

IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, JABALPUR  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 27/Jab/2023

(A.Y: 2014-15)

MaheshwariMukundDas, 1288, D B Vallbh Das Palace, Hanumantal, Jabalpur-482002, Madhya Pradesh.	Vs.	ITO, Ward -2 Jabalpur 2 <sup>nd</sup> Floor, Anxe Bldg, Aayakar Bhavan, Napier Town, Jabalpur-482001. Madhya Pradesh.
PAN/GIR No. : AAEHM2166B		
Appellant	..	Respondent

Assessee by :	Shri.SapanUsrethe.Adv.AR
Revenue by :	Shri.Shiv Kumar. Sr.DR

Date of Hearing	21.09.2023
Date of Pronouncement	09.10.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre, (NFAC), Delhi / CIT(A) passed u/sec 143(3) and 250 of the Act.The assessee has raised the following grounds of appeal:

*1.The learned Commissioner of Income tax (Appeal) was not justified in accepting the actual sale consideration as received by the appellant for the purpose of capital gain*

*considering to the adverse possession and property was in encroachment.*

*2. The learned Commissioner of Income tax (Appeal) was not justified in not accepting the actual sale consideration as received by the appellant for the purpose of capital gain without appreciating the facts that there is no evidence or material which shows that appellant has received more amount than actual sale consideration.*

*3. The learned Commissioner of Income tax (Appeal) was not justified in appreciating that all the ten properties are already in possession of the purchaser since long time and sale deed was done only to avoid litigations and all the purchaser have given affidavits regarding ownerships and was also mentioned in the sale deed itself.*

*4. The learned Commissioner of Income tax (Appeal) was not justified in not directing for valuation of remaining 8 properties before the DVO.*

*5. The learned Commissioner of Income tax (Appeal) was not justified in directing the AO to take value of land of only two properties for the purpose of capital gain which was referred to DVO without appreciating that all the ten properties are encroached properties and was sold during the year and hence cost of land for remaining 8 properties should also been directed and appellant is not liable to pay capital gain on the cost of building of remaining 8 properties as he has not done construction and appellant has sold land only which was also mentioned in the sale deeds itself.*

*6. The learned Commissioner of Income tax (Appeal) was not justified in accepting the discount of 25% on encroached*

*properties whereas discount should be more than 25% considering to the adverse possession of properties.*

*7. The learned Commissioner of Income tax (Appeal) was not justified in not allowing the deduction under section 54F on the ground that appellant has not filed any details regarding construction of property whereas it was duly filed before both the authorities.*

*8. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal*

2. The brief facts of the case are that, the assessee derives income from house property, dividend income, interest on term deposits and agriculture income. The assessee has filed the return of income for the A.Y 2014-15 on 23.07.2014 disclosing a total income of Rs. 6,40,000/-, and the return of income was processed u/sec 143(1) of the Act. Subsequently the case was selected for limited scrutiny to verify the cash deposits and sale of immovable properties and notice u/sec 143(2) and 142(1) of the Act along with the questionnaire was issued. The Assessing Officer (AO) found that the assessee is HUF consisting of him and his wife, the AO as per AIR information found that the assessee has entered into cash transactions above Rs.10Lakhs through Allahabad Bank account Jabalpur and in respect of sale of properties, the consideration as per sale deed

is less than the market value as per the stamp valuation authorities. The A.O has issued the notice to explain the sources of cash deposits in the bank account and the reasons for sale consideration received less than the market value assessed by the state government and invoking the provisions U/sec50C of the Act. Whereas the assessee has filed written submissions on the various dates on the disputed issues dealt in the order. The AO has dealt on the submissions explaining the land details and the ownership by the assessee and the construction of house/shop was made by the purchaser but has not accepted the facts and there was some dispute/ encroachments in the property and the matter was referred to the valuation officer for determination of Fair Market Value. Finally the AO was not satisfied with the explanations and applied the provisions of section 50C of the Act and computed the Long term capital gains of Rs.1,24,02,920/- and passed the order u/s 143(3) of the Act dated 30.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO has granted partial relief to the assessee and partly allowed the assessee appeal. Aggrieved by the

CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in not considering the facts and actual sale consideration and investment u/s 54F of the Act and encroachment in the properties. The Ld. AR emphasized on the construction and payment of municipal tax receipts and the exemptions claimed. Further the Ld.AR substantiated the submissions with the factual paper book and prayed for allowing the assessee appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) has erred in not accepting the sale consideration as per the deed overlooking the adverse and encumbrance on the property. Further CIT (A) has erred in not appreciating that the purchaser of the property has filed the affidavit confirming the facts of sale and the ten properties are in the possession of the purchaser and the sale deed was executed to avoid the disputes and litigations. The CIT(A) has directed reference to the D.V.O in respect of land value of two properties ignoring the remaining properties and

encroachments. The AR has highlighted the page 59K of the paper book disclosing the registration details of the property and these details were filed in the assessee proceedings. Further the CIT(A) has denied the claim of exemption U/sec54F of the Act ignoring the details of the construction of the property. The Ld.AR substantiated the facts of construction with property tax receipts, electricity bills and the affidavit placed at page 60 to 76 of the paper book. The Contentions are that the land was purchased and construction was completed and claimed exemption in accordance with the provisions of the Act. The assessee has filed an application of additional evidence in support of the valuation report. Prima-facie the assessee has filed various details before the authorities but there is no clarity on the facts and information dealt in the course of proceedings. Hence Considering the facts and circumstances and material information filed, we are of the opinion that the assessee should not suffer for non consideration of material information, as the evidences played a vital role in decision making. Accordingly, to meet the ends of justice, we set aside the order of the CIT(A) and restore the entire disputed issues to the file of the Assessing officer to examine and verify the evidences and decide afresh on merits and the

assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai. Dated 09.10.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति // True Copy //

1.

( Asst. Registrar)  
ITAT, Jabalpur