

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 629/JP/2024
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Sher Singh Shikari Bas, Near Jeevan Jyoti Girls School, Behror Road, Alwar	बनाम Vs.	The ITO Ward- 1 (4) Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CSNPS 1486 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 11/06/2024
उद्घोषणा की तारीख / Date of Pronouncement: 24/06/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 12-03-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 raising therein following grounds of appeal.

1 The Ld. CIT(A), NFAC has erred on facts and in law in upholding the action of AO in computing the long term capital gain on sale of land at village Ballaboda, Alwar at Rs.31,33,108/- as against Rs.1,78,814/- computed by the assessee by (i) adopting the DLC value of the land at Rs.32,35,158/- as against actual consideration of Rs.13,80,000/- without referring the matter to DVO u/s 50C(2) of the Act (ii) computing the indexed cost of acquisition of land at

ITA NO. 629/JP/2024

SHRI SHER SINGH VS ITO, WARD 1(4), JAIPUR

Rs.1,02,050/- as against Rs.29,43,750/- claimed by the assessee and (iii) not allowing deduction u/s 54F at Rs.12,50,000/- claimed by the assessee.

2. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the action of AO in computing the long term capital gain on compulsory acquisition of agriculture land by UIT, Alwar at Rs.3,66,100/- as against Rs.12,850/- computed by the assessee by computing the indexed cost of acquisition at Rs.78,500/- as against Rs.4,31,750/- claimed by the assessee. He has further erred in not considering the fact that capital gain arising on compulsory acquisition of agriculture land is exempt u/s 10(37) of the Act.

3. The Ld. CIT(A), NFAC has erred on facts and in law in not reducing the long term capital gain of Rs.1,91,664/- declared by the assessee in the return of income from the long term capital gain of Rs.34,99,208/- computed by the AO, resulting into double taxation of Rs.1,91,664/-.”

2.1 Brief facts of the case are that the assessee is an agriculturist aged 75 years. He has not filled return of income. The AO on the basis of information that assessee has sold an immovable property issued notice under section 148 dt.29.03.2019. In response, the assessee filed the return on 30.07.2019 declaring total income of Rs.1,97,170/-. The assessee owned an agricultural land at Khasara No.429 measuring 0.34 hectare. Out of it 0.23 hectare land was acquired by UIT, Alwar on 17.10.2008 (**letter of UIT filed**). Against this acquisition the assessee was paid compensation of Rs.3,97,440/- on 17.10.2008, Rs.3,97,440/- on 18.01.2010 and Rs.4,44,594/- on 26.05.2011. Out of this land, on some part there was a road. Hence the balance 0.09 hectare land was sold by the assessee to Shri Sandeep Jain vide sale deed dt. 19.01.2012 for Rs.13,80,000/- (**PB 10-17**). The stamp authority assessed the value of the land for stamp duty purposes at

ITA NO. 629/JP/2024
SHRI SHER SINGH VS ITO, WARD 1(4), JAIPUR

Rs.32,35,158/-. Accordingly AO adopted the deemed sale consideration u/s 50C at Rs.32,35,158/-. The assessee claimed FMV of the land sold as on 01.04.1981 at Rs.3,75,000/- and claimed deduction u/s 54F in respect of investment of Rs.13,50,000/- made on construction of the house property. The AO, however, on the basis of information received from DIG Stamp, Alwar that nearby immovable property at Ballaboda was sold for Rs.13,000/- in FY 1981-1982 took the FMV of the land as on 01.04.1981 at Rs.13,000/- and allowed index cost of acquisition at Rs.1,02,050/- ($13000 \times 785/100$). Further AO did not allowed the claim of deduction u/s 54F for the reason that assessee has not produced any supporting evidence/ voucher or bills of construction. Accordingly AO computed LTCG on sale of land at Rs.31,33,108/-. In respect of land acquired by UIT, in the absence of evidence regarding the acquisition of land by UIT, AO computed the LTCG at Rs.3,66,100/- ($4,44,600 - \text{indexed value } 78,500$) in respect of the amount of Rs.4,44,600/- received during the year under consideration by taking the FMV of the land as on 01.04.1981 at Rs.10,000/-.

2.2 The Ld. CIT (A), NFAC reproduced the assessment order at Pg 2 to 7 and the submission of the assessee at Pg 7 to 13 of the order. Thereafter on Pg 13 to 48 of the order he decided the ground where he again reproduced the assessment order at Pg 14 to 16, submission of the assessee at Pg 16 to 18, decision of ITAT Jaipur

Bench at Pg 19 to 34, decision of Delhi High Court at Pg 34 to 48 and thereafter held that the assessee has not submitted any proof of evidence/ certificate/ receipt in respect of the transaction and thus dismissed the appeal filed by the assessee.

2.3 During the course of hearing, it is submitted by the Id. AR of the assessee that the AO has not properly appreciated the facts and the Ld. CIT(A), NFAC has not individually decided the grounds of the assessee by taking into consideration the submission of the assessee. The Id. AR submitted that the UIT, Alwar acquired 0.23 hectare of the agricultural land of the assessee on 17.10.2008. The evidence of acquisition is filed. Part amount was received on 17.10.2008 & 18.01.2010 and the balance amount was received on 26.05.2011 as evident from the papers placed at **PB 32-33**. Section 10(37) of the Act provides that where a capital gain arises to an individual from transfer of agricultural land by way of compulsory acquisition under any law, the same is exempt from capital gain. Thus no capital gain as computed by the AO at Rs.3,66,100/- is chargeable to tax. Further the calculation of capital gain made by AO is incorrect in as much as he considered the FMV of the land as on 01.04.1981 at Rs.10,000/- for the entire 0.23 hectare of the land whereas for 0.09 hectare of the land he considered FMV as on 01.04.1981 at Rs.13,000/-. On this basis the FMV of 0.23 hectare of land as on 01.04.1981 would be Rs.33,222/- ($13000/0.09*0.23$) and the indexed cost of acquisition would be Rs.2,60,794/- as against Rs.78,500/- computed by him. Thus even as per AO the

capital gain on acquisition of this land would be Rs.1,83,806/- (4,44,600- 2,60,794) as against Rs.3,66,100/- computed by the AO. Otherwise also, when the land was acquired on 17.10.2008 and only part compensation was received in the year under consideration, the capital gain on acquisition of this land would accrue and arise in AY 2009-10 and not in the year under consideration. In respect of agricultural land sold by the assessee for Rs.13,80,000/-, AO took the deemed consideration u/s 50C at Rs.32,35,158/-. This is incorrect for the reason that DLC value of the land as on the date of sale of agricultural land capable for plotting was Rs.1610/- per sq. yard **(PB 18)** if the land is situated more than 30 feet from the road/ population. The land under consideration is situated 3 km away from the village population and thus the applicable DLC rate is Rs.1610/- per sq. yard. The land sold is 0.09 hectare that is 1075 yard and thus the DLC value of the land is Rs.17,30,750/- (1075*1610) as against the actual sale consideration of Rs.13,80,000/-. Under these circumstances AO ought to have referred the determination of the FMV of the land u/s 50C(2) to the DVO. Hence adoption of the deemed sale consideration u/s 50C at Rs.32,35,158/- without making reference to the DVO is neither correct nor as per law. The assessee has invested the sale consideration on construction of residential house. In support of the same assessee has filed the affidavit of Shri Amar Singh **(PB 22-23)** who carried out the construction work and his own affidavit **(PB 24-25)** before the AO and the valuation report of the valuer

determining the cost of construction at Rs.13,57,148/- (**PB 26-31**) before Ld. CIT(A), NFAC. Thus assessee is eligible for deduction u/s 54F of the Act. However the Ld. CIT(A) has not considered these facts and therefore AO be directed to allow deduction u/s 54F to the assessee. It is submitted that assessee computed the LTCG at Rs.1,91,664/-. AO computed the LTCG at Rs.34,99,208/- and made addition for the same without reducing the LTCG declared by the assessee. Thus there is double addition to this extent. The Ld. CIT(A), NFAC has reproduced the order of ITAT, Jaipur Bench and Hon'ble Delhi High Court but he has not written a single word as to how these cases are applicable on the facts of assessee. In fact there is total non-application of mind by the Ld. CIT(A), NFAC in deciding the appeal. Hence the order passed by Ld. CIT(A), NFAC is erroneous. In view of above, AO be directed to recompute the capital gain as submitted above.

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

2.5 After having gone through the facts of the present case with reference to Ground No.1 of the appeal, AO took the deemed sale consideration u/s 50C at Rs.32,35,158/- as against actual consideration of Rs.13,80,000/- without making reference u/s 50C(2) of the Act to the DVO. Further the DLC rate of the agriculture land capable for plotting was Rs.1,610 per sq. yds. and on that basis the DLC value of the land was Rs.17,30,750/- (1075*1610). The assessee has invested

the sale consideration on construction of house and as per the valuation report of the valuer the cost of construction is Rs.13,57,148/- which was submitted to Id. CIT(A) NFAC. In respect of Ground No.2 the land was acquired by UIT Alwar for which necessary evidence could not be furnished before the lower authorities but now assessee has furnish the evidence that the land was acquired by Land Acquisition Authority on 17.10.2008 and thus the capital gain on acquisition of this land is exempt u/s 10(37) of the Act. Though the assessee has computed long term capital gain on the amount received during the year on acquisition of this land mistakenly, these evidences which go to the root of the matter be admitted to impart substantial justice to the assessee. In view of the above facts & circumstances of the case the matter is send back to the file of the AO to compute the long term gain on sale of land afresh as per law after providing reasonable opportunity of hearing to the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

2.6 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

ITA NO. 629/JP/2024
SHRI SHER SINGH VS ITO, WARD 1(4), JAIPUR

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

Order pronounced in the open court on 24 /06/2024.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 24/06/2024

***Mishra**

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

1. The Appellant- Shri Sher Singh, Alwar
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1(4), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 629/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar