

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 183/JP/2020
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Shiv Kumar Soni 348, Panda Pada Haweli, Mangla Marg behind Mangla Mata Mandir, Brahmपुरi, Jaipur	बनाम Vs.	The ACIT Circle-5 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AVLPS 3697 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 13/10/2022
उदघोषणा की तारीख / Date of Pronouncement: 18/10/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A)-2, Jaipur dated 16-12-2019 for the assessment year 2014-15 wherein the solitary ground raised by the assessee is as under:-

“That on the facts and in the circumstances of the case, the Id. CIT(A) is wrong, unjust and has erred while upholding AO's decision and confirmed addition of Rs.26,10,078/- on account of invoking provisions u/s 56(2)(vii)(b) of the Income Tax Act, 1961.”

2.1 Brief facts of the case are that the assessee filed the original return of income showing total income of Rs.16,79,410/- on 29-11-2014 which was processed u/s 143(1) of the Act. The case of the assessee was selected for scrutiny on the basis of CASS under complete scrutiny. The statutory notice u/s 143(2) of the Act was issued on 01-08-2015 which was duly served upon the assessee, however due to change of incumbent, the case was referred to transfer pricing officer u/s 92CA(1) on 16-09-2016 for approval of Id. Pr.CIT-2, Jaipur. In this case, the AO noticed that the assessee derives income from trading of bullion, purchase & sale of gold and silver items in wholesale. In this case, the AO while making the assessment during the year under consideration noticed that the assessee had purchased plot situated at G1-14(A), EPIP, Sitapura, Jaipur for a consideration of Rs.97.00 lacs. However, the stamp duty value of such lease hold rights of plot situated at G1-14(A), EPIP, Sitapura, Jaipur as adopted by Sub-Registrar, Jaipur-VI amounted to Rs.1,23,10,078/-. Therefore, vide note sheet entry dated 15-09-2017, the AO show caused the assessee as to why difference of Rs.26,10,078/- should not be added back to the total income of the assessee u/s 56(2)(vii)(b) of the Act for which the Id. AR of the assessee submitted the detailed reply before the AO mentioning therein that *“5. As section 56(2)(vii)(b) applies only to a immovable property, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee purchase lease right for ninety*

years (90 years) in the plot and not land itself, the provisions of Section 56(2)(vii)(b) cannot be invoked. However, the submission made by the assessee was considered by the AO and he did not find the same tenable due to the reason that, in the Section 56(2)(vii)(b), the phrase ‘land or building or both’ has never been used by the statute and wrongly stated by the assessee. According to the AO Explanation to Section 56(2)(vii) defines ‘property’ inter alia to mean capital asset being (i) immovable property being land or building or both, (ii) shares and securities (iii) jewellery (iv) archaeological collections (v) drawings (vi) paintings (vii) sculptures (viii) any work of art or (ix) bullions. However, the definition of ‘property’ does not refer to rights in land or building or both. Hence, the lease rights in land under consideration can neither be classified as ‘any sum of money’ or can it be classified as ‘property’. The AO thus observed that the term of ‘immovable property’ is a wider term and it has always included rights in land or building or both. The AO did not find the arguments raised by the assessee satisfactory and made the addition of Rs.26,10,078/- by taking the difference of stamp value of Rs.1,23,10,078 minus sales consideration of Rs.97,00,000/-. Thus the AO made addition of Rs.26,10,078/- u/s 56(2)(vii)(b) of the Act and added the same amount to the total income of the assessee.

2.2 In first appeal, the Id. CIT(A) confirmed the action of the AO by observing as under:-

“2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. On perusal of overall facts, it is seen that during the year under consideration, assessee purchased a plot measuring 1180 Sq.mtr alongwith building with covered area of 6858.42 sq.ft. for Rs. 97,00,000/-. However, stamp authority took value of this land at Rs. 1,23,10,078/- for stamp duty purpose. The Assessing Officer treated the difference as income under section 56(2)(vii)(b) for Rs. 26,10,078/-

2.3.1 Ld. Authorized Representative argued that section 56(2)(vii)(b) is deeming fiction applicable only with respect to land and building or both and does not cover any right in land and building or both. For this he relied upon decision of Hon'ble ITAT, Jaipur bench in case of Jaipur Times Industries Vs. ITO.

2.3.2 On going through sale deed and order of Hon'ble ITAT, Jaipur bench, I find that as per sale deed the assessee has sold land and building thereon. The land is leasehold but the building thereon is not a leasehold building. In fact, the building is constructed by the seller and assessee purchased both land and building. Therefore, the claim of the appellant that assessee has sold any lease hold rights is incorrect.

2.3.3 So far as decision of Hon'ble ITAT is concerned, I find that Hon'ble ITAT in decision of Jaipur Times Industries held that section 50C cannot apply to leasehold rights in land and therefore, they deleted addition under section 50C. Thus, in that case, only leasehold right in land was sold. The facts of this case are different. Here, the assessee purchased the land allotted by RIICO to buyer alongwith building constructed thereon. The purchase consideration is for both and cannot be segregated. Thus this, constitutes, purchase of land and building by appellant, therefore, provisions of section 56(2)(vii)(b) are clearly applicable. Accordingly, addition made by the Assessing Officer is confirmed. This ground of appeal is dismissed.

3.In the result, the appeal is dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee reiterated the same arguments as were raised by him before the ld. CIT(A).

2.4 On the contrary, the ld. DR supported the orders of the authorities below.

2.5 The Bench has heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee is engaged in the business of trading of Gold Bullions. During the year under consideration, the assessee has filed his return of income on 29-11-2014 declaring total income at Rs.16,79,410/-. It is noted that the assessee had entered into the sale agreement dated 08.10.2013 with M/s Unique Impex (hereinafter referred to as seller) of the industrial plot [admeasuring 1180 sq. meters] alongwith the building thereon [admeasuring 6858.42 sq. feets] situated at G1-14(A), EPIP, Sitapura, Jaipur (herein after referred to as the said property). The ownership over the said property belongs to Rajasthan State Industrial Development Investment Corporation Ltd. (hereinafter referred to as RIICO) for a sum of Rs. 97,00,000/-. The seller had received the lease-hold rights for a fixed period of 99 years on the said property from RIICO vide allotment letter dated 08.07.2003 and lease agreement dated 02.03.2005 (Page 12-20, 21-25 of Paper Book). The seller transferred the lease hold rights over the said property to the assessee vide sale agreement dated 08.10.2013 for Rs 3,97,00,000/-. Subsequently RIICO issued letter dated 06.01.2014 (at Page No. 10-11 of II Paper Book) to the seller granting permission to transfer the lease hold rights of the property subject to compliance of certain terms and condition which were to be complied with by the SELLER but he had not complied, such as construction of Rain Water Harvesting System (Condition No. 7), Clearance of Old

Outstanding dues of the Seller to RIICO (Condition No. 8), plantation of trees (Condition No. 10). On perusal of terms and condition of the letter of permission for transfer of lease hold right in favor of the assessee , the assessee did not retain the exclusive right of ownership over the land. It is only the right to use the land subject to terms and conditions imposed by RIICO. The AO without considering the submission made by the assessee made an addition of Rs 26,10,078/- u/s 56(2)(vii)(b) of the Act. The Id. CIT(A) also confirmed the action of the AO. The Id. AR of the assessee prayed that AO and Id. CIT(A) grossly erred in invoking the provision of 56(2)(vii)(b) of the Act. He submitted that section 56(2)(vi)(b) is deeming fiction and it is settled preposition that deeming provision cannot be extended beyond the purposed for which it is enacted and section 56(2)(vii)(b) applies only in the cases of transfer of Immovable property takes place but not where the transfer of rights in the immovable property takes place. The definition of property does not refer to rights or transactions which may enable use or enjoyment of property and it appears that having regards to description context and objective, acquisition of such rights cannot be equated with immovable property.

To this effect, the Id. AR of the assessee relied on following case laws

1. Bhavna Shashikant Ghone , 2022 (9) TMT 919 dated 20-06-2022,(ITAT Pune Bench.)
2. Khazan Singh Anand (2020) 12 TMI 114 dated 02-12-2020 (ITAT Delhi Bench)
3. Noida Cyer Park Pvt. Ltd (2020) (10) TMI 563 dated 12-10-2020 (ITAT Delhi Bench)

4. Rajkot Nagrik Sahakari Bank Ltd. (2022) (7) TMI 333 dated 06-07-2022 (ITAT Rajkot Bench)

The Bench has gone through the series of the case laws relied upon by the assessee. However, it is noted that the ITAT Pune Bench in the case of Bhavna Shashikant Ghone vs ITO Ward 12(2), Pune has very explicitly observed as under:-

“4. The first and foremost issue that arise for our apt adjudication in this backdrop herein is as whether such leasehold rights are covered under the statutory definition of ‘any immovable property’ u/s 56(2)(vii)(b) as defined in Explanation (d)(i) as ‘being land or building or both’. We note that the legislature has used an identical express in Section 50C(1) of the Act wherein various judicial precedents (2017) 77 taxmann.com 308 (Bom), CIT vs Greenfields Hotels and Estates Pvt. Ltd. (2015), 55 taxmann.com (2017) (Pune) Kancast Pvt. Ltd. vs ITO, (2011) 4 SCC 36 (SC) GVK Industries Ltd. vs ITO and 2020-TIOL-307-Kolkata hold that such a lease hold right does not come under either of the twin specified categories of ‘land or building or both’ as the case may be. We adopt the very reasoning herein as well to conclude that the learned lower authorities have erred in law and on facts in invoking section 56(2)((vii)(b) addition qua assessee’s acquisition of leasehold rights in issue. The impugned addition stands deleted in above terms, Ordered accordingly.

5. This assessee’s appeal is allowed in above terms.

In view of the decision of Coordinate Bench of ITAT Pune in the case of Bhavna Shashikant Ghone, we are of the view that Section 56(2)((vii)(b) cannot be applied in assessee’s case. It is also noteworthy to mention that letter dated 6-01-2014 issued by RIICO in favour of M/s. Unique Impex is clear evidence that the assessee only received lease hold right for 99 years . Hence, in view of above

deliberations and the case laws mentioned hereinabove, the Bench does not concur with the view of the ld. CIT(A) and the addition sustained by the ld. CIT(A) is directed to be deleted. Thus the solitary ground of the assessee is allowed.

3.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 18/10/2022.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/10/2022

*Mishra

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

1. The Appellant- Shri Shiv Kumar Soni, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-5, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 183/JP/2020)

आदेशानुसार / By order,

Asstt. Registrar