आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य

BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं./ ITA NO. 484/Chd/2023
निर्धारण वर्ष / Assessment Year : 2016-17

Pankaj Gupta H.No. 610, Sector 18, Chandigarh	बनाम	The DCIT Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: ABUPG3629G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Shr Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 13/05/2024
उदघोषणा की तारीख/Date of Pronouncement : 25/06/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC Delhi dt. 30/05/2023 pertaining to Assessment Year 2016-17.

2. In the present appeal, the assessee has taken the following grounds of appeal:

> *1. That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition on account of not allowing indexed cost of improvement against the capital asset sold by the appellant.*
>
> *2. That the Ld. Commissioner of Income Tax (Appeals) has failed to comment on the additional evidence submitted during appeal proceedings.*
>
> *3. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
>
> *4. That the order of the Ld. Commissioner of Income Tax is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable."*

3. Briefly the facts of the case are that the assessee filed his return of income on 03/08/2018 which was selected for scrutiny and during the course of assessment proceedings, the assessee was asked to provide details of the asset sold along with supporting documentation substantiating the claim for Long Term Capital Gain (LTCG).

3.1 In response, the assessee submitted that he has sold land at Village Gulabgarh and particulars regarding the sale consideration, purchase consideration and cost of

improvement were submitted. The AO on perusal of the cost of improvement vis-à-vis the cost of land stated that the assessee has claimed excessive high cost of improvement upto 50 times the cost of land and thereafter, the detailed show cause was issued to the assessee to provide total area of land at Village Gulabgarh which has been sold to GBP Real Infra Pvt. Ltd., total area of land in the name of the assessee out of the said land being sold, whether cost of improvement of Rs. 11,40,000/- claimed to be incurred during 1994-95 and 1996-97 belongs to the assessee's share of land or total land being sold, purpose of improvement, the details of the activities performed for improvement of land, bifurcation of activity wise expenditure on the improvement of land, details of the persons whose services were taken for carrying out improvement of the said land.

3.2 In response, the assessee submitted that the land measuring 24 Bighas were sold to GBP Real Infra Pvt. Ltd. vide Title Deed No. 2380 dt. 01/10/2015 for a consideration of Rs. 12,60,00,000/- by three persons namely the assessee, Mr. Rattan Prabha, Mr. Sat Prakash Gupta and out of the land so sold, the share of the land pertaining to the assessee was 5 Bighas 14 Biswas.

3.3 It was further submitted that the assessee has incurred cost of improvement of Rs. 6,00,000/- during the F.Y. 1994-95 and Rs. 5,40,000/- during 1996-97 and the said cost pertains to assessee share of land being sold. It was submitted that the land was uneven before 1994-95 and were having trees as plantations. During 1994-95 and 1996-97, the assessee leveled these land and make arrangements for irrigation etc to make them more fertile and ready for crops and trees plantations. It was submitted that the activity performed on the land include leveling the lands and providing irrigation facilities and other activities to make them more fertile. It was further submitted that as the expenditure was relating to agricultural activities and were carried by local labourers and due to the time gap between period of expenditure and the assessment date, it was not feasible for the assessee to provide bifurcation of the expenditure incurred on each activity. It was further submitted that the activities such as leveling etc were carried out by local labourers with the help of JCB Operators and due to time gap between the period of expenditure and the assessment date, it is not feasible for

the assessee to provide details of persons to whom the payment has been made by the assessee.

3.4 Thereafter, in order to verify the claim of the assessee regarding improvement work carried out during the 1994-95 and 1996-97, the AO called for the information under section 133(6) from the Tehsildar of Derabassi seeking information about the crops sown, the total production from the land etc. Thereafter, the Teshildar vide his letter dt. 20/11/2018 furnished the copy of the khasra girdawari for the period 1992 to 1997 and 1998 to 2002 and has given the information regarding the crop being shown as Gair Mumkin Safeda. Considering the same, the AO has recorded his findings which are contained at para 2.7 and 2.8 of the assessment order and we deem it appropriate to reproduce the same as under:

> *"2.7 The information received from the Tehsildar office does not corroborate the claim of the assessee. Perusal of the report clearly shows that during the period from 1993-94 to 2000-01, there was only 'Gair Mumkin Safeda' grown on that land. There were 40 'Safeda' tress planted over that period of time, which continued to be same from 1993-94 to 2000-01. The 'Safeda' plantation does not require regular irrigation facilities and leveling of land like regular Rabi/Khareef crops. These plants once grown continue for over a long period of time without any human intervention and do not require even the leveling of the land. From the details of the records as furnished by the Tehsildar, it can be noticed that since F.Y. 1993-94 to 2000-01, there has been negligible/zero crop production over the land belonging to the assessee. The detailed description of the crops sown/tree plantation is placed on records. The report of Tehsildar clearly shows that there was no major improvement carried out during the said years by the assessee.*
>
> *2.8 Further the assessee has failed to provide the specific details of work carried out during the year 1994-95 and 1996-97. The assessee has further failed to produce any Bills/Vouchers regarding the improvement expenses claimed during the said years. In the absence of any proofs and from perusal of report of the Tehsildar, it is clear that the expenses claimed by the assessee are bogus and there was no improvement carried out on the said land during the year 1994-95 and 1996-97. In view of this the improvement expenses of Rs. 6,00,000/- for F.Y. 1994-95 and Rs. 5,40,000/- for F.Y. 1995-96 claimed by the assessee are disallowed. Indexed value of the disallowance is as under :-*
>
> Cost of improvement in 1994-95 = 600000/-
>
> Indexed cost of improvement for F.Y. 2015-16 = 2501930 (600000*1081/259)
>
> Cost of improvement in 1996-97 = 540000/-
>
> Indexed cost of improvement for FY 2015-16 = 1913902 (540000 * 1081/305)
>
> Therefore the total amount of Rs. 44,15,832/- (Rs. 2501930 + Rs. 1913902), is added to the Long Term Capital Gain of the assessee."

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A).

5. During the appellate proceedings, it was submitted on behalf of the assessee that the said cost of improvement was incurred by the assessee on levelling of the land, filling the earth and making arrangements for irrigation etc to make the land more fertile and ready for crops and trees plantation. It was submitted that the appellant was not able to provide the details of the expenses along with proof at the time of assessment due to paucity of time. However appellant was able to find the bills/ vouchers for earth work etc, which are enclosed with reply. It was submitted that an expense cannot be disallowed on the basis of non productions of documents which were around 20-21 years old on the date of assessment. The Income Tax Act, 1961 provides for the maintenance of records for last 7 assessment years. Also the Ld. AO called for information u/s 133(6) of the Income Tax, Act, 1961 from the Tehsildar of Derabassi on 05-11-2018 and the report was received on 20-11-2018. On the basis of the Tehsildar's report, the Ld. AO concluded that the cost of improvement claimed by the assessee is bogus and disallowed Rs. 44,15,832/-. The fact that the Ld. AO relied upon report dated 20-11-2018 which was more than 20 years later than the actual occurrence of the event. The report itself is questionable and cannot be relied upon. Further the Tehsildar had stated that this land is Garmumkin and had Safeda plantations on it. This fact cannot be denied that Safeda Planations also need levelling of land and watering of same. The appellant had spent the cost on levelling of land by purchase of earth/ soil and filling the dugs and thus levelling it to make it fit for plantations.

6. The submissions so filed by the assessee were considered but not found acceptable to the Ld. CIT(A) and the relevant findings of the ld CIT(A) are contained at para 5.2.1 to 5.2.3 of the impugned order and the same reads as under:

> *"5.2.1 This ground relates to challenging the action of AO, where the AO has denied the benefit of indexation of cost of improvement of Rs.44,15,832/-, while determining Long Term Capital Gain.*
>
> *5.2.2 I have considered the submission of the appellant and gone through the AO's order. In impugned case, the appellant sold a land during the year under consideration i.e. during the FY 2015-16. The said land was purchased in the year prior to 1.4.1981. Thereafter, it was claimed that in FY 1994-95 and in 1996-96, an amount of Rs.6,00,000/- and Rs.5,40,000/- respectively were spent on the improvement of the land, however, the cost of the land as on 1.4.1981 was disclosed at*

Rs.86,480/-. Since the amount spent on cost of improvement was found to be many times as compared to cost of the land, the AO carried out extensive enquiries, which is enumerated in para 2.6 and 2.7 of the assessment order. Since the appellant failed to bring on record any evidence viz bills and vouchers suggesting such claim and other cogent material, the AO denied the claim and accordingly, modified the calculation of long term capital gain.

5.2.3 During the appeal proceeding, the appellant reiterated the same argument what he had taken before AO. The main plea of the appellant is that since the improvement in land took place long back it was not feasible to maintain all bills and vouchers pertaining to the said expenditure, however, he failed to understand that the quantum of claim was so huge in comparison to the cost of land that he was mandatorily required to maintain it on simple reason that it is going to substantially suppress the quantum of the long term capital gain. Under these circumstances, since the appellant has failed to bring on record any evidence, I don't find any reason to interfere in the order of AO, accordingly addition so made is hereby sustained. As a result, ground no.2 is dismissed."

7. Against the said findings and directions of the ld CIT(A), the assessee has come in appeal before us.

8. During the course of hearing, both the parties were heard at length wherein the submissions made and the findings of the lower authorities were reiterated. The ld AR has dawn our reference to bills and vouchers which were produced during the appellate proceedings in support of cost of improvement and it was submitted that the ld CIT(A) has failed to take cognizance of the same and has passed the impugned order. In his response, the ld DR has submitted that no ground of appeal has been taken by the assessee before the ld CIT(A) in terms of lack of opportunity by the AO and secondly, no application under Rule 46A has been moved by the assessee before the ld CIT(A) seeking permission for furnishing the evidential evidence.

9. Further, the ld AR has relied upon the decision of the Coordinate Bench in case of ACIT vs Sambandam Dorairaj (ITA No. 301/Chny/2020/ dated 30/09/2021) whereas the ld DR has relied upon the decision of the Coordinate Benches in case of Mr. Vasamsetty Veera Venkata Satyanarayana Vs. ITO (ITA No. 706 and 707/Hyd/2022 dt. 23/03/2023) and DCIT Vs. M/s E-4 Entertainment (P) Ltd. (ITA No. 449/Del/2010 dt. 11/05/2012) which along with other material available on record has been duly considered and examined.

10. In our understanding, where the assessee is claiming the cost of improvement as an eligible deduction while computing the long term capital gains on sale of land, the onus is on the assessee to demonstrate the incurrence of such cost for the purposes of

improving and accreting the value of the capital asset and support the same with verifiable evidence. It has been submitted by the ld AR that the cost of improvement was incurred by the assessee on levelling of the land, filling the earth and making arrangements for irrigation etc to make the land more fertile and ready for crops and trees plantation. It was further submitted that since the expenditure was relating to agriculture activities and were carried out by the local labourers, JCB operators and given the time gap between the period of expenditure and the assessment date, it was not feasible for the assessee to provide bifurcation of the expenditure incurred on each activity and to provide details of payment made to each persons. As per the report of the Tehsildar which in turn is based on khasra girdawari, as noted by the AO, during the period from 1993-94 to 2000-01, there were only 'Gair Mumkin Safeda' grown on that land. There were 40 'Safeda' tress planted over that period of time, which continued to be same from 1993-94 to 2000-01. These facts have not been disputed by the assessee. The AO has further held that the 'Safeda' plantation does not require regular irrigation facilities and leveling of land like regular Rabi/Khareef crops, that these plants once grown continue for over a long period of time without any human intervention and do not require even the leveling of the land. In his submissions, the assessee has submitted that Safeda Plantations also need levelling of land and watering of same and the amount has been spent on levelling of land by purchase of earth/ soil and filling the dugs and thus levelling it to make it fit for plantations.

11. The question that arise for consideration is whether the expenditure so claimed to be incurred by the assessee in relation to preparation of land for the purposes of planting and growing of safeda trees, being an expenditure incurred in relation to agriculture activities, would be eligible for deduction against the agriculture income or whether the same can be claimed as eligible expenditure as cost of the improvement while working out capital gains on sale of the land. The answer to the same lies in the nature of the expenditure, i.e, whether the expenditure incurred is such which leads to accretion in the value of the land and is in the capital field or the expenditure is in nature of revenue field which can be claimed as eligible deduction against the agriculture income. The AO has returned a finding that from the details of the records as furnished by the Tehsildar, it can be noticed that since F.Y. 1993-94 to 2000-01, there

has been negligible/zero crop production over the land belonging to the assessee. In such a situation, merely the fact that there was negligible/zero growth/production and consequent negligible/zero revenues from agricultural activities, whether the same allows the assessee to claim the expenditure as cost of improvement against sale of land. Therefore, where the AO has asked the assessee to provide the specific of cost of improvement in terms of nature of activities, kind of expenditure and persons to whom the amount has been paid, the AO has rightly adopted the correct methodology and asked the right queries in examining the claim so made by the assessee.

12. Second and related issue that arises for consideration is what is the nature and end use of land at the time it was sold to the purchaser M/s GBP Real Infra Pvt Ltd. Where the land which was initially used for plantation of Safeda trees and some expenditure has been incurred therein and lateron, the end-use has either been changed or likely to be changed, as would be clear from reading of the registered deed and intention of parties as so stated therein, say for instance to commercial or residential purposes, the question is whether cost so incurred initially even on capital field can be claimed as cost of improvement where the very nature of the asset has undergone a change and no more retains the original character at the time of sale. In our understanding, the said issue is clearly emerging from the records and need to be examined before arriving at the final finding as to allowability or otherwise of the expenditure so claimed by the assessee.

13. It was further submitted by the ld AR that the assessee was not able to provide the nature and details of the expenses along with proof at the time of assessment due to paucity of time, however, he was able to find the bills/ vouchers for earth work etc, which were submitted during the appellate proceedings before the ld CIT(A) which the ld CIT(A) has failed to take cognizance of. In his submissions, the ld DR has submitted that these were clearly additional evidences which were submitted for the first time before the ld CIT(A) and in absence of any application moved on behalf of the assessee to admit the additional evidence, the ld CIT(A) was not required to consider the same and pass any order either accepting or rejecting the additional evidence. It was further submitted that bills/vouchers as so submitted can be procured from any vendor/supplier and doesn't support the claim of the assessee as having incurred the

expenditure as apparently, the payments are made in cash and there is no further corroboration in terms of availability of cash or cash withdrawal from the bank account maintained by the assessee at the relevant point in time. In our understanding, in view of the fact that the assessee has brought on record certain evidences in support of his claim of cost of improvement, even though for the first time during the course of appellate proceedings, we believe that the same being germane to the matter need to be considered, tested and examined on its own merits in the interest of substantial justice and the matter thereafter has to be decided accordingly.

14. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we direct the assessee to move appropriate application for admittance of additional evidence before the ld CIT(A) who shall examine the same along with the aforesaid issues and decide the matter a fresh as per law after providing reasonable opportunity to the assessee. The matter is accordingly set-aside the matter to the file of the ld CIT(A).

15. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/06/2024.

Sd/-	Sd/-
परेश म. जोशी	**विक्रम सिंह यादव**
(PARESH M. JOSHI)	**(VIKRAM SINGH YADAV)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य/ ACCOUNTANT MEMBER**

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar