

IN THE INCOME TAX APPELLATE TRIBUNAL
[DEHRADUN BENCH "DB" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRIM. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.2813/Del/2017
निर्धारणवर्ष/Assessment Year:2011-12

Shri Chandra Kant Chahal, 78-C, Panditwari, Phase - II, Dehradun.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 1 (2) Dehradun.
PAN No. AFAPC3463L		
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by :	Shri Alok jain, Adv.; & Shri Anubhav Jain, Advocate;
राजस्वकीओरसे / Department by :	Shri A. S. Rana, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	25/08/2023
उद्घोषणाकीतारीख/Pronouncement on :	22/11/2023

आदेश /O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals) [hereinafter

referred to CIT (Appeals)] Dehradun, dated 25.01.2017 for assessment wyear 2011-12.

2. The assessee has raised the following revised substantive grounds of appeal:-

“1Ground No. 1

The order of Ld. CIT(A) bearing No. 176/CIT(A)/DDN/2015-16 dated 25.01.2017 passed u/s 250(6) of the Income-tax Act, 1961 ('the Act') is bad in law and on facts and merits to be set aside;

2. Ground No. 2

The order of the Ld. CIT (A) is bad in law and facts in so far as it has upheld the order of the AO, Ward 1(2), Dehradun (Order dated 25.03.2015) for computing the share of the Appellant in the Long-Term Capital Gains, arising on 'Sale of Co-ownership Land', as per the circle rate, by invoking the provisions of Section 50C of the Act.

3. Ground No. 3

The Ld. CIT(A) in the course of appeal proceedings had accepted the Appellants plea to allow him to produce and file, during the course of hearing, additional evidence, in the form of Departmental Valuation Officers Report dated 16.12.2016, in respect Fair Market Valuation of co-ownership of land, the sale proceeds of which are the subject matter of Long-Term Capital Gains.

The occasion to refer the valuation to DVO arose in assessment proceedings of other co-owner, namely Smt. Krishna Nand Chahal (PAN: ADOPC1352C - Legal heir of Late Mr. Krishan Kant Chahal brother of the Appellant and one of the co-owner) for AY 2011-12 where valuation report has been accepted by the Department in the assessment proceedings by the ITO Ward 1(4) Dehradun vide Assessment Order dated 29.12.2016.

The Ld. CIT(A) erred in law and on facts, as the additional evidence has been taken cognisance of without asking for a remand

report either from the Appellant's AO or from the Departmental Valuation Officer, for which he was duty bound, as per Rule 46A of the Income Tax Rules 1962, in the interest of natural justice.

4. Ground No. 4

The Ld. CIT(A) has erred on facts of the DVO's Report dated 16.12.2016, in so far he has disagreed with the DVO's action to reduce the Circle Rate of the land by 50% to arrive at the Fair Market Value of land sold, stating that he has not adopted a scientific basis for reducing the value of land by 50% in the case of Smt. Krishna Nand Chahal for AY 2011-12 which is common and relevant in the case of the Appellant also, without any reference/opportunity to the DVO or the appellant, even when he was fully aware that the said report has been accepted by the AO of Ward 1(4) Dehradun while framing the assessment order of Smt. Krishna Nand Chahal for A.Y. 2011-12, and has not been challenged before any Appellate Authority.

5. Ground No. 5

It is total violation of principles of taxation, that on one single transaction in respect of sale of immovable property (land) jointly held in co-ownership, that separate methods have been adopted by two different AO's, in the case of two separate co-owners, for calculation of Long- Term Capital Gains.”

3. Briefly stated the facts are that the assessment was re-opened by issue of a notice under section 148 of the Income Tax Act, 1961 (the Act) in assessee's case and the re-assessment was completed on 25.03.2015 determining the income under the head capital gains at Rs.63,89,845/-. The Assessing Officer while completing the re-assessment adopted Rs.6,46,80,000/- being the circle rate for the purpose of capital gains under section 50C of the Act as against the sale consideration of land sold at Rs.3,25,00,000/- and computed the long term capital gains at Rs.63,89,845/- as 1/6th share of the assessee.

4. The assessee preferred appeal before the CIT (Appeals) and submitted that in one of the co-owners case, namely, Shri Krishan Kant Chahal, who is the brother of the assessee, a reference was made to the DVO to ascertain the fair market value of the property sold and the DVO valued the property at Rs.3,39,57,000/- which value was adopted in assessee's brother's case by the Assessing Officer accepting the valuation done by the DVO and the assessment was accordingly completed under section 143(3) read with section 147 of the Act vide order dated 29.12.2016 and, therefore, there cannot be a different valuation for the purpose of computing capital gains in the hands of the assessee. However, the ld. CIT (Appeals) rejected the claim of the assessee on the ground that the valuation report given by the DVO is not correct as he has reduced 50% value of the property for the reason that the size of the property was large in extent and there were no buyers for such plot.

5. The ld. Counsel before us submits that since the valuation was already done by the DVO which value was adopted by the Revenue in his brother's case, namely, Shri Krishan Kant Chahal there is no justification in adopting the fair market value of the property at Rs.6,46,80,000/- for the purpose of computing long term capital gains in the hands of the assessee. The ld. Counsel for the assessee referring to page Nos. 73 & 74 of the paper book submits that the assessment in the case of his brother, who was the co-owner of the property was completed under section 143(3) read with section 147 of the Act by order dated 29.12.2016 accepting the valuation report of the DVO. The ld. Counsel also referred to the

valuation report of the Departmental Valuer which is placed at page Nos. 8 to 15 wherein the DVO valued the property at Rs.3,39,57,000/-.

6. On the other hand, the ld. DR strongly supported the orders of the authorities below.

7. Heard rival submissions. We find considerable merit in the submissions of the ld. Counsel. On perusal of the assessment order in the case of Smt. Krishna Nand Chahal, wife and legal heir of Late Shri Krishan Kant Chahal passed under section 143(3) read with section 147 of the Act dated 29.12.2016 the Assessing Officer adopted the valuation report of Govt. valuer dated 16.12.2016 wherein the property was valued at Rs.3,39,57,000/- for the purpose of computing long term capital gains on sale of land. The Assessing Officer adopted 1/6th share of the assessee, namely Late Krishan Kant Chahal and computed the long term capital gain accordingly observing as under:-

“Original return was filed on 23.8.2011, which was processed u/s 143(1) on 6.2.2012. Notice u/s 148 dated 21.12.2015 was issued for assessment year 2011-12 Assessee filed return declaring NIL income on 22.8.2016. Notices u/s 143(2) and 112(1) were issued and served on the assessee. In response to notices Shri Charanjit Raton, A attended the proceedings and filed required details.

In this case information was received that the assessee along with other persons have sold land situated at Village Dhakpatti, Pargana Central Doon, Dehadun for consideration of Rs.3,25,00,000/- the market value of which was Rs.6,46,80,000/ The assessee was required to show cause as to why the capital gains may not be assessed to tax taking the market value of Rs.6,46,80,000/-. The assessee filed objection for the same. The matter was referred to

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Valuation Cell of the department. The Valuation Officer, Meerut vide his report dated 16.12.2016 determined the cost of property at Rs.3,39,57,000/-. On behalf of the assessee written reply has been filed stating that the capital gains should be worked out as per Valuation Report of the Departmental- Valuer. Accordingly, the capital gains is worked out as under:

Value of the property as determined by the Departmental Valuation report.		3,39,57,000
Less: Cost of acquisition	28,40,928	
Commission Paid	25,00,000	
Less: Expenses	<u>2,10,00,000</u>	<u>2,63,40,928</u>
		76,16,072
1/6 share of the assessee		12,69,345
Less: Deduction u/s 54F.		<u>12,69,345</u>
Taxable capital gains		NIL

Assessment is completed on total income of Rs.1,16,300/-...
Issue notice demand after giving credit for prepaid taxes/TDS.

Sd/-

(Gulshan Kumar)
Income tax Officer
Ward 1(4), Dehradun.”

8. The above assessment order in the case of assessee's brother has become final. In the case of the assessee, however, the Assessing Officer adopted the fair market value of the property sold at Rs.6,46,80,000/- for the purpose of computing capital gains ignoring the valuation report of the DVO and the assessment made in assessee's brother's case wherein the valuation of the DVO was adopted for computing long term capital gains. The Id. CIT (Appeals) also did not accept the contention of the assessee for

adopting the DVO valuation in assessee's case also for the purpose of computing the long term capital gain which in our view, is not justified. Having adopted the DVO's valuation in one of the co-owners case who is the brother of the assessee for the assessment year i.e. 2011-12 for computing the long term capital gain, we see no justifiable reason to adopt a different valuation in assessee's case for computing long term capital gain for his 1/6th share for the very same assessment year i.e. 2011-12.

9. Our view is supported by the decision of the Hon'ble Punjab & Haryana High Court in the case of Jaswant Rai Vs. CWT [(1977) 107 ITR 477 (P & H) wherein the Hon'ble High Court held as under:-

“11. It is no doubt true that assessment for a particular year is final and conclusive between the parties only and the decision given in an assessment for an earlier year is not binding either on the assessee or on the department in a subsequent year, but this is not an absolute rule. [In Commissioner of Income-tax v. Dalmia Dadri Cement Ltd.](#) [1970] 77 ITR 410, 420 (Punj) a Division Bench of this court observed as under :

"An assessment for a particular year is final and conclusive between the parties only in relation to the assessment for that year and the decisions given in an assessment for an earlier year are not binding either on the assessee or the department in a subsequent year. But this rule is subject to limitations, for there should be finality and certainty in all litigations including litigation arising out of the [Income-tax Act](#) and an earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision, and if the Tribunal giving the earlier decision has taken into consideration all material evidence. No doubt in this case earlier the matter was not taken to the Income-tax Appellate Tribunal, but then, as pointed out,

it was never questioned by the Commissioner of Income-tax in exercise of his powers of revision which was the mode open to the revenue for re-consideration of the decisions of the Income-tax Officer year after year."

12. In the instant case, the assessee is not invoking the bar of res judicata on the basis of a decision given regarding an earlier assessment year. He claims that the same property in the hands of his brother for the same assessment year had been valued at a particular figure and the same figure should be adopted in his case also. We are accordingly of the view that it was not open to the Wealth-tax Officer to disregard the order dated January 7, 1975, passed by the Income-tax Officer, District 1(4), Ludhiana, in which the value of 1/3rd share of the property belonging to Shri Ranjit Kumar, co-sharer, was determined at Rs. 73,333. We may also mention that this value was arrived at on the basis of the report made by the valuation officer appointed under [Section 12A](#) of the Act. The learned counsel for the revenue has submitted that the order, dated January 7, 1975, passed by the Income-tax Officer, Ludhiana, was not based on a full-fledged enquiry. We do not agree with this submission because the order on the face of it shows that it had been passed under [Section 16\(3\)](#) of the Act which contemplates an enquiry in which evidence can be led and the assessee can also be heard. So long as this order is not challenged in appeal or revision, it is not open to the department to adopt a different yardstick in the case of the present assessee.

13. For the reasons mentioned above, we answer the questions referred to us in favour of the assessee and against the revenue."

10. Following the decision of Hon'ble Punjab & Haryana High Court in the case of Jaswant Rai Vs. CWT (supra) the Hon'ble Madras High Court in the case of CIT Vs. Kumararani Smt. Meenakshi Achi [(2007) 292 ITR 624 (Mad)] held as under:-

"6. Learned counsel for the Revenue contends that the Tribunal erred in deciding the issue without going into the merits of the case, merely on the basis of the co-owner's case being

dropped; and that the registered valuer had taken a sale of ½ ground of land in 1995 and worked backwards, whereas the Assessing Officer had taken the value shown by one of the co-owners in respect of the neighbouring land, and therefore, the order of the Assessing Officer needs to be restored.

7. Admittedly, the Assessing Officer proceeded to adopt the value of the land disclosed by one of the co-owners for wealth-tax proceedings for the assessment year 1992-93 and the said property is located at quite a distance from the impugned property and further that property was valued for the purpose of wealth-tax and not on the basis of the fair market value. Moreover, no reason has been attributed against the assessee by the Assessing Officer, for not accepting the value adopted by the assessee, based on the report of an approved valuer.

8. That apart, the Tribunal, while passing the order under appeal, had also taken into consideration the order of the Commissioner of Income-tax initiated under section 263 of the Income-tax Act, in and by which, the proposal to revise the assessment in the case of the other co-owner was dropped, finding that there was no justification to reject the value adopted by the assessee. The Tribunal, in the light of the decision in *Jaswant Rai CWT [1977] 107 ITR 477*, held that differential treatment cannot be meted out to another co-owner while making assessment of the same property or while valuing the same property.

9. Learned counsel for the Revenue is not in a position to satisfy us as to how the Commissioner of Income-tax dropped the proceedings initiated under section 263 of the Income-tax Act qua the co-owner, who had also adopted the same value for the property as the petitioner herein.

10. It is trite that if during the same assessment year the same quantity of wealth in the possession of one co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned, it would militate against the principle of equality of laws enshrined in article 14 of the Constitution, vide *Jaswant Rai v. CWT [1977] 107 ITR 477 (P & H)*.

11. Applying the ratio laid down in *Jaswant Rai v. CWT* [1977] 107 ITR 477 11 (P & H), to the facts of the case on hand would lead to the firm conclusion that the assessee, who is also a co-owner of the property, is entitled to the benefit enjoyed by the other co-owner, whose valuation of the same property, at the same rate as that of the assessee, was accepted by the Commissioner of Income-tax and recorded in the order under appeal by the Tribunal.”

11. We observe that in the case on hand also not even the case of the Revenue that the valuation of the DVO was not accepted by the Revenue in the case of Late Krishan Kant Chahal and the CIT had initiated proceedings under section 263 of the Act. The Revenue could not place before us any proceeding pending under section 263 in the case of co-owner and brother of the assessee Late Shri Krishan Kant Chahal. The valuation adopted by the Revenue as per the DVO's report became final in the co-owners case and, therefore, the same valuation should be adopted in assessee's case also for the purpose of computing long term capital gain. Thus, we direct the Assessing Officer to adopt the valuation report of the DVO dated 16.12.2006 which formed the basis for computing long term capital gain in the case of the other co-owner, Late Shri Krishan Kant Chahal, who is also the brother of the assessee for the purpose of computing 1/6th share of capital gains, in the case of the assessee also. We order accordingly. Ground Nos. 3 and 5 of the grounds of appeal are allowed.

12. The other grounds are only academic and need no need for adjudication.

14. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on : 22/11/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 22/11/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI/
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	20.11.2023
Date on which the typed draft is placed before the dictating Member	21.11.2023

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Date on which the typed draft is placed before the Other Member	22.11.2023
Date on which the approved draft comes to the Sr. PS/PS	22.11.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	22.11.2023
Date on which the fair order comes back to the Sr. PS/PS	22.11.2023
Date on which the final order is uploaded on the website of ITAT	22.11.2023
Date on which the file goes to the Bench Clerk	22.11.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	