

IN THE INCOME TAX APPELLATE TRIBUNAL
Jodhpur Bench

Before Shri B.R. Baskaran (AM) & Shri Sandeep Gosain (JM)

I.T.A. No. 154/Jodh/2019 (A.Y. 2015-16)

Late Mohamad Yasin Hazi Through L/h. Fateh Mohamad Ward No. 29, Bakra Mandi Road, Sardarshahar, Churu Rajasthan : 331 403. PAN : ADOPH9515N (Appellant)	Vs.	ITO, Ward 3 Churu Rajasthan (Respondent)
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Assessee by	Shri Suresh Ojha
Department by	Shri Venkatesh V.
Date of Hearing	04.11.2022
Date of Pronouncement	17.01.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28.02.2019 passed by Ld CIT(A)-4, Jaipur and it relates to the assessment year 2015-16. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition made by the AO u/s 50C of the Act.

2. The facts related to the issue are stated in brief. The assessment was reopened by issuing notice u/s 148 of the Act on 26.09.2016. In response thereto, the assessee filed return of income on 26-09-2017. The AO issued notice u/s 143(2) along with notice u/s 142(1) on 27.09.2017. During the year under consideration, the assessee has sold two pieces of land situated at Rohi Mauja, Sardashahar on 11.08.2014 for a consideration of Rs.16,44,500/- (Rs.8,22,250/- x 2). The sub-registrar had determined the sale consideration at Rs.24,66,800/- (Rs.12,33,400/- x 2), whereas the

DIG(Stamp and Registration) determined the value at Rs.1,04,00,000/- (Rs.52,00,000/- x 2).

3. The AO noticed that the assessee has shown the sale consideration at Rs.24,66,800/- for the purpose of computation of capital gain. Before the AO, the assessee submitted that the valuation determined by DIG (Stamp and Registration) has been quashed by the Revenue Board, Ajmer, Rajasthan, vide its order dated 03-01-2017. Hence the AO made enquiries with the Sub-registrar and it was informed that the State Revenue Department has challenged the decision of Revenue Board before Hon'ble Rajasthan High Court. Under these set of facts, the AO adopted the value of sale consideration as Rs.1,04,00,000/- in terms of sec. 50C of the Act and accordingly determined the Long Term Capital Gain. The Ld CIT(A) confirmed the order passed by the AO.

4. The Ld A.R submitted that the assessee has submitted certain additional evidences before Ld CIT(A) and contended that the impugned land is located beyond 4 kms of municipal limits. Hence a specific ground, viz., ground no.5 was raised before the Ld CIT(A) contending that the impugned land sold by the assessee is not "capital asset" within the meaning of Income tax Act. He submitted that the Ld CIT(A) did not accept the additional evidences and also did not dispose of the above said ground.

5. We heard Ld D.R and perused the record. We notice that the assessee has raised a specific ground before the Ld CIT(A) contending that the impugned lands sold by the assessee are not agricultural lands. However, consideration of said ground requires admission of certain additional evidences. According to Ld A.R, the Ld CIT(A) did not admit them and did not adjudicate the above said ground. Under these set of facts, in the interest of natural justice, we admit the additional evidences. Since the Ld CIT(A) has not disposed of the above said ground and since it goes to the root of the matter, we think it fit to restore all the issues to the file of Ld CIT(A) for adjudicating them afresh. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to his file for adjudicating them afresh. After

affording adequate opportunity of being heard, the Ld CIT(A) may take appropriate decision in accordance with law.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced on 17-01-2023

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 17 /01/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS

S.No	Description	Date	Intls	
1	Prepared by BRB	4.1.23		
2	Draft dictated on	4.1.23		Sr.P.S.
3	Draft placed before author	4.1.23		Sr.P.S.
4	Draft proposed & placed before the second Member			JM/AM
5	Draft discussed/approved by second Member			JM/AM
6	Approved Draft comes to the Sr.P.S./PS			Sr.P.S.
7	Kept for pronouncement on	17 .1.23		Sr. P.S.
8	File sent to the Bench Clerk	17 .1.23		Sr.P.S.
9	Date on which file goes to the Head Clerk			
10	Date of Dispatch of order			