

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 411/JPR/2023
निर्धारणवर्ष/AssessmentYear : 2016-17

Shri Ashok Singh E-Durga Pura, Bani Park Jaipur	बनाम VS.	ACIT, Circle-3, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADLPS 4685 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Arpit Vijay, C.A
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 18/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 23 /11/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 09-05-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the assessee has raised the following ground of appeal.

“Under the facts and circumstances of the case the ld. CIT(A) is not justified in confirming the action and finding of the AO regarding making disallowance of Brokerage Payment of Rs.9,78,500/- paid in respect of sale of land.”

2.1 Brief facts of the case are that the return declaring income of Rs.5,72,67,720/- was filed by the assessee on 20-09-0-2016. The case of the assessee was selected under CASS and notice u/s 143(2) of the I.T. Act was issued on 28-07-2017. The AO at the time making assessment noted that the assessee during the year under consideration had disclosed income from salary (Pension income), Business Profession, Long term capital and short term capital gain and income from other sources. Notice u/s 142(1) was issued on 06-08-2018 along with query letter and the case was fixed on 13-08-2018. Some details were uploaded by the assessee on 11-08-2018. On perusal of the details furnished by the assessee, the AO observed during the year under consideration that the assessee had sold land at Chittora Up-Tehsil, Madhorajpura, District Jaipur on 22-06-2015 which was the inherited property measuring 53.08 bigha. The said land was sold by the assessee to M/s. Marigold Buildtech (P) Ltd. As per the sale deed the sale consideration of the land sold was Rs.5,75,00,000/-. However, the Stamp Registering Authority assessed the value of this land at Rs.6,91,36,980/-. The AO while computing the long term capital gain on the land noted that the assessee took the sale consideration at Rs.5,75,00,000/- instead of Rs.6,91,36,980/-. The AO observed that as the stamp registering authority adopted the higher rate for registering the sale document, therefore, as per the provisions of Section 50C the value adopted by the stampregistering authority being higher than the sale consideration mentioned

in the registered document was to be adopted as sale consideration of the property.

The AO observed that as the provisions of Section 50C were not followed, the assessee was show caused vide notice u/s 142(1) dated 30-08-2018 was to why the value adopted by the stamp registering authority i.e. Rs.6,91,36,980/- may not be taken as sale consideration of the property in view of the provisions of Section 50C of I.T. Act. The AO further requested the assessee to submit some other details relating to long term capital gain transaction and the assessee was required to furnish complete details of brokerage expenses claimed by the assessee. It is also worth mentioning that the AO made an addition of Rs.9,78,500/- on the ground that *none of the person to whom brokerage payment had been claimed to have been made had signed at any place in the registered sale document or initial sale agreement*. The relevant observation at page 4 & 5 as to making addition by the AO towards brokerage payment of Rs.9,78,500/- in the hands of the assessee is reproduced as under:-

‘I have considered the documents filed by the assessee. On consideration of the documents filed and facts of the case as available from the documents filed by the assessee, following facts emerges:-

- (i) The assessee claimed that the agreement to sale of land was made on 25.03.2013, copy of this agreement on Rs.100/- stamp paper was also filed. In this agreement there is no reference of any broker in the sale transaction. This document does not bear any signature of witness, it is only signed by the assessee and the Director of purchaser company.
- (ii) The Voucher of payment of brokerage is bearing date 22.06.2015.
- (iii) The receipt filed by the persons to whom brokerage payment has been claimed to have made is bearing date 22.06.2017.

(iv) The complete brokerage payment of Rs. 9,78,500/- has been claimed to have been made in cash.

(v) On verification on internet it has come to notice that one of the Director of Purchaser Company i.e. M/s Marigold Buildtech Pvt. Ltd. is assessee himself.

From all the above facts it can be seen that on the one hand the assessee has claimed to have entered into sale agreement of land on 25.03.2013 but claimed payment of brokerage on 22.06.2015, as reflected in payment voucher. The payment has been claimed to have made in cash thus it cannot be verified from any independent source. The copy of receipt filed by the assessee from the so called brokers is dated 22.06.2017 which is neither the date of initial agreement nor the date of registering document. Moreover this document is a self serving document. It is pertinent to mention that the assessee himself was the Director of the company to which the land was sold by the assessed therefore it cannot be accepted that there was any need of any broker to get the deal materialized. In the registered sale deed there is no reference of any broker. Moreover the Witnesses signing the registered document are also different person. None of the person to whom brokerage payment has been claimed to have made had signed at any place in the registered sale. document or initial sale agreement. In view of these facts, as discussed above, I held that the claim of brokerage payment is an afterthought of the assessee to reduce his tax liability and to absence of any Independent evidence and not having any prudence, cannot be allowed to the assessee This will result in an addition of Rs. 9,78,500/- to the income of the assessed. ‘

2.2 In first appeal, the Id. CIT(A) has confirmed the disallowance made by the AO in connection with brokerage payment amounting to Rs.9,78,500/-, by observing as under:-

‘I have gone through the facts of the case, assessment order and the submissions of the appellant. The details of the brokerage paid to the persons are tabled below:-

S.No.	Name	Address	Amount
1	Shri Sita Ram Jat	Jai Nagar, Todavata, Kakanriya Ki Dhani, Phagi, Chittora, Renwal, Jaipur	1,95,000/-
2.	Shri Prahlad	Chittora, Renwal, Jaipur	1,95,000/-
3.	Shri Sukhdev	229, Kumharo Ka Mohalla, Chittora, Phagi, Jaipur	1,95,000/-

4.	Shri Mohan Lal Gurjar	36, Gurjaro Ka Mohalla, Balkhandiya, Tonk, Jaipur	1,95,000/-
5.	Shri Mukesh Kumar Choudhry	3,Sujya Chotu Ki Dhani, Rupvas,Tehsil Chaksu, Jaipur	1,98,000/-
	Total		9,78,500

The appellant in his submission produced ID proofs showing their names and address alongwith the proof of payment regarding brokerage vouchers and receipt that was paid in cash to them.

On consideration of the documents filed, the appellant claimed that the agreement to sale of land was made on 25-03-2013. The voucher of payment of brokerage is bearing date 22-06-2015. The receipt filed by the persons to whom brokerage payment has been claimed have dated 22-06-2017 and payment cannot be done in cash and at last one of the director purchased company i.e. MARIGOLD BUILDTECH PVT LTD. is appellant himself.

The brokerage payments have been made in cash and the copy of receipt of brokerage filed by the appellant is 22-06-2017 which is neither the date of initial agreement nor the date of registering the documents and document provided is showing sign a self serving document. The applicant himself was director of the company to which land was sold by the appellant. From the view of the above, the appellant is trying to reduce his tax liability without providing any strong independent evidence. Hence, the contention of the appellant is not sustainable. The AO is correct in his action. Ground No. 4 is dismissed.”

2.3 Being aggrieved by the order of the ld. CIT(A), the assessee carried the matter before this Bench praying that the disallowance of brokerage amounting to Rs.9,78,500/- confirmed by the ld. CIT(A) is not justified which should be deleted by taking into consideration the written submission and the same is reproduced as under:-

“The humble assessee in respect of each ground of appeal most respectfully beg to submit:

Ground No. 1:

Under the facts and circumstances of the case the Ld. CIT(A) is not justified in confirming the action and finding of the Ld. AO regarding making disallowance of Brokerage payment of Rs. 9,78,500/- paid in respect of sale of Land.

1. The appellant is an individual who derived his income from Salary (Pension), Business or Profession, Capital Gain and other sources. The appellant for the assessment year of 2016-17 filed his return of income on 29.09.2016 declaring total income of Rs. 5,72,67,720/-. (PB No. 1-6)

2. The assessment was completed u/s 143(3) of IT Act, 1961 by Ld. ACIT, Circle-3, Jaipur, vide assessment order dated 13.11.2018 at an assessed income of Rs. 6,98,83,200/-. (PB No. 7-12)

3. The AO by invoking the provisions of section 50C of IT Act, 1961 considered the DLC value/ Stamp Value as determined by sub-registrar on date of registry of land as Rs. 6,91,36,980/- instead of DLC value/ Stamp Value as on the date of agreement of Rs. 5,75,00,000/- as declared by the assessee.

4. The AO further disallowed the brokerage payment of Rs. 9,78,500/- paid in respect of above-mentioned sale of land.

5. Thereby the Ld. AO computed long term capital gain arising from sale of land of Rs. 6,85,42,430/- instead of Rs. 5,59,26,950/- as declared by the assessee. Hence the total additions and disallowances of Rs. 1,26,15,480/- have been made to returned income.

6. The appellant against the sale of land situated at Village-Chittora had paid brokerage of Rs. 9,78,500 to five persons. The details of brokerage paid to these persons are as under:

S.No.	Name	Address	Amount
1.	Shri Sitaram Jat	Jai Nagar, Todavata, Kakanriya ki Dhani, Phagi, Chittora Renwal, Jaipur.	1,95,000/-
2.	Shri Prahlad	Chittora, Renwal, Jaipur.	1,95,000/-
3.	Shri Sukhdev	229, Kumharo ka Mohalla, Chittora, Phagi, Jaipur.	1,95,000/-
4.	Shri Mohan Lal Gurjar	36, Gurjaro Ka Mohalla, Balkhandiya, Tonk, Jaipur.	1,95,000/-
5.	Shri Mukesh Kumar Choudhary	3, Sujya Chotu Ki dhnai, Rupvas, Tehsil Chaksu, Jaipur.	1,98,500/-

Total	9,78,500/-
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The copy of ID proof (Aadhar Card) showing name and address of the above persons are attached herewith. **(PB No. 58-63)**

7. The proof of payment regarding Brokerage of Rs. 9,78,500/- i.e. Payment voucher & Signed receipt of Brokerage payment is attached herewith. **(PB No. 64-65)**

8. It is submitted that the Ld. AO in the assessment order has contended that the appellant had not shown the name of these brokers in the registered sale deed.

9. In this regard it is submitted that it is no-where mentioned in any law prevailing in India that the name of broker is required to be written in any deed or agreement. Hence this allegation of Ld. AO is totally baseless, unjustified and deserves to be quashed.

10. It is also important to mention here that there is no law which says that the witnesses who has signed the registered deed can only be brokers or vice versa. Hence this allegation of Ld. AO is also totally baseless, unjustified and deserves to be quashed.

11. It is further submitted that as the brokers to whom the commission was paid were farmers and they doesn't believe in banking channel and thus commission was paid in cash. Hence, the commission paid in lieu of sales consideration cannot be denied merely on this basis that they were paid in cash.

12. It is also important here to mention that the Ld. AO in Assessment Order has objected that on one hand the appellant has claimed to have entered into sale agreement of land on 25/03/2023 but claimed payment of Brokerage on 22/06/2015.

13. In this regard it is submitted that Brokerage is paid only after complete receipt of sales consideration / on or after the date of Registry. In the present case of the appellant, the sale agreement was entered on 25/03/2013 **(PB No. 43-47)** on receipt of advance payment of Rs. 5,00,000/- wherein it was decided that the complete payment of Sales Consideration of Rs. 5,75,00,000/- would be paid within 3 years. Thereafter the registered sale deed was executed on 22/06/2015 **(PB No. 48-57)** after receipt of complete sales consideration. In such a scenario, generally a prudent person will make payment of Brokerage after receipt of complete sales consideration/ on or after the date of Registry. Hence this allegation of Ld. AO is also totally baseless, unjustified and deserves to be quashed.

14. It is also important here to mention that the Ld. AO in Assessment Order has made another allegation that the appellant himself was Director of the company to which the land was sold by the appellant, therefore, it cannot be accepted that there was any need of any broker to get the deal materialized.

15. In this regard it is humbly submitted that the appellant holds an ancestral property of 96 Bigha (approx.) at Village Chittora, Phagi, Dist. Jaipur. The purchaser Shri Ashu Mathur wanted to develop a Residential Scheme at Village Chittora Phagi Road, so he approached the appellant alongwith the above named Brokers (Sitaram Jat, Prahlad, Sukhdev, Mohan Lal Gurjar & Mukesh Kumar Choudhary) for purchase of agricultural land of around 50 bighas during the year 2012.

16. As the purchaser Shri Ashu Mathur wanted to develop a residential scheme, various permissions were required from Jaipur Development Authority (JDA), therefore the purchaser incorporated a Pvt Ltd company having name "Marigold Buildtech Private Limited". As the expected time period for completion of the project was around 4-5 years and the sales consideration was to be received over that period, therefore the appellant in order to safe guard himself from any fraud/problem became one of the Director of Marigold Buildtech Private Limited. Hence this allegation of Ld. AO is also totally baseless, unjustified and deserves to be quashed.

17. Thus, after considering the above facts and circumstances of the case it is amply clear that the commission/brokerage of Rs. 9,78,500/- paid by the appellant be allowed.

18. Therefore, your Honouris requested that the disallowance of Brokerage of Rs. 9,78,500/- may kindly be deleted."

It is also pertinent to mention that during the course of hearing, the Bench desired from the ld. AR of the assessee to submit the affidavits in support of claim of brokerage payment in respect of sale of land for which the ld. AR of the assessee has filed Original Affidavit of the assessee Shri Ashok Singh and 05 brokers namely Shri SitaRam Jat, Prahlad, Sukhdev, Mohan Lal Gurjar and Mukesh

Kumar Choudhary and thus the ld. AR of the assessee prayed to delete the disallowance of brokerage payment of Rs.9,78,500/- relating to sale of land.

2.4 On the other hand, the ld.DR supported the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record. The crux of the issue in question as to payment of brokerage amount of Rs.9,78,500/- in respect of following persons for sale of land situated at Village Chittora.

S.No.	Name	Address	Amount
1.	Shri Sitaram Jat	Jai Nagar, Todavata, Kakanriya ki Dhani, Phagi, Chittora Renwal, Jaipur.	1,95,000/-
2.	Shri Prahlad	Chittora, Renwal, Jaipur.	1,95,000/-
3.	Shri Sukhdev	229, Kumharo ka Mohalla, Chittora, Phagi, Jaipur.	1,95,000/-
4.	Shri Mohan Lal Gurjar	36, Gurjaro Ka Mohalla, Balkhandiya, Tonk, Jaipur.	1,95,000/-
5.	Shri Mukesh Kumar Choudhary	3, Sujya Chotu Ki dhni, Rupvas, Tehsil Chaksu, Jaipur.	1,98,500/-
Total			9,78,500/-

From the record, it is noted that the assessee had submitted the copy of ID Proof i.e. Aadhar Card showing name and address of the above 05 persons which is available at PB No. 58-63. It is also noted that the assessee had submitted the payment voucher and signed receipt of brokerage payment amounting to Rs.9,78,500/- as proof which is available at PB No. 64-65. It is also noted from the assessment order wherein the objection of the AO is that “*In this agreement there*

is no reference of any broker in the sale transaction. This document does not bear any signature of witness, it is only signed by the assessee and the director of the purchaser company. The Bench feels that there is no requirement of getting signature or putting the name of signature of the broker which is not part and parcel of the agreement and it is nowhere indicated in the registry about the name of the broker. We also find that the assessee had entered into agreement of land on 25-03-2023 but claimed payment of brokerage on 22-06-2015. To this effect, the Bench noted arguments of the Id. AR of the assessee wherein he prayed that the brokerage is paid only after complete receipt of sales consideration or after the date of registry. In this case, it is noted that the sale agreement was entered on 25-03-2013 (PB No. 43-47) on receipt of payment advance of Rs.5.00 lacs. However it was decided by the parties that complete payment would be paid within 3 years and thus thereafter the registered sale deed got executed on 22-06-2023 (PB N0 48 to 57) which is registered before the Registering Authority and thus the brokerage was paid by the assessee on completion of the job. Hence, taking into consideration the above facts and circumstances and contemplating the orders of the lower authorities, we do not find any justification in the orders of the lower authorities to make disallowance of Rs.9,78,500/- as it is a mutual agreement between the purchaser and broker to get the deal done. We also find from the affidavit of the assessee Shri Ashok Singh who deposed therein at para 2 of his affidavit as under:-

“2. That the date of receipt of Brokerage Payment was wrongly mentioned as 22-06-2017 instead of 22-06-2015 due to typo-graphic error as the common receipt was obtained from the brokers during the time of assessment proceedings,”

It is also noteworthy to mention from the affidavit of the assessee Shri Ashok Singh that he had paid brokerage of Rs.9,78,500/- in cash to the above mentioned five persons. Hence, taking into consideration the facts and circumstances of the case, the brokerage amount of Rs.9,78,500/- is allowed. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 23 /11/2023.

Sd/-

(राठोड कमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23 /11/2023

*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Shri Ashok Singh., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-3, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 411/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar