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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकरअपील सं./ITA No. 666/JP/2019
निर्धारणवर्ष/Assessment Year :2012-13

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| Late Shri Raj Kumar Johri<br>Through: Legal Heir, Smt. Pushpa Johri<br>B-26, Mahalaxmi Nagar, JLN Road<br>Jaipur | बनाम<br>Vs. | The ITO<br>Ward 6 (2)<br>Jaipur |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAWPJ 0459 N | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : None
राजस्व की ओर से/Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख/Date of Hearing : 01/03/2023
उदघोषणा की तारीख/Date of Pronouncement: 30/05/2023

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A)-2, Jaipur dated 29-03-2019 for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

> ''1. That both the lower authorities have erred in law as well as in facts of the case in substituting actual sales consideration of Rs.85,00,000/- by deemed sales consideration u/s 50C of the I.T. Act 1961 of Rs.1,13,69,566/- overlooking & ignoring the vital fact that there was upward revision in DLC rates between oral agreement dated 18-12-2010 i.e. when

earnest money was received through banking channel and date of sale deed i.e. 20-04-2011 thereby enhanced full value of consideration of Rs.28,69,566/- and thus addition of Rs.6,28,693/- was made/ confirmed to the returned income.

2. That both the lower authorities have erred in law as well as in facts of the case in holding sale of depreciable asset i.e. Innova Car'' to be sale of short term capital asset as per section50 thereby addition of Rs.1,60,980/- made to the returned income.

2.1 Brief facts of the case are that previously the case was argued by Shri Ashish Khandelwa, CA, ld. AR of the assessee through virtual hearing and the said matter was kept for years and subsequently certain clarifications were required and therefore, the matter was again fixed for clarifications. However, on none of the dates, the ld. AR appeared for answering the clarifications. Thus, after providing sufficient opportunities by the Bench on various occasions, the matter was finally heard ex-parte in the presence of the ld. DR.

2.2 We have heard the ld. DR and perused the materials available on record. It is an undisputed fact that the assessee alongwith his spouse entered into oral (verbal) agreement for sale with prospective buyer on 18-12-2010 for total consideration of 1.70 crores. In furtherance of the same, the assesse and his spouse received cheque dated 20-12-2010 amounting to Rs.18.75 lacs respectively which was deposited in ICICI Bank account. Further, the funds credited in the bank accounts were used for making payments towards ICICI Bank O/D & ICICI Bank Housing Loan as the

said property was mortgaged with the bank. Further, as per ld. AR, the transfer of property was agreed for consideration of Rs.1.70 crores among assessee, his spouse and buyers which hitherto was DLC value as on 18-12-2010 but due to revision of Circle Rates (DLC) by Govt. in March, 2011, the stamp duty was charged on the basis of revised DLC Rate. In this connection, copy of certified DLC rate as stood on 18-12-2010 i.e. date of oral agreement and 20-04-2011 i.e. date of registered transfer was placed before the AO during the assessment proceedings. On these facts and circumstances of the case, the ld. AR had argued that for the amount settled and received at the time of agreement to sell may be taken for the purpose of computing full value of consideration for such transfer and relied upon the decision of Coordinate Bench of ITAT Jaipur in the case of Shri Dharamvir Singh vs ITO (ITA No. 35/JP/2019, A.Y. 2012-13 dated 12-03-2021). After having gone through the present case and hearing the parties at length and after perusal of the decision of Coordinate Bench , I found that the decision relied upon of Coordinate Bench, *Ahemdabad in the case of Dharamshibhai Sonani vs ACIT (ITA No. 1237/Ahd/2013 dated 30-09-2016) has categorically held that proviso to Section 50C of the Act being curative in nature and thus could have been retrospective applicability.* The said decision has further been followed by another Coordinate Bench of ITAT Ahmedabad in the case of **Smt. Kundanben Ambalal Shah Vs ITO in ITA No. 3354/Ahd/2014 decision dated 30/11/2017**

*wherein also it has categorically been held that "where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, then in that eventuality, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value or consideration for such transfer and the said proviso was held to be retrospective in nature and effective w.e.f. 01/04/2003. The said proposition has also ben upheld by the Hon'ble Delhi High Court in the case of* ***Ansal landmark Township Pvt. Ltd.*** *and the Hon'ble Supreme Court in the case of* ***Alom Extrusions Ltd.*** *wherein the Hon'ble Supreme Court observed that when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the Section and which proviso to required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole.* However, the decision of Coordinate Bench in the case of Shri Dharamvir Singh vs ITO (supra) is not applicable to the facts and circumstances of the present case as in the said case entire sale consideration was received by the assessee through cheques before execution of sale deed and at the time of agreement. However, in the present case, admittedly no written agreement has been placed on record. So much so, even according to the ld. AR of the assesse, there was no written agreement, however,

there was oral agreement entered between the assessee and the prospective buyer on 18-12-2010 and the part amount was received vide cheque dated 20-2-2010 i.e. after the date of alleged agreement and if the Bench analyses the provisions of Section 50C of the Act wherein it has been categorically mentioned ……*''Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purpose of computing full value of consideration for such transfer. Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by the use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed ] on or before the date of the agreement for transfer:]''* So after analyzing the above provision of Section 50C, it is found that said Section shall apply only in a case where the amount of consideration or part thereof has been received by way account payee cheque or account payee draft or by the use of electronic clearing system through a bank account ***on or before the date of the agreement for transfer*** but as per facts of the present case even according to the assessee, the oral agreement for transfer was entered into on 18-12-2010 and the part amount was received vide cheque dated 20-12-2010 i.e. after the date of said

agreement for transfer. Therefore, the same is in violation of proviso to Section 50C of the Act and it has categorically been mentioned that such payment is to be received by the assessee on or before the date of agreement for transfer. Although the assessee has relied upon the decision of Coordinate Bench in the case of Shri Dharamvir Singh vs ITO (supra) yet this aspect was neither raised nor considered in the said cited case. Thus the same is not applicable on the facts of the case and it distinguishable. Therefore, no benefit can be given to the assessee. Moreover, the assessee has not placed on record any other documentary evidences to controvert or rebut the findings so recorded by the ld. CIT(A) which is reproduced as under:-

> ‘’2.3 Ground No. 01 and 02 are being taken together. I have perused the facts of the case, the assessment order and the submissions of the appellant. Assessee jointly owned property with wife Smt. Pushpa Johri sold for Rs.85,00,000/- during the year. The DLC value was determined by Sub-Registrar at Rs.1,13,69,566/-. Accordingly, the Assessing Officer made addition of different amount of Rs,.6,28,693/-. Before me, Authorized Representative contended that there was an agreement between the parties i.e. buyers and seller on 18-12-2010 when the sale consideration was fixed at Rs.85,00,000/- which is in parity with prevailing DLC rates. But the final registration of sale agreements was made on 20-04-2011 when remaining sale consideration was received. The DLC value was increased to Rs.23,725/-. There was no evidences filed in confirmation of oral agreement between the parties as claimed by the assessee.
>
> 2.3.1 Provisions of Section 50C are clear, if assessee had any objection, he should have requested Assessing Officer for verifying the case for valuation to DVO. No such request was made before the Assessing Officer or before me. Thus Assessing Officer in these circumstances rightly adopted DLC valuation for purpose of

computing Capital Gain. Therefore, addition of Rs.6,28,693/- is upheld. These grounds are dismissed.

In view of the above deliberation, the Bench does not find any infirmity in the order of the ld.CIT(A) which is confirmed. Thus Ground No. 1 of the assessee is dismissed.

3.1 As regards the Ground No. 2 of the assessee, the facts as emeges from the order of the ld. CIT(A) are as under:-

> ''Ground No. 3 & 4 are being taken up together. I have perused facts of the case, the assessment order and the submissions of the appellant. During the year, assessee sold immovable property of Rs.4,80,000/-but had not declared capital gain which was computed by the Assessing Officer at Rs.1,60,980/-. Assessee claimed that return was filed under section 44AD, therefore no capital gain is to be assessed separately.
>
> 3.3.1 On perusal of overall facts, the assessee's claim cannot be entertained, asset sold is capitalized asset and profit arising on the same is to be taxed separately. The assessee declared profit on presumptive scheme which is meant for computing income and not capital gain. Therefore, section 44AD cannot be enlarged to give benefit against capital gain. These grounds of appeal are dismissed.

3.2 After hearing the ld. DR and perusing the materials available on record, the Bench does not find any submission or reply controverting the ground No. 2 raised hereinabove by the assessee. Hence, the Bench has no other alternative except to confirm the order of the ld. CIT(A). Thus Ground No. 2 of the assessee is also dismissed.

4.0 In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 30 /05/2023.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 30 /05/2023
*Mishra
आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Raj Kumar Johari, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(2), Jaipur
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 666/JP/2019)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar