

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 206/Ind/2020
(Assessment Year:2012-13)

Shri Vinod Choudhary, 12, Niranjapur, Lasudia, Indore	Vs.	ITO 1(3) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AKRPV 4892 Q		
Assessee by	Shri Pankaj Shah & Soumya Bomb, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.02.2023	
Date of Pronouncement	28.02.2023	

ORDER

Per B.M. Biyani, AM:

Feeling aggrieved by appeal-order dated 14.01.2020 passed by learned Commissioner of Income-Tax (Appeals)-I, Indore [**Ld. CIT(A)**], which in turn arises out of assessment-order dated 14.12.2018 passed by Ld. ITO-1(3) [**Ld. AO**] u/s 147 read with section 144 of Income-tax Act, 1961 [**the act**] for assessment-year [**AY**] 2012-13, the assessee has filed this appeal on following grounds:

“1. That the order of AO is bad in law & wrong on facts.

2. (a) That the AO has erred in determining the long term capital gain from sale of urban agricultural land in the A.Y. 2012-13 without appreciating the fact that the long term capital gain had accrued to the assessee in the AY

2011-12 and the same had already been correctly disclosed in the computation and return of income.

(b) That in addition to the AY 2012-13, the AO had also assessed the case of assessee for the AY 2011-12 wherein the assessee had offered his income from Long Term Capital Gain arising out of sale of urban agricultural land. The returned income of the assessee was accepted by the AO without rejecting the income from Long Term Capital Gain Hence the same income cannot be assessed twice.

(c) That the AO had wrongly interpreted the judgement of Apex Court held in the case of Balbir Singh Maini which was decided in the context of Joint Development Agreement and the facts of that case were entirely different from the facts of the assessee.

(d) That with a preset mind the AO had wrongly interpreted section 2(47)(v) just to deny the exemption claimed u/s 54F & 54B. The A.O had failed to appreciate that the transaction of the assessee not only falls under provision (v) of sec. 2(47) but it is also squarely covered under provision (i), (ii) and (vi) of sec. 2(47).

(e) That the AO had erred in non relying on the sale agreement and possession receipt produced by the assessee without bringing any contrary material, other evidence on record and without confronting the buyer of the property.

3. That the appellant craves leave to add or amend any ground of appeal.”

2. Heard the learned Representatives of both sides and case records perused.

3. The registry has informed that that present appeal is filed after a delay of 87 days and therefore time-barred. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

4. Briefly stated the facts are such that as per information available with income-tax department, the Ld. AO found that assessee (alongwith other 3 co-owners) sold an immovable property for Rs. 4,31,75,600/- vide

registered sale-deed dated 27.04.2011 to M/s. Brilliant Homes Pvt. Ltd. Indore which was taxable in AY 2012-13 but the assessee did not pay tax on the capital gain arising therefrom. Based thereon, Ld. AO recorded satisfaction and issued notice u/s 148. In compliance to such notice, the assessee filed return of income on 28.05.2018 at a total income of Rs. 42,140/- but without declaring the impugned capital gain. During assessment-proceeding, the assessee submitted that the transaction of sale had taken place in AY 2011-12 and not in AY 2012-13. But, however, the Ld. AO did not accept the submission of assessee and completed assessment after making an addition of Rs. 1,07,93,900/-, being 1/4th share of assessee in the taxable capital gain computed by him. Aggrieved, the assessee filed first appeal before Ld. CIT(A) but could not succeed. Therefore, the assessee has come in this appeal before us assailing the orders of lower authorities.

5. Ld. AR representing the assessee straightaway submitted that the assessee sold the property along with 3 co-owners, namely (i) Shri Hukumchand Chaudhary, (ii) Shri Anil Chaudhary, and (iii) Smt. Kaushaliya Bai Chaudhary and the assessee had 1/4th share. Ld. AR submitted that the sale of property had taken place in the immediately preceding AY 2011-12 and the assessee had offered the resultant capital gain in the AY 2011-12 itself, which stood assessed by authorities, a copy of the assessment-order of AY 2011-12 concluded u/s 147 read with section 143(3) is placed at Page No. 40 of the Paper-Book. Ld. AR submitted that the revenue authorities have re-taxed the same income once again in AY 2012-13 on the basis that sale-deed was executed on 27.04.2011 falling within previous year 2011-12 relevant to AY 2012-13, whereas the sale had already been concluded in AY 2011-12 by agreement dated 26.04.2010 and possession-letter dated 15.05.2010. Ld. AR submitted that it is a case where the authorities have re-taxed the same transaction in AY 2012-13 which had already and rightly been taxed in AY 2011-12. Ld. AR submitted that this action of revenue authorities is illegal and unsustainable on the facts of the case.

6. Then, the Ld. AR submitted that identical action was taken by revenue authorities in the case of another co-owner of property namely *Shri Hukumchand Choudhary* where the controversy travelled up to ITAT, Indore in ITA No. 205/Ind/2020 and the said appeal has been decided by Hon'ble Coordinate Bench vide order dated 21.02.2023 (author of this order was one of the Members in the Bench) wherein the Hon'ble Bench has allowed the appeal of assessee and held that the income had been rightly taxed in AY 2011-12. According to Ld. AR, as a result thereof, the addition made by authorities in AY 2012-13 stands deleted. The relevant paras of the order are reproduced below:

"5. The Ld. A.R. submitted that the assessee is an agriculturist who derives his income mainly from the agricultural activities. During the A.Y. 2011-12 the assessee sold his 1/4th share of ancestral urban agricultural land co-owned by his other family members vide an agreement entered on 26.04.2010. Out of the sale proceeds received from the sale of the land he purchased new agricultural land in rural area and made investment in construction of his house. Since the large part of consideration was received in A.Y. 2011-12 and the assessee parted with the possessing of property to the buyer and finally sale deed was executed on 27.04.2011, i.e. just after 26 days from the end of the A.Y. 2011-12, hence in view of Section 2(47) of the Act the Long Term Capital Gain accrued to the assessee in the A.Y. 2011-12. The assessee offered the same in his return of income and claimed exemption under Section 54F & 54B out of the Long Term Capital Gain income. The income arising out of sale of urban agricultural land was correctly shown in the A.Y. 2011-12 and the same was assessed by the Assessing Officer. During the course of assessment proceedings the assessee produced the necessary documents and the Assessing Officer never doubted or made any adverse remarks in respect of genuineness of these documents. The income for the A.Y. 2011-12 was assessed and accepted as per the return filed by the assessee. While making for the A.Y. 2012-13, the Assessing Officer treated capital gain to have accrued in the A.Y. 2012-13 instead of A.Y. 2011-12 primarily on account of the fact that the sale deed was registered on 27.04.2011 i.e. in A.Y. 2012-13 and denied the exemption of the assessee under Section 54F and 54B. The Assessing Officer primarily relied upon the judgment of Balbir Singh Maini arising out of Civil Appeal No. 15619/2017. Consequently a huge addition of Rs. 1,07,93,900/- was made resulting into a tax demand of Rs. 39,86,910/-. The Ld. A.R. submitted that the Assessing Officer erred in determining the Long Term Capital Gain from sale of urban agricultural land in A.Y. 2012-13 without appreciating the fact that the Long Term Capital Gain had accrued to the assessee in the A.Y. 2011-12 and the same had already been correctly disclosed in the computation and return of income. In the instant case the sale deed was registered on 27.04.2011 and therefore, the Assessing Officer held that the same was taxable in A.Y. 2012-13 and not 2011-12, but the Assessing Officer failed to appreciate that the definition of

word Transfer starts with word 'includes' which means it is an exhaustive definition. The ownership of an asset is assumed either when the possession of the asset has been handed over or when the sale deed is executed between the parties. The date of transfer of capital asset would be considered from the date of agreement and handing over possession of the property to be taken or retained in the part performance of the contract. The sale agreement was executed by both the parties in the A.Y. 2011-12 and the possession was also given alongwith the part performance of the contract hence the same is required to be taxed in the A.Y. 2011-12 and not in the A.Y. 2012-13. The return income of the assessee was accepted by the Assessing Officer without rejecting the income from Long Term Capital Gain and without denying the exemption claimed under Section 54B & 54F. The Ld. A.R. relied upon the decision of Hon'ble Supreme Court in case of Mahaveer Kumar Jain vs. CIT (Civil Appeal No. 4166 of 2006 order dated 19.04.2018). The Ld. A.R. further submitted that the Assessing Officer wrongly interpreted the judgment of Hon'ble Apex Court in case of Balbir Singh Maini vs. CIT (Civil Appeal No. 15619/2017 order dated 04.10.2017). The facts of the case of Balbir Singh Maini are totally different from the facts of the case of the assessee. As the former of the case of Joint Development Agreement and the particular assessee herein is an individual. The Ld. A.R. further submitted that all the relevant documents were produced before the Assessing Officer. The Ld. A.R. relied upon the following decision:

- *Ajay Kumar Shah Jagati v. CIT (2008) 168 Taxman 53 (SC)*
- *Jasbir Singh Sarkaria, (2007) 164 Taxman 108*
- *Bertha T. Almeida v. ITO (2015) 53 taxmann 522*
- *S. Gurucharan Singh Anand (1993) 45 ITD 299 (JP)*
- *CIT vs. Excel Industries Ltd. (2013) 38 taxmann.com 100 (SC)*
- *Sanjeev Lal vs. CIT (2014) 46 TAXMANN.COM 300 (SC)*
- *Rukmani Devi Agarwal vs. ITO (ITA 557/JP/2018)*
- *ACIT vs. S. Balasundaram (ITA 1832/Mds/2012)*

6. The Ld. D.R. submitted that since the sale deed was registered in A.Y. 2012-13 the same cannot be taken into account for A.Y. 2011-12 but in the current A.Y. i.e. 2012-13. The Ld. D.R. relied upon the decision of Hon'ble Supreme Court in *Suraj Lamp & Industries vs. State of Madhya Pradesh (SLP No. 13917/2009 order dated 11.10.2011)*. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. In rejoinder the Ld. A.R. submitted that the decision of Hon'ble Supreme Court in case of *Suraj Lamp & Industries and Balbir Singh Maini* the factual aspect is totally different. The Ld. A.R. in rejoinder further submitted that as regards alternate argument the Assessing Officer had wrongly interpreted Section 2(47)(v) only to deny the exemption claimed under Section 54F & 54B. The Ld. A.R. submitted that Assessing Officer failed to appreciate that the transaction of the assessee not only falls under provision (v) of Section 2(47) but it is also squarely covered under provision (i), (ii) and (vi) of Section 2(47).

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Ld. A.R. has distinguished the decision in factual aspect that of *Balbir Singh Maini and Suraj Lamp & Industries*. In this particular case the assessee is an

individual and he has sold 1/4th share of the said land and purchased the land (agricultural land) in A.Y. 2011-12 itself. The execution of the agreement related to purchase of land and possession of the land was in A.Y. 2011-12 only. The registration is in April 2011 cannot debar the assessee when the assessee has claimed benefit of exemption under Section 54F & 54B is in A.Y. 2011-12 itself. The same has not been granted in that particular year. As the assessee has offered his income from Long Term Capital Gain in A.Y. 2011-12 only. These aspects were not taken into account by the Assessing Officer as well as CIT(A). Hence, the appeal of the assessee is allowed.

9. *In result, the appeal of the assessee is allowed.”*

7. Ld. AR submitted that controversy of assessee in the present-appeal is thus already settled in favour of assessee. Hence the same view should be adopted and the addition made in present case also deserves to be deleted.

8. Ld. DR fairly agreed to the submissions of Ld. AR

9. In view of the congruence by parties, we are inclined to adopt the same view as taken by Co-ordinate Bench in the case of *Hukumchand Choudhary (Supra)*. Respectfully following the same, we too hold that the capital gain, which had already been taxed in AY 2011-12, cannot be taxed in AY 2012-13. Being so, we delete the addition made by Ld. AO of Rs. 1,07,93,900/-. The assessee succeeds in this appeal.

10. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 28.02.2023.

Sd/-

(VIJAY PAL RAO)
Judicial Member

Indore, 28.02. 2023

Patel/Sr. PS

Sd/-

(B.M. BIYANI)
Accountant Member

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore