentions and perused the material available on record and gone through the orders of the lower authorities. From the records, we noticed that the department had received information that the assessee had sold property located at Purani Basti, Dhobi Ghat, New Indrapuri Colony, Kakiro Ka Tiba, Jaipur, Khasra No. 415 at the sale value of Rs. 6,00,592/- as taken by the Stamp Duty Authority as "market value" and the assessee has not paid the capital gain tax on the said amount. Whereas, the Id. A/R of the assessee has categorically submitted that the assessee had not sold any property during the year under consideration. However, it was submitted that the plot in question was in fact belonging to Smt. Gulab Devi, Shri Amar Singh Kotiya, Shri Kishore Singh Kotiya, Shri Bhawani Singh Kotiya and Shri Man Singh Kotiya and the assessee was appointed as Mukhtyar i.e. Power of Attorney holder and in this regard a Power of Attorney dated 24.11.2006 was got registered with the Sub Registrar-II, Jaipur and on the basis of the said 'Mukhtyarnama', the assessee had sold the property on behalf of the owners i.e. Smt. Gulab Devi, Shri Amar Singh Kotiya, Shri Kishore Singh Kotiya, Shri Bhawani Singh Kotiya and Shri Man Singh Kotiya through Registered Sale Deed dated 30.05.2007 in favour of Shri Hira Singh and Shri Purushottam. Whereas on the contrary, the Id. D/R while relying on the orders of the lower authorities submitted that Shri Amar Singh Kotiya, one of the Mukhtyarnama provider submitted an affidavit wherein he stated that they had sold the property to Shri Ganesh Lal Mehra, the assessee vide Mukhtyarnama for Rs. 4,00,000/- and they got the entire amount on the same date of executing the

Mukhtyarnama dated 24.11.2006 and for all practical purposes the property was sold to the assessee.

5.1 After having meticulously gone through the documents i.e. Power of Attorney, Sale Deed, Affidavit of Shri Amar Singh Kotiya and also while considering the material available on record, we find that the registered Mukhtyarnama was executed in favour of the assessee on 24.11.2006, wherein ownership of the property was not transferred to the assessee and the capacity and status of the assessee was only that of Power of Attorney holder and even the Sale Deed dated 30.05.2007 was executed by the assessee in the capacity of Power of Attorney holder i.e. Agent of the said owners i.e. Smt. Gulab Devi and others. Therefore, in our view, by no stretch of imagination it can be construed that the assessee was ever owner of the property or had any ownership rights. The revenue authorities had only relied upon the Affidavit of Shri Amar Singh Kotiya who is one of the co-owners of the property but in our considered view ownership cannot be conferred upon the assessee merely on the basis of Affidavit, the contents of which are contrary to the Registered documents i.e. Power of Attorney and Sale Deed. Moreover, before relying upon the Affidavit of Shri Amar Singh Kotiya, the AO had not provided any opportunity to cross examine said Shri Amar Singh Kotiya to the assessee, even the said Affidavit was not supported by any document. Therefore, in our considered view no reliance can be placed upon the said Affidavit of Shri Amar Singh Kotiya for conferring or transferring ownership rights upon the assessee. Even otherwise, the contents of the said Affidavit are in contradiction and in conflict with the Power of Attorney and Sale Deed which admittedly are registered documents and are within the public domain. Thus, both the lower authorities fell in error to

hold that the assessee as owner of the property by merely relying upon the copy of Affidavit, the contents of which were in contravention and in conflict with Power of Attorney and Sale Deed which are registered documents. Therefore, considering the entire factual position, we are of the firm view that no addition is maintainable in the hands of the assessee, who merely acted as Power of Attorney holder on behalf of Smt. Gulab Devi and others. Thus the addition made by the AO and upheld by the Id. CIT (A) on account of Short Term Capital Gain is hereby directed to be deleted.

Ground No. 3 of the assessee relates to challenging the order of Id. CIT (A) in upholding the estimated addition of Rs. 46,345/- as business income.

6. We have heard both the parties, material available on record and gone through the orders of the lower authorities. Since the assessee during the course of assessment proceedings could not furnish the basis of computation of business income and could not furnish the complete details of Receipts & Expenditures with documentary evidence, therefore, the AO had rightly estimated the income of the assessee from business. Even before us, no new facts or documents are placed on record and moreover the assessee has not been able to rebut or controvert the lawful findings so recorded by the Id. CIT (A). Therefore, we feel no reasons to interfere into or to deviate from the findings so recorded by the Id. CIT (A). Thus, this ground of the assessee is dismissed.

7. Ground No. 1 and permission to raise additional ground of appeal by the assessee has not been pressed. Therefore, keeping in view the factual position, ground no. 1 of the Memorandum of Appeal and application for permission to raise the additional ground of appeal stand dismissed as not pressed.

8. In the result, appeal of the assessee is partly allowed in terms indicated above.

No order as to costs.

Order pronounced in the open court on 29/08/2022.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2022.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ganesh Lal Mehra, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 5(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 464/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar