

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA No. 51/Jodh/2018
(ASSESSMENT YEAR- 2011-12)

Shri Uttam Chand Singhi Sadar Bazar, Sirohi	Vs	ITO Ward-Sirohi (Raj)
(Appellant)		(Respondent)
PAN NO. ACUPS 5999L		

ITA No. 52/Jodh/2018
(ASSESSMENT YEAR- 2011-12)

Shri Bhanwar Lal Singhi Sadar Bazar Sirohi	Vs	ITO Ward-Sirohi (Raj)
(Appellant)		(Respondent)
PAN NO. ACUPS 5999L		

Assessee By	Shri Arvind Purohit, Adv.
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	18/01/2023
Date of Pronouncement	20 /01/2023

ORDER

PER: B. R. BASKARAN, AM

Both these appeals filed by the respective assesseees are directed against the orders passed by the Id. CIT(A)-1, Jodhpur dated 28-07-2017 for the

assessment year 2011-12 in their respective hands. Since the issues raised in both the appeals are identical in nature and arise out of common set of facts, they were heard together and are being disposed of through this common order, for the sake of convenience.

2 At the outset of the hearing, the Bench noted that both the appeals are barred by limitation of 93 days. The ld. AR of the assessee has furnished a letter owning up responsibility for the delay on account of some personal inconveniences. Accordingly, we are of the view that there was a reasonable cause for the delay in filing both these appeals before the Tribunal. Accordingly, we condone the delay and admit the appeals.

3 The common issue urged in both these appeals relate to the issue of adoption of market value as on 01-04-1981 while computing capital gains on sale of a plot, in which both the assesseees herein are co-owners.

4 The facts relating to the above said issue are stated in brief. The assesseees herein are the co-owners of a residential plot admeasuring 53300 sq. Feet, holding 25% share each. This plot was sold for a sales consideration of Rs.1.30 crores. Both the assesseees computed capital gains adopting their share (25%) in the above said sale consideration. The AO noticed that the stamp authority has determined the DLC value at Rs.1.44 crores. Hence, the AO held that the assesseees herein should have adopted the sale consideration as Rs.1.44 crores as per provisions of Section 50C of the Act. Hence, the AO reopened the

assessment of the year under consideration in the case of both the assesseees. Accordingly, the AO computed the capital gains in the hands of both the assesseees by adopting 25% of the DLC value of Rs.1.44 crores as sale consideration. The AO further noticed that the assesseees have deducted the cost of land by adopting the Fair market value (FMV) as on 01-04-1981 at Rs.42 per sq. Ft. The AO took the view that the above said FMV of the plot is on the higher side. Accordingly, the AO estimated the FMV of the plot as on 1.4.1981 at Rs.35 per sq. Ft and deducted the indexed value of the sale while computing the long term capital gain.

5. Both the assesseees challenged the above said decision of the AO by filing appeal before the Ld CIT(A). However, the ld. CIT(A) confirmed the orders passed by the AO in the hands of both the assesseees.

6. We heard both the parties and perused the record. Before us, the assesseees did not dispute the adoption of DLC value as Sale consideration in terms of sec. 50C of the Act. The dispute is related to the determination of the FMV as on 1.4.1981. It is the case of the assesseees that they have adopted the value as determined by a registered valuer.

7. We notice that the DLC value in 1983 was shown as Rs.60/- per sq. Ft. The valuer of the assessee has discounted the above said rate in order to arrive at value as on 01-04-1981 at Rs.42/- per sq. Ft. On the contrary, the ld. CIT(A) has noticed that the DLC rate of Rs.60/- per sq.ft. in 1983 has increased to

Rs.120/- in 1987 resulting in an average increase of Rs.15/- per sq. ft. The Ld CIT(A) adopted the discounting factor as Rs.15/- per sq.ft and accordingly held that the rate of Rs.60/- per sq.ft in 1983 will discount to Rs.30/- per sq.ft in 1981. Accordingly the Ld CIT(A) held the rate of Rs.35 per sq. ft adopted by the AO was reasonable.

8. We noticed that the ld. CIT(A) has compared the rate between 1983 to 1987 in order to find out the discount factor at Rs.15/-per sq.ft and it was applied to find out the value as on 1.4.1981 by discounting the rate of the rate of 1983. The registered valuer has also discounted the the DLC rate of 1983 by adopting the discount factor as Rs.9/- per sq.ft. The requirement of both the parties is to arrive at the value as on 01-04-1981 and the value of Rs.60/- per sq. Ft determined by DLC in 1983 was the basis for both of them.

9. In our view, it may not be correct to adopt the average increase in the DLC value between 1983 and 1986 as the discounting factor, since it is in the common knowledge of every one that the increase in plot value is usually more on the occurrence of development activities. Hence, we are unable to accept the methodology adopted by the ld. CIT(A) on the basis of increase happening in the periods subsequent to 1983. We noticed that the approved valuer has arrived at the value of Rs.42/- per sq. Ft by adopting discounting factor as Rs.9/- per sq.ft, i.e., he has discounted the value at Rs.60/- per sq. ft determined by the Registrar for 1983 in order to arrive at the value as on 1.4.1982. In our view the

approach of the approved valuer is more acceptable in the facts and circumstances of the case. Accordingly, we are of the view that FMV as on 01-04-1981 should be adopted at Rs.42 per sq. ft. Accordingly, we set aside the orders passed by the Id. CIT(A) in both the cases and direct the AO to recompute LTCG by adopting FMV as on 01-04-1981 at Rs.42 per sq. Ft.

10 In the case of Shri Uttam Chand Singhi, the assessee has raised one more ground with regard to the claim for deduction u/s 54 of the Act. The assessee did not claim deduction u/s 54 of the Act in the return of income, but claimed the same for the first time before the Id. CIT(A). Since the assessee did not produce any documentary evidence with regard to the said claim, the Id. CIT(A) dismissed the same. In our view, the assessee may be given an opportunity to produce necessary documents in support of the claim of deduction u/s 54 of the Act. Accordingly, we set aside the order of the Id. CIT(A) on this issue and restore the same to the file of the AO for examining the said claim. The assessee is also directed to furnish necessary evidences in support of his claim and the AO after examining them may take appropriate decision in accordance with law.

11. In the result, the appeal of Shri Uttam Chand Singhi is allowed for statistical purposes and that of Shri Bhanwar Lal Singh is allowed

Order pronounced in the open Court on 20 /01/2023

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Dated : 20 /01/2023

**Mishra*

Copy to:

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

Asstt. Registrar

Jodhpur Bench