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. 302/JP/2022
निर्धारण वर्ष/Assessment Year : 2010-11.

Ahmed Ali Khan Gali Bahur, Jamdar Bawoi Aliganj, Tonk.	बनाम Vs.	Income Tax Officer, Ward, Tonk.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. FKLPK 7278 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mukesh Khandelwal (CA)
राजस्व की ओर से/ Revenue by : Ms Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 29/11/2022
उदघोषणा की तारीख/Date of Pronouncement: 23/02/2023

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal filed by the assessee is directed against order of the ld. CIT(A), National Faceless Appeal Centre, Delhi dated 15-06-2022 for the assessment year 2010-11 wherein the assessee has raised the following grounds of appeal :-

1. That under the facts and circumstances of the case, the ld. CIT (A) has erred in sustaining the addition of Rs. 17,19,182/- made by the ld AO on account of Long Term Capital Gain by adopting the valuation done by the ld. DVO as sale consideration of the agricultural land sold by assessee on one side and also reducing the cost of acquisition claimed by the appellant resulting into an addition of Rs. 17,19,182/-.

2. That under the facts and circumstances of the case, the ld. CIT (A) has erred in sustaining the action of the ld. AO who adopted the valuation done by ld. DVO as sale consideration of the property sold by the appellant without dealing with the objections filed by the appellant on such valuation.

3. That under the facts and circumstances of the case the ld. CIT (A) has erred in sustaining the action of the ld. AO in reducing the cost of acquisition of the property claimed by the appellant merely on his estimations.

The assessee has also requested to allow him to raise an additional ground as under :-

> " That the application of provisions of section 50C of the Income Tax Act, 1961 is not applicable in the case which has been wrongly applied by the ld. AO and confirmed by ld. CIT (A) and therefore the addition made in the assessment on such basis deserves to be quashed."

2. The additional ground raised by the assessee is regarding application of section 50C of the IT Act, 1961 which was wrongly applied by the AO and confirmed by the ld. CIT (A) and thereby making addition on such basis. The ld. A/R of the assessee has submitted that the additional ground raised by the assessee is arising from the orders of the AO as well as ld. CIT (A) and, therefore, this is not a new ground raised first time at this stage. He has further contended that inadvertently the said ground was not included in the original grounds of appeal, therefore, the assessee is seeking permission to raise this additional ground. In support of his contention, he has relied upon the judgment of Hon'ble Supreme Court in case of NTPC vs. CIT, 229 ITR 383 (SC).

3. On the other hand, the ld. D/R has vehemently objected to the admission of the additional ground and submitted that when the assessee has not raised this ground in the original grounds of appeal, then it is clear that the assessee has accepted the findings of the ld. CIT (A) on these issues.

4. Having considered the rival submissions and careful perusal of the record, we find that the additional ground raised by the assessee is arising from the impugned orders of the AO as well as ld. CIT (A). Thus it is clear that this is not a fresh plea raised by the assessee first time before the Tribunal but it is very much an issue which was before the AO and ld. CIT (A) and, therefore, in these facts and circumstances of the case, we admit the additional ground raised by the assessee for adjudication on merits.

Additional Ground

5. As regards the additional ground regarding the addition made by the AO and confirmed by the ld. CIT (A), the ld. A/R submitted that provisions of section 50C are applicable on transfer of land or building or both only. The same is not applicable on transfer of leasehold rights and/or tenancy right. In the instant case the assessee was only a Khatedar of land as evidenced with the Jamabandi (APB 9). This report shows that owner of the land was State Government and the appellant was only a Kastkar (person who is doing cultivation work on land owned by other person) and hence the appellant was not an owner of the land and therefore the provisions of section 50C have been wrongly applied by the AO. The ld. A/R further submitted that Income Tax Act recognizes land and right in the land separately which is evidenced with the provisions of section 54D. For verification, he reproduced the provisions of section 54D as under :-

> **" Capital gain on compulsory acquisition of lands and buildings not to be charged in certain cases.**
>
> 54D.(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking belonging to

> the assessee which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee for the purposes of the business of the said undertaking (hereafter in this section referred to as the original asset), and the assessee has within a period of three years after that date purchased any other land or building or any right in any other land or building or constructed any other building for the purposes of shifting or re-establishing the said undertaking or setting up another industrial undertaking, then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say, -
>
> xxxxx xxxxx xxxxx

Hence, transfer of ownership rights in land or building attracts provisions of section 50C whereas in case of transfer of rights therein no such provisions are attracted. Such view has been upheld in various judicial pronouncements. In support of his contention, the ld. A/R relied on the decision of Jaipur Bench of the Tribunal in the case of Jaipur Times Industries vs. ITO in ITA No. 429/JP/2012 dated 26.02.2014 wherein the matter involved was that the assessee had sold his industrial property which was taken on lease from Rajasthan State Industrial & Mineral Development for Rs. 42,25,000/- which was valued by registering authority at Rs. 58,98,653/-. The ld. AO worked out capital gain by adopting 50C value. Same was confirmed by the ld. CIT (A). On appeal the Hon'ble Jaipur Tribunal held in favour of the assessee by observing as under :-

> " 3.4. After considering the above written submissions, we are inclined to accept that Section 50C of the Act applies only to capital asset being land or building or both but it cannot apply to lease rights in a land. Since the assessee has transferred the lease right for 99 years in the plot and not ownership in land itself, the provisions of section 50C cannot be invoked. Therefore, full value of consideration in this case has to be taken at Rs. 42.25 lacs. The decisions relied on by the assessee in its written submissions also support our above finding. Therefore, we allow the Ground No. 1.1 of the assessee's appeal."

The ld. A/R further relied on the following decisions :-

Shri Arun Lashkary vs. DCIT
ITA No. 759/JP/2016 dated 10.02.2017 (ITAT Jaipur)

Bharat Bhushan Jain vs. ITO
ITA No. 316/Del.'2020 dated 27.05.2022 (ITAT New Delhi)

CIT vs. Greenfield Hotels and Estates Pvt. Ltd.
389 ITR 68 (Bombay HC)

Atul G. Puranik vs. ITO
11 ITR – Trib. 0120 (ITAT Mumbai)

The ld. A/R therefore, submitted that in view of the above judicial pronouncements the application of provisions of section 50C of the Income Tax Act, 1061 is unjustified and hence the addition made by the AO and sustained by the ld. CIT (A) deserves to be quashed.

6. On the other hand, the ld. D/R has relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as the relevant material on record. At the outset, we noticed that the ld. CIT (A) while deciding the appeal of the assessee has categorically in para 5.1 of his findings has recorded that notice in the case of assessee was issued on 14.01.2021 for furnishing written submissions/documents on or before 28.01.2021. Since there was no compliance on the part of the assessee, therefore, another notice was again issued on 09.03.2021 to the assessee to furnish the written submission etc. on or before 15.03.2021. This time again the said notice was not complied

with by the assessee. Therefore, another notice was issued on 28.04.2022 to the assessee to furnish written submission/documents etc. on or before 06.05.2022. Another notice was issued on 10.05.2022 for compliance on 17.05.2022. Thereafter, again another notice was issued on 24.05.2022 for compliance on 30.05.2022 but still the assessee failed to comply with the repeated notices. Therefore, the ld. CIT (A) decided the appeal filed by the assessee by observing in para 6.2 of his order as under :-

> " 6.2. During the appellate proceedings, the appellant was provided many opportunities as enumerated above. The appellant, for the reasons best known to him has remained non-compliant. No material facts have been brought on record to rebut the action of the AO. In view of the above facts, I am of the considered view that the AO had sufficient reason to believe that capital gain arising out of sale of land had escaped assessment. Hence, the reopening of the case of the appellant u/s 147 of the Act is justified. Therefore, this ground of appeal is dismissed."

Thus, on perusal of the order of the ld. CIT (A) herein above, we find that the ld. CIT (A) has confirmed the order of the AO in absence of any submissions from the side of the assessee and also non appearance of the assessee before the ld. CIT (A). From the entire sequence of events and the conduct of the assessee in non compliance of the repeated notices, it appears gross negligence on the part of the assessee and wastage of precious time. In our considered view, non compliance of notice issued by the Authorities and non appearance before the Authorities inspite of repeated notices/summons is dis-regard towards the Authorities. Be that as it may,

without going into merits, considering the interest of natural justice, one more opportunity is granted to the assessee, and the file is restored back to the ld. CIT (A) for consideration afresh, subject to cost of Rs. 2,000/- for negligent attitude during income tax proceedings, to be deposited in the Prime Minister's Care Fund and proof thereof should be produced.

8. Since we have restored the matter to the file of the ld. CIT (A) for adjudicating the matter afresh after providing reasonable opportunity to the assessee, the other grounds raised have become infructuous and need no adjudication.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 23/02/2023.

Sd/-	Sd/-
(राठौड़ कमलेश जयंतभाई)	(संदीप गोसाई)
(RATHOD KAMLESH JAYANTBHAI)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23/02/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Ahmed AliKhan, Tonk.
2. प्रत्यर्थी / The Respondent- The ITO Tonk.
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. 302/JP/2022}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar