

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.504/Asr/2014
Assessment Year: 2006-07**

ITO, Ward -II(2), Muktsar. (Appellant)	Vs.	Sh. Makkar Cotton Mills, Village Bariwala, Distt. Muktsar. [PAN: -] (Respondent)
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Appellant by	Sh. Rajiv Wadhwa, Sr. DR
Respondent by	None

Date of Hearing	13.07.2023
Date of Pronouncement	01.08.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the revenue was filed against the order of the Id. Commissioner of Income Tax (Appeals)-Bathinda,[in brevity ‘the CIT (A)’] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y.

2006-07. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-2(2), Muktsar(in brevity the AO) order passed u/s 144 of the Act.

2. The revenue has taken the following grounds:

“(i) On the facts & circumstances of the case, the Ld. CIT(A) has erred in directing to adopt the value of land @ 300000/-per acre instead of Rs.450 per sq.feet e Rs.1,94,40,000/-per acre adopted by the AO in his assessment order passed in :ne cases of persons/partners who sold the land

(ii) The Ld. CIT(A) has also erred by holding that the sale consideration of and building is to be assessed in the hands of the firm whereas, the same is assessed in the hands of partners/persons who sold the land on Behalf of the firm M/s Makkar Cotton Co., Bariwala, as per provisions of Section 50C of Income Tax Act. 1961 by computing the capital gain as per provisions of Section 48 of Income tax Act, 1961 by taking the deemed value of consideration of property, as per registered deeds, as done by the AO in the assessment made in the case of persons/partners who sold the land on behalf of M/s Makkar Cotton Mills, Bariwala.

(iii) The appellant craves leave to add or amend any ground of appeal before the appeal is finally heard or disposed of.”

3. Brief fact of the case is that the assessee is a partnership firm sold the property for Rs.50 lacs which include land and building for Rs.30 lacs and machinery Rs.20 lacs to M/s Baba Fateh Singh Cotton & Genl. Mills, Barriwala. The property held by the assessee and the plant, machinery and building was sold for Rs.50 lacs. The assessment was framed u/s 144 of the Act. r.w.s. 148 of the Act. The assessing authority added back the valuation of building on basis of the circle rate amount to Rs.1,94,40,000/- per acre on total area of land 5 acre 45 marlawhich works out the total valuation of the land on market price amount to Rs.9,95,08,500/-which was determined by the ld. AO and calculated capital gain accordingly. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) after considering the submission of the assessee has taken the valuation of land amount to Rs. 3 lacs per acre and calculated the land and building amount to Rs.30 lacs. The ld. CIT(A) denied the observation of the ld. AO and the ground of the assessee was allowed. Being aggrieved the order of the ld. CIT(A) revenue has filed an appeal before us.

4. When the appeal was called for hearing, but none was present on behalf of the assessee. On perusal of the record, we observed that the notice was duly served through the Department of Income tax and served on the assessee. The report of the ld. ITO, Ward II(2), Muktsar is reproduced as below:

“2. In this regard, it is submitted that notice of hearing in the case of M/s Makkar Cotton Mills, Village Bariwala, Distt. Muktsar for AY.2006-07 was served through affixture by the Tax Assistant Sh Basant Singh and Notice Server Sh Raj Kumar of this office in presence of two independent witnesses on the last known address of the concern. The report of Tax assistant alongwith photograph taken and signed affixture is enclosed herewith.

Encl: As above.

*Sd/-
(M.P. Singh)
Income Tax Officer,
Ward-2(2), Muktsar.”*

4.1 Considering the issue, we proceed to dispose of appeal *ex partequa* for the assesseeafter hearing the ld. DR.

5. The Id. DR vehemently argued and first invited our attention in statement of facts of the Id. AO which is reproduced as below:

*“Name of the Assessee M/s Makkar Cotton Mills,
Bariwala, Distt. Muktsar.
Firm*

2. *Status*

3. *Assessment Year 2006-07*

4. *PAN:*

STATEMENT OF FACTS

The brief facts of the case are that during the course of assessment proceedings in the case of M/s Baba Fateh Singh Cotton & Genl. Mills, Barriwala for the assessment year 2009-10, it was noticed that the assessee firm M/s Makkar Cotton Mills (partnership firm) sold the properties for Rs. 50 lacs (land and building for Rs. 30 lacs and machinery for Rs. 20 lacs) to M/s Baba Fateh Singh Cotton & Genl. Mills, Barriwala. The said firm M/s Makkar Cotton Mills is not doing business since 01.04.1995. The properties held by the said partnership firm i.e. plant, machinery and building was sold for Rs. 50 lacs. Out of total consideration of Rs. 50 lacs, Rs. 20 lacs was fixed as the value of the machinery fitted in the factory. The land and building was sold for a consideration of Rs. 30 lacs as per court agreement, whereas as per revenue records the land was in the name of the following persons and there was huge variation in transaction value and fair market

value as per registration deed of the property as under :-

<i>Name of the seller(s)</i>	<i>Name of the purchaser</i>	<i>Transaction value/Registration</i>	<i>Market Value</i>	<i>Difference</i>
<i>Ms. Kamla Jain and Ajit Kumar Urg Sunny (39/80 share) & Sh. Surjit Singh</i>	<i>Sh.Amar Pal Singh S/o Sh.Dharm singh</i>	<i>Rs.600000/- 178/12.05.2005</i>	<i>20533500</i>	<i>Rs.19933500</i>
<i>Sh.Surjit Singh S/o Gurcharan Singh (15/80 share), Sh.Rajinder Singh S/o Gurcharan Singh (22/80 share) and</i>	<i>Smt.Kanwaljit Kaur W/o Sh.Harminder Singh</i>	<i>Rs.600000/- 179/12.05.2005</i>	<i>20533500</i>	<i>Rs.19933500</i>
<i>Sh.Surjit Singh S/o Sh. Gurcharan Singh, (4/240 share), Sh.Attar Singh S/o Sh.fateh Singh(220/240 share) &</i>	<i>Smt.Sumeet Kaur W/o Sh. Lakhvir Singh</i>	<i>Rs.600000/- 180/12.05.2005</i>	<i>20533500</i>	<i>Rs.19933500</i>
<i>Sh.Harbhajan Singh & Gurmeet Singh Sons of Sh.Mehtab Singh (220/240 share) & Surjit Singh S/o Gurcharan</i>	<i>Smt.Amrit Kaur W/o Dharm Singh</i>	<i>Rs.600000/- 178/12.05.2005</i>	<i>20533500</i>	<i>Rs.19933500</i>
<i>Sh.Harmander Singh S/o sh.Dharm Singh</i>	<i>Sh.Manmohan Singh S/o Sh.Attar</i>	<i>Rs.600000/- 178/12.05.2005</i>	<i>20533500</i>	<i>Rs.19933500</i>

The land and building was sold by different persons through five registered deeds in favour of the different persons, the respective capital gains has assessed in the hands of respective persons who had sold the land as per registered deeds. To avoid double taxation, the capital gain on account of sale of land in question is again not assessed in the hands of M/s Makker Cotton Co., Bariwala as the land has been sold by various persons as

discussed above and the Capital Gain has been assessed in their respective hands. The details of the properties sold were given in the assessment order.

2. *As for as sale of Plant and Machinery, the profit on account of sale of movable assets is to be assessed in the hands of firm M/s Makker Cotton Co., Bariwala under section 41 (2) of the Income Tax Act, 1961. As per reasons recorded, the plant and machinery of the assessee was sold at Rs. 20,00,000/- whereas the cost as per records was Rs. 1,60,000/-. Hence, the assessment was made by the then AO at Rs. 18,40,000/- being Long Term Capital Gain arised on account of sale of machinery.*

3. *Aggrieved by the assessment order, the assessee filed an appeal before Ld. CIT(A), Bathinda. The Ld. CIT(A) vide order in CIT(A) No. 104-IT/CIT(A)/BTI/13-14/ dated 30.05.2014 has decided the appeal of the assessee. The Ld. CIT(A) has observed that the sale consideration on account of land and building for Rs. 30 lacs is to be assessed in the hands of firm M/s Makker Cotton Mills, Bariwala, not in the hands of partners/persons who sold the land on behalf of M/s Makker Cotton Mills, Bariwala. Further, the sale consideration of total land i.e. 5 acres 45 maria has to be taken @ Rs. 3,00,000/- per acre (not Rs. 450 per sq.ft. taken while computing the capital gain in the hands of partners/persons who sold the land for which market price has been shown at Rs. 9,95,08,500/-). The cost of land is to be taken from the income tax record of the firm by the AO after due verification and allowing the benefit cost indexation. The Ld. CIT(A), Bathinda further observed that the sale consideration of building shall be taken as the remainder of the amount of sale consideration of the land*

arrived at by adopting the above stated method and reduced from Rs. 30 lacs. The written down value shall be taken as per income tax records after due verification by the AO. The facts of order of Ld. CIT (A), Bathinda has been given and income is enhanced to Rs. 50 lacs resulting additional demand of Rs.24,75,000/-.

Comments of the AO :

4 It is submitted that the Ld. CIT(A) has erred in observing that the income arising from sale of land and building is liable to be assessed in the hands of the firm M/s Makkar Cotton Mills, Barriwala and not in the hands of persons who executed sale deeds. In this connection it is submitted that the income of the assessee firm has been assessed by the then AO by computing the capital gain on sale of assets (machinery) and regarding the sale of land and building, the same is assessed in the hands of partners/persons who sold the land on Behalf of the firm M/s Makkar Cotton Co., Barriwala, as per provisions of Section 50C of Income Tax Act, 1961 by computing the capital gain as per provisions of Section 48 of Income Tax Act, 1961 by taking the deemed value of consideration of property, as per registered deeds. The Ld. CIT (A) after considering the compromise dated 23.04.2005 has held that this document is part of the record and has observed that the entire property i.e. land, building and machinery as belong to the firm M/s Makkar Cotton Mills, Barriwala but the AO has assessed .the Long Term Capital Gain arising from sale of land and building in the hands of the partner and Smt. Kamla Devi and Sh. Ajit Jain only due to the fact that the land is recorded in the revenue record in their names.

4.1 The Ld.CIT(A), Bathinda in his order, directed to adopt the value of land @ 300000/-per acre instead of Rs.450 per sq.feet i.e Rs. 1,94,40,000/-per acre adopted by the AO in his assessment order passed in the cases of persons/partners who sold the land. The assessee firm was running a cotton factory on this land. As per registered deeds, the revenue authority has clearly mentioned this land as commercial land and seg. rate has been mentioned @ 450/- per sq.feet. Also summons were issued to the Revenue authority during the course of assessment proceedings and Shri Beant Singh, Naib tehsildar, Bariwala stated that the market price of the said land is Rs.450/- Sq.feet. There is huge difference in observation of Ld.CIT(A), Bathinda regarding to adopt the value of land @ 3,00,000/- per acre instead of Rs.1,94,40000/- per acre assessed by the AO. The total difference in value of land is Rs.9,92,08,500/- and difference in tax effect for Rs.1,93,02,904/- (Rs.2,01,80,294/- (tax effect in the cases of partners/person who sold the land - Rs. 8,77,390/- (assessed in the hand of firm).

4.2 Further it is submitted that although the tax effect involved in this case is Nil as the demand has been enhanced but the Ld.CIT(A), Bathinda has deleted the addition made by AO in the hands of partners (8 cases) in their assessment cases for the Asstt.Year 2006-07 and the department has filed 2nd appeal to the Hon'ble ITAT. The tax effect involved in the cases of partners is Rs. 2,01,80,294/- exceeds the limits prescribed for filing appeal in view of Instruction No.3/2011 [F.No.279/MISC. 142/2007-ITJ], dated 09-02-2011. Moreover, the law point is involved in this case, as the value of land and Building is to assessed in the hands of partners/persons who sold

the land u/s 50C of the I.T.Act, 1961 not in the hands of the firm M/s Makkar Cotton Co., Bariwala @ Rs.450/- per Sq.feet i.e Rs.1,94,40,000/- per acre not Rs.3,00,000/- per acre as directed by the Ld.CIT(A), Bathinda.”

5.1 The Id. DR also invited our attention in CIT(A) order para 1.12 and 1.13 which are reproduced as below:

“1.12 In the present case the sub registrar has no way accepted or stated that the stamp duty has been adopted or assessed on the market value of Rs. 450/- per sq. feet. The AO has also not able to prove that the stamp duty has been charged on the alleged market value of the land and building. The English translation of the sale deeds clearly proves that Rs. 54000/-has been charged as stamp duty on the transaction value of Rs. 600000/-and the same has been paid by the purchaser as per sale deed.

1.13 In view of the facts discussed supra, it is held that the sale consideration of land and building for the purpose of computation of capital gain is only Rs. 30 lacs and not the amount as mentioned being market price of the property mentioned on the back side of the sale deed or 450/- per sq. ft. because in the present case the stamp duty has been paid on the sale consideration of Rs.30 Lac and both the AO and the Joint Registrar has failed to prove that the stamp duty was paid on

the market value or Rs. 450/- per sq. feet. Hence it is held that the provisions of section 50 C of the Act are not applicable in the present case.”

5.2 The Id. DR further argued that the Id. CIT(A) had accepted the assessee's plea without any basis. The demining provision of section 50C is duly applicable on the assessee for difference in actual value and the guided value. He prayed for upheld the order of the Id. AO.

6. We heard the rival submission, considered the documents available in the record and also the orders of the revenue authorities. The Id. AO had determined the sale consideration Rs.9,95,08,500/- on basis of the stamp duty value. The Id. AO specifically mentioned the market price is duly shown in the registered deed. In the submission the Id. AO further mentioned that the registration for transfer of land was duly executed by the partner of the assessee. The addition was also made in the hands of partners and the said additions were duly rejected by the Id. CIT(A). The Id. CIT(A) had taken the value of land Rs.3 lac per acre instead of Rs.1,94,40,000/- per acre, as determined by the AO. We find that the Id. CIT(A) has no basis in the valuation of the land amount to Rs.30 lacs. The revenue has agitated the grounds only related to the implementation of provision of section

50C, which is already violated by the assessee during the transfer of the land. So, in any case, the appeal order, itself erroneous and liable to be set aside. In our considered view, the grounds which were agitated by the revenue are duly accepted and allowed.

7. In the result, the appeal of the revenue bearing **ITA No. 504/Asr/2014** is allowed.

Order pronounced in the open court on 01.08.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order