

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवंश्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 621/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

Mr. Imran Khan 59- Jalupura Chhoti Maszjid, Near Chandpole Anaj Mandi, Jaipur-302001.	बनाम Vs.	ITO, Ward-3(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AZTPK 3286 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pawan Kumar Garg (C.A.)
राजस्व की ओर से / Revenue by: Ms. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 01/11/2022
उदघोषणा की तारीख / Date of Pronouncement: 19/12/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals), Alwar [herein after referred as Ld. CIT(A)] for the assessment year 2014-15 dated 26.02.2019, which in turn arises from the order passed by the Income Tax Officer, Ward-3(3), Jaipur passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 06.12.2016. Earlier the appeal was rejected on the ground of non prosecution by the assessee.

Subsequently on Misc. Application filed by the assessee the matter was recalled and fixed for hearing on 01.09.2022.

2. The assessee has marched this appeal on the following grounds of appeal:-

“1. That the ITO, Ward-3(3), Jaipur had erred in assuming the role of AO without valid transfer order u/s 127.

2. That the Ld. AO has erred in making addition of Rs. 7,97,015/- on account of unexplained investment. Assessee had duly submitted the valuation report of the registered valuer but Assessing Officer did not accept the same nor referred the case to valuation Officer, which is bad in law.

3. That the appellant craves the right to add, amend or delete any of the grounds of appeal either before or at the time of hearing of appeal.”

3. The brief facts of the case are that the assessee is deriving rental income, income from business and interest income during the year under consideration. The assessee filed his return of income on 07.02.2015 declaring total income of Rs. 2,18,770/- after claiming deduction under chapter VIA of Rs. 1.037/-. The case was selected for limited scrutiny under CASS, and accordingly a formal notice u/s 143(2) was issued to the assessee on 31.08.2015. Assessee had purchased a property jointly with Sh. Nazar Mohd during the year having DLC value of Rs. 43,94,029/- for purchase consideration of Rs. 28,00,000/-. Assessee's share was 50% in above property.

Assessing officer added the half of difference amount of Rs. 7,97,015/- in total income of the assessee treating it as unexplained income. The addition so made by the Id. AO was challenged by the assessee before the Id. CIT(A) who rejected the same via order dated 26.02.2019. Now the assessee has filed appeal before us.

4. The AO observed that during the year under consideration assessee had purchased a plot Chondpole Bazar, Jaipur. The said property has been purchased jointly by the assessee and Sh. Nazar Mohd. In the F.Y. 2013-14 dated 24.05.2013. the plot has been purchased in amount to Rs. 28,00,000/- in which the share of the assessee is 50%. The assessee has paid against the share of plot an amount of Rs. 14,00,000/- against the purchase cost and transfer expenses separately as per his share. But the value as per Stamp Authority of property purchase is Rs. 43,94,029/- & share of the assessee in the above property is 50 % that comes to Rs. Rs. 21,97,015/-, which is more than by Rs. 7,97,015/- in comparison to actual purchase consideration Rs. 14,00,000/-. Therefore difference amount of Rs. 7,97,015/- is hereby added to the total income of the assessee as undisclosed income during the year under consideration. As per provisions of Income-tax Act, value as per Stamp Authority of property purchases should be taken and shown in the original return but the assessee has not shown the same in his original return filed on 07.02.2015,

therefore penalty proceedings u/s 271(1)(c) r.w.s. 274 have been initiated separately of the Income Tax Act, 1961 for concealment of income and furnishing of inaccurate particulars of income.

5. Before the ld. CIT(A), the assessee has reiterated its arguments. The ld. CIT(A) for the reasons stated in his order has rejected the arguments and submissions made by the assessee. The ld. CIT(A) has confirmed the action of the AO by observing as under:-

“5.3 I have perused the assessment order as well as submissions filed by the appellant. The A.P. has rightly calculated the purchase amount of the property as per the valuation of the Stamp duty Authority as per provision of Section 56(2)(vii)(b) of the Act as applicable w.e.f. 2014-15. Accordingly, the addition of Rs. 7,97,015/- is sustained and the appellant’s ground of appeal on the issue is dismissed.

6. Aggrieved by the CIT(A) order, the assessee filed appeal before us. The assessee filed his written submissions in this regard which is reproduced as under:-

“Ground No. 1: THAT THE ITO, WARD 3(3), JAIPUR HAD ERRED IN ASSUMING THE ROLE OF AO WITHOUT VALID TRANSFER ORDER U/S 127:

As per sec. 127,

- (1) The principal director or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is

possible to do so, and after recording his reasons for doing so, transfer any case from one or more assessing officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing officer or Assessing officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2)

In the present case, notice u/s 143(2) for the A.Y. 14-15 was issued by ITO Ward 3(4), Jaipur and thereafter the case transferred to ITO, Ward 3(3), Jaipur. The case was transferred via transfer Memo dated 18.05.2016 [PB 1] without a transfer order u/s 127.

It has been held in various case laws that transfer of assessment proceedings without order u/s 127 are null and void. Some of the case laws are as under:

1. Brijesh Sharma vs. DCIT [IT(IT)A. No. 06/JP/2022] [PB 2-23]
2. Vijay Vikram Dande Kurnool vs. ADIT (Int. Taxation) [ITA 947/Hyd/2016]

Since, no transfer order u/s 127 was made, therefore, whole of the resultant proceedings are null and void resulting into quashing of the assessment proceedings

Ground No. 2: THAT THE LD. AO HAD ERRED IN MAKING ADDITION OF RS. 7,97,015/- ON ACCOUNT OF UNEXPLAINED INVESTMENT. ASSESSEE HAD DULY SUBMITTED THE VALUATION REPORT OF THE REGISTERED VALUER BUT ASSESSING OFFICER DID NOT ACCEPT THE SAME NOR REFERRED THE CASE TO VALUATION OFFICER, WHICH IS BAD IN LAW:

Assessee had purchased a residential house at Bhopji Ka Dera, Khetri House Road, Chandpole Bazar, Jaipur for Rs. 28,00,000/- jointly with Mr. Nazar Mohd which has DLC value of Rs. 43,94,029/-. [PB 24-32] Assessee's share in above property was 50%.

During the assessment proceedings, assessee submitted the valuation report from the registered valuer [PB 33-42] to AO as evident from the note sheet of the department. [PB 4345] Further, assessee had submitted the calculation sheet obtained from registration department from where it can be found that how the calculation of DLC value of Rs. 43,94,029/- [PB 46-49] was arrived on date of transaction.

From the perusal of above calculation sheet, it can be found that registrar department has made valuation for the above property considering it to be commercial property whereas the same was residential property. Further, assessee had sold above property on 05.02.2015 [PB 50-59] where the valuation of same half portion of property was made by registration department at Rs. 17,17,516/-. Calculation sheet of DLC value for Rs. 17,17,516/- [PB 60-61] was also provided to assessing officer from which it can be found out that valuation was made by the registrar department considering it to be residential property. Further, value of property as on 05.02.2015 was Rs. 17,17,516/- so value for the same property on 07.05.2013 will always be less than Rs. 17,17,516/- and can never be more than that. Assessee had also submitted an affidavit in support of his contention [PB 62]. However, assessing officer did not consider the submissions and passed assessment order adding the whole amount of difference in income of the assessee.

However, the revised valuation of the above property considering it to be a residential on the basis of rates prescribed by the state government is as follows:

Land cost at the rate of 13760 per Sq. Mtr for 209.03 Sq. Mtrs (As Per DLC Rate)
28,76,252/-

Construction Cost (As evaluated by stamps deptt.)

98,715/-

TOTAL (As evident from the val. report obtained from stamps & reg. depts)	<u>29,74,967/-</u>
Assessee's Share (i.e. 50%)	14,87,484/-
Purchase Consideration	14,00,000/-
Deemed income to be added u/s 56	87,484/-

However, since, the difference between fair market value of property and actual consideration is less than 10% of the actual consideration, therefore the same should be ignored and no addition should be made u/s 56 as held by Bangalore ITAT in Sandeep Patil vs. ITO [924/BANG/2019] and Jaipur ITAT in Sita Bai Khetan vs. ITO [826/JP/2013]

Further, assessee had claimed before assessing officer that value adopted by stamp valuation authority exceeds the fair market value of the property, therefore assessing officer should have referred the matter to Department valuation officer instated of adopting the value taken by the stamp valuation authorities and failure to do so will result in deleting the addition as held in case of

- a. ITO vs. M/s Aditya Narain Verma (HUF) 4166/Del/2013 (PB 63-72)
- b. ITO vs. Estate of Maharaja Karni Singh of Bikaner [241/JODH/2017/ 166 DTR 29 (Jodh. Trib.)]

In view of above addition of Rs. 7,97,015/- deserved to be deleted.”

7. The ld. DR is heard who has relied on the findings of the lower authorities. He contended that the AO has made the addition based the Registration papers. It was of the satisfaction of the AO and observed that during the year under consideration assessee has purchased a plot Chandpole Bazar, Jaipur. The said

property has been purchased jointly by the assessee and Sh. Nazar Mohd. in the F.Y. 2013-14 dated 24.05.2013. The plot has been purchased in amount to Rs. 28,00,000/- in which the share of the assessee is 50%. The assessee has paid against the share of plot an amount of Rs. 14,00,000/- against the purchase cost and transfer expenses separately as per his share. But the value as per Stamp Authority of property purchase is Rs. 43,94,029/- & share of the assessee in the above property is 50% that comes to Rs. 21,97,015/-, which is more than by Rs. 7,97,015/- in comparison to actual purchase consideration Rs. 14,00,000/-. Therefore difference amount of Rs. 7,97,015/- is hereby added to the total income of the assessee as undisclosed income during the year under consideration.

8. We have heard both the parties and perused the materials available on record. The ld. AR for the assessee made his submission that ground No. 1, relying on U/s 127 of the Act and case laws. We observed that the transfer of assessment record u/s 127 of the Act the ITO has the power to transfer within Ward as per the territorial jurisdiction, the above said transfer of record has been within the same Ward where the territorial jurisdiction where the case lies with ITO, Ward-3(3), Jaipur and transfer is done to ITO, Ward -3(3). The Citation where the ld. AR for the assessee submitted before us is not relevant to his case. ***We arrived at the conclusion that as per sec127(3) and the decision of the Apex court in the case***

Kashiram Aggarwalla V Union of India and Others (1965) 56 ITR 14 (SC), Where the transfer of jurisdiction only involves Assessing Officer situated in the same city [Section 127(3)] Section 127(3) makes it clear that no opportunity is required to be given in respect of transfer of jurisdiction within the same city.

It was held that the mandatory requirement of recording reasons was not to be applicable, as the transfer orders were in the same city and only wards were changed but the court did observe about the nature of transfer orders under section 127.

Hence, ground No. 1 of the assessee appeal is dismissed.

9. In ground No. 2, taking into merits of the case, the ld. AR for the assessee has purchased a residential house for Rs. 28,00,000/- jointly with Mr. Nazar Modh which had DLC value of Rs. 43,94,029/-, where the assessee is holding 50% of the property value. The ld. AO has failed to consider the submission made by the assessee that the valuation report from the registered valuer is an evident where the calculation sheet obtained from registration department from where it can be found that how the calculation of DLC value of Rs. 43,94,029/- was arrived on the date of transaction. The ld. AO and the ld. CIT(A) has failed to note that the assessee has sold the above property on 05.02.2015 where the valuation of same half portion of the property was made by Registration Department at Rs. 17,17,516/- . The ld. AO

failed to consider the submission made by the assessee where the assessee has submitted the valuation sheet of DLC value which was made by the Registrar Department considering it to be a residential property. The Id. AO and Id. CIT(A) has failed to consider that the AO submitted an affidavit in support of his contention.

Further the main question is arrived whether the property is commercial property or residential property, we observed that the Registrar Department has made valuation for the property considering it be a commercial property, where as the same was residential property from the documents furnished. We observed that the assessee has sold the above property on 05.02.2015 where the valuation of same half portion of the property was made by the Registration Department at Rs. 17,17,516/-. Further perusing the calculation sheet of DLC value, the Assessing Officer failed to note that the valuation was made by the Registrar Department considering it to be a residential property which is reproduced as under:-

राजस्थान सरकार

कार्यालय— उप पंजीयक, पंजीयन एवं मुद्रांक, जयपुर पंचम्“पंजीयन भवन” कलेक्ट्रेट परिसर, बनीपार्क, जयपुरक्रमांक 1632दिनांक 17/10/19

श्री इमरान खान,

59, जालुपुरा, जयपुर।

विषय:— सूचना का अधिकार अधिनियम 2005 के तहत सूचना उपलब्ध करवाने बाबत।प्रसंग:— आपके आवेदन पत्र दिनांक 13.10.16 के क्रम में।

उपरोक्त विषयान्तर्गत लेख है कि आप द्वारा चाही गई वांछित सूचना निर्धारित शुल्क जमा करवाने पर इस कार्यालय में उपलब्ध रिकार्ड अनुसार संलग्न कर सूचनार्थ प्रेषित है।

संलग्न:— दस्तावेज संख्या 2015397003077 की मूल्यांकन रिपोर्ट की सत्यापित प्रतिलिपि।



उप-पंजीयक
सब रजिस्ट्रार, जयपुर
पंचम् जयपुर

Stamps and Registration Department
OFFICE OF SUB REGISTRAR - V
JAIPUR

(1317/15)

Property Type - Self Valuation (On Presentation)
Document Type - Sale Deed (Conveyance deed)

Document S/No	2015397003077	Presentation Date	5-2-2015
Presenter Name	IMRAN KHAN	Execution Date	5-2-2015
Presenter/Property Address	59 PURANA JALUPURA JAIPUR		

Property Detail

1	Property Address	U/D 1/2 , BHOPI KA DERA KHETDI HOUSE CHANDPOLE JAIPUR
2	Property Region	NAHARI KA NAKA AREA
3	Property Locality	KHETARI HOUSE COURT STAY LIST PLOT NO. 73 KURESHI COLONY,
4	Nature Of Use	RESI./COMM
5	Property Criteria	RESIDENCIAL (INTERIAR) NEW
6	DLC Applicable	14940 Rs./SQ.MTR.
7	DLC Effective From Date	01-10-2014
8	Plot Land Area	104.51 SQ.MTR.
9	Floor Type	GROUND FLOOR WITH CELEING (100 %)
10	Is Corner	Yes 10 % Extra
11	Tin Share	Area :0.0 Rate :0
12	Boundary	Length :0.0 Rate :0
13	Plot Land Value	1717516
14	Rebate Applicable	No

15	Evaluated Value	1717516				
16	Stamp Duty Applicable	5.0 %				
17	Registration Fee Applicable	1.0 %				
Total Value Of All Properties as above(in Rs.)						
18	Plot / Land Value	1717516				
19	Construction Value	0				
20	Tin Share Value	0				
21	Boundary value	0				
22	Others	0.0				
23	Face Value	1450000	(Stamps	72500	Registration Fee	14500)
24	Total Value Evaluated(Rs.)	1717516	(Stamps	85880.0	Registration Fee	17180.0)
25	Payable	stamps	85880.0	Surcharge	8588	Registration Fee 17180.0
26	Duty paid inclusive previous if any	stamps	85880	Registration Fee	0	
27	Balance to be Paid	stamps	0.0	Surcharge	0	Registration Fee 17180.0
28	csi_more_50000	300.0				
29	Memorandum	stamps	0	MEM. Registration	0	
30	Commission	0				
31	Total Payable(Rs.)	17480				

85880
8588
94468

Computer Operator _____ Cashier/Reg. Clerk _____ Sub Registrar _____

Further, we observed that the value of property as on 05.02.2015 was Rs. 17,17,516/- so value for the same property on 07.05.2013 will be less than Rs. 17,17,516/-. The ld. AR for the assessee submitted that the revised value of the above property considering it to be a residential on the basis of rates prescribed by the State Government is as follows:-

“Land cost at the rate of 13760 per Sq. Mtr for 209.03 Sq. Mtrs (as per DLC rate) Rs. 28,76,252/-

Construction Cost (as evaluated by stamps deptt.)	Rs. 98,715/-
Total (as evident from the val. Report obtained from stamps & reg. deptt)	Rs. 29,74,976/-
Assessee’s share (I.e. 50%)	Rs. 14,87,484/-
Purchase consideration	Rs. 14,00,000/-
Deemed income to be added u/s 56	Rs. 87,484/-

However, since, the difference between fair market value of property and actual consideration is less than 10% of the actual consideration, therefore the same should be ignored and no addition should be made u/s 56 as held by Bangalore ITAT in Sandeep Patil vs. ITO [924/BANG/2019] and Jaipur ITAT in Sita Bai Khetan vs. ITO [826/JP/2013]”.

The Ld AO and CIT (A) erred in not appreciating the facts that Valuation Report of sub registration was submitted and perused by the lower Authorities . The property was sold before the Assessment Year. On perusing the Sale deed which is mentioned in page 11 of this order clearly mentioned has residential property.

The ld. AR for the assessee relied upon order of the Coordinate Bench in case of Income Tax Officer vs. M/s Aditya Narain Verma (HUF) ITA No. 4166/Del/2013

dated 07.06.2017 for the assessment year 2009-10, wherein the Coordinate Bench has held in para 4.1 which are reproduced as under:-

“4.1 On the very perusal of the provisions laid down under section 50C of the Act reproduced hereinabove, we fully concur with the finding of the Id. CIT (Appeals) that when the assessee in the present case had claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty. The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation. Thus, non-compliance of the provisions laid down under sub section (2) by the Assessing Officer cannot be held valid and justified. The Hon'ble jurisdictional High Court of Allahabad in the case of Shashi Kant Garg (supra) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. Similar view has been expressed by the other decisions cited by the Id. AR in this regard hereinabove. The first appellate order on the issue is thus upheld. The grounds are accordingly rejected.”

Hence, ground No. 2 of the appeal of the assessee is allowed on merit.

In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19/12/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2022

***Santosh**

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

1. The Appellant- Mr. Imran Khan , Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward-3(3),Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 621/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar