

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.286/Ind/2023 (AY: 2013-14)

Shri Shyamlal Patidar, House No.23, Near Ram Mandir, Purani Basti Jhatkhedi, Bhopal (PAN: EFQPP51544H)	<u>बनाम/</u> Vs.	ITO 2(5), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)

ITA No.287/Ind/2023 (AY: 2013-14)

Mohan Patidar (Through Legal Heir Jamna Prasad Patidar, House No.53, Purani Basti, Bhopal (PAN: DPHPP2974H)	<u>बनाम/</u> Vs.	ITO 2(5), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)

ITA No.401/Ind/2024 (AY: 2013-14)

Shri Badri Prasad Patidar, Village Jatkhedi, Post Misrod, Bhopal (PAN: AGTPP3050G)	<u>बनाम/</u> Vs.	ITO 2(5), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)

Assessee by	S/Shri Ashish Goyal & N.D. Patwa, ARs
Revenue by	Shri Ashish Porwal, Sr. DR
Date of Hearing	27.08.2024
Date of Pronouncement	28.08.2024

आदेश / O R D E R

Per Vijay Pal Rao, JM:

These 3 appeals by the three individual assessee(s) who were the co-owners of land in question are directed against three separate orders dated 27.06.2023, 29.05.2023 and 05.04.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi and Thiruvananthapuram respectively for the Assessment Year 2013-14.

2. Since common grounds are raised by these three assessee(s) arising from the same transaction of sale of land as well as same facts and circumstances therefore, these three appeals are clubbed

together for the purpose of hearing and disposal. The grounds raised in Appeal No. ITA/286/Ind/2023 is reproduced as under:

“On the facts and the circumstances of the case:

- 1. The Ld. AO was not justified in passing the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 2. The Ld. CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 3. The Id. CIT(A) was not justified in confirming the addition of Rs. 14,57,400/- against sale of immovable property without considering the facts and circumstances of case.*
- 4. The Id. CIT(A) was not justified in confirming the application of section 50C and moreover adopting the stamp value, without considering the facts and circumstances of the case.*
- 5. The appellant carves leave to add, amend or modify any of the grounds of appeal.”*

3. These three assessee(s) alongwith seven other co-owners sold agriculture land during the year under consideration vide sale deed dated 15.03.2023 measuring 0.25 acre situated at Gram Jatkhedi, Patwari Halka No.42, Rajaswa Mandal 03, Khasra No. 75,76/2, Vikas Khand Phanda, Tehsil Huzur, Bhopal for a consideration of Rs. 30 lakhs but the market value of the same as per the stamp duty valuation is Rs.1,45,74,000/- . The A.O issued notice u/s 148

of the Act on 28.03.2017. Before the A.O the assessee contended that the land in question was sold during the Financial Year 2005-06 to one Mr. Arvind Barjatiya, S/o Mr. Gulabchand Barjatiya resident of E-3/162, Arera Colony, Bhopal, Madhya Pradesh vide agreement to sale and thereafter the sale deed was executed in favour of one Mr. Rahul Shukla through the GPA holder Shri A.S. Awasthi. It was further contended that the land was sold by the farmers during the assessment year 2006-07 and therefore, the reopening of the case is not valid. The A.O did not accept the contention of the assessee and held that the property was sold vide sale deed dated 15.03.2023 and therefore the capital gain arising from the transaction is assessable to tax for the assessment year 2013-14. Accordingly the A.O assessed the Long Term Capital Gain in the hands of each of the co-owners i.e. 1/10 share which comes to Rs.14,57,400/-. The assessee challenged the action of A.O before CIT(A) but could not succeed.

4. Before the Tribunal the Ld. AR of the assessee submitted that initially the assessee has entered into an agreement to sale of land measuring 0.50 acre to Shri Arvind Barjatiya vide agreement to sell

dated 18.11.2005 @ Rs.85/- per sq.feet. Thereafter a supplementary agreement dated 26.03.2006 was also entered into between the parties for payment of the balance sale consideration. A revised agreement to sell was entered into on 15.07.2011 for sale of 0.50 acre of land to Mr. Arvind Barjatiya. Ld. AR has submitted that since all the agreements are unregistered and the consideration received by the assessee as well as other co-owners was in cash only therefore, in view of the judgment of Hon'ble Supreme Court in case of **Suraj Lamp & Industries V/s State of Haryana 340 ITR1** as well as in case of **CIT V/s Balbir Singh Maini 398 ITR 531** the transfer of immovable property without registered agreement to sell is not a valid transfer hence, the assessee do not press the said issue of transaction of transfer in the Financial Year 2005-06. The Ld. AR has further submitted that the A.O has assessed the entire full value consideration as income of the assessee without allowing the cost of acquisition or the fair market value of the land as on 01.04.1981 from the full value consideration. Thus the A.O is not justified in making the addition in the hands of the assessee towards the full value consideration.

Ld. AR has further submitted that even the full value consideration adopted by the A.O is not as per the guideline value of the area notified by the authority and therefore, the addition made by the A.O by taking incorrect full value consideration amounts to assessing the excess income in the hands of the assessee over and above of the actual guideline value. In support of this contention he has referred to the valuation report whereby the Registered Valuer has valued the fair market value as on 01.04.1981 as well as fair market value as on the date of sale. Ld. AR submitted that registered valuer has taken the guideline of agriculture land @ Rs.1,48,20,000/- per hectare whereas the A.O has adopted the full valuation consideration at Rs.1,45,74,000/- of land measuring 0.25 acre/0.101 hectare. Ld. AR has further submitted that the assessee has filed an application under Rule 29 of the ITAT Rules 1963 for admission of the valuation report as additional evidence in support of the fair market value of the land as on 01.04.1981 as well as on date of sale. He has further submitted that even the sale consideration was invested by the assessee(s) for purchase of agriculture land and therefore, the assessee(s) are eligible for

exemption u/s 54B of the Act. The assessee has also filed the sale deed for purchase of agriculture land as additional evidence. Thus the Ld. AR has submitted that the assessee(s) are raising additional ground in respect of the fair market value as on 01.04.1981 and fair market value as on the date of sale and further claiming exemption u/s 54B of the Act on account of investment made in purchase of agriculture land. Thus the Ld. AR has pleaded that due to inadvertence and lack of proper guidance the illiterate assessee(s) could not raise these points before the authorities below and hence, the same may be admitted for deciding the matter as these are clinching evidence and will provide the correct facts for determination of the correct income in the hands of the assessee. Hence, he has prayed that the matter may be remanded to record of the A.O for fresh adjudication after considering the cost of acquisition being the fair market value of the land in question as on 01.04.1981 as well as on the date of sale in terms of Section 50C(2) of the I.T. Act and also considering the claim of deduction u/s 54B of the Act.

5. On the other hand Ld. Departmental Representative has submitted that so far as the claim of the assessee raised before the A.O as well as CIT(A) is concerned in the absence of any registered agreement the same is covered by the judgment of Hon'ble Supreme Court in case of **Suraj Lamp & Industries V/s State of Haryana 340 ITR1** as well as in case of **CIT V/s Balbir Singh Maini 398 ITR 531**. He has further submitted that the assessee did not file even the return of income in response to the notice u/s 148, hence the claim of exemption u/s 54B cannot be entertained. Ld. DR has further stated that full value consideration has been adopted by the A.O which is strictly as per the provisions of Section 50C(1) of the Act whereby the A.O is bound to adopt the full value consideration as stamp duty valuation which is not disputed by the assessee. Therefore, in the absence of any challenge to the valuation of stamp duty the assessee cannot claim the different rate of stamp duty valuation as applied by the stamp duty authority at the time of registration of the sale deed. He has relied upon the orders of the lower authorities.

6. I have considered rival submissions as well as relevant material on record. At the outset it is noted that before the A.O the assessee has raised objection against the notice issued u/s 148 on the ground that the transaction of transfer of the land in question took place in Financial Year 2005-06 relevant to the A.Y. 2006-07 which was rejected by the A.O. Apart from this objection the assessee did not raise any other issue regarding adoption of full value consideration by the A.O or allowing the cost of acquisition as on 01.04.1981. From the assessment order it is manifested that after rejecting the objection against issue of notice u/s 148 A.O has not issued any show cause notice to the assessee for adopting the full valuation consideration u/s 50C(1) of the Act and hence, it appears that the assessee was not given an opportunity before adopting the full valuation consideration as per Section 50C(1) of the Act and consequent addition by the A.O on account of Long Term Capital Gain arising from sale of land in question. Though the assessee challenged the order before the CIT(A) however, still the assessee did not raise any specific ground regarding full valuation consideration or allowing the cost of acquisition or

exemption u/s 54B of the Act. So far as assessing the entire sale consideration u/s 50C(1) of the Act is concerned the A.O is not justified in making the addition of the entire sale consideration without allowing the cost of acquisition. Even the A.O has not made any attempt to ascertain the cost of acquisition or fair market value as on 01.04.1981 while assessing the Long Term Capital Gain in the hands of the assessee therefore, to that extent the order of the A.O is not sustainable. Further the assessee has also disputed the fair market value of the land in question as adopted by the A.O being full valuation consideration u/s 50C(1) of the Act in view of the fact reported by the registered valuer in the valuation report that the guideline value of the land situated at the main road is Rs.5 crores per hectare whereas the A.O has adopted the full value consideration of Rs.1,45,74,000/- for a land measuring 0.101 hectare which is prime facie more than the guideline prescribed for the land in question reported by the registered valuer. Thus, in the facts and circumstances when the registered valuer has reported the guidelines value which is less than the full valuation consideration adopted by the A.O this aspect is required to be

properly verified and examined by ascertaining the correct fact from the record. Even otherwise once the assessee has questioned the adoption of full value consideration, the fair market value is required to be determined as per Section 50C(2) of the Act. Accordingly, in the facts and circumstances of the case and in the interest of justice the matter is set aside to the record of the A.O for fresh adjudication after considering the cost of acquisition of the land in question as well as the fair market value in terms of Section 50C(2) of the Act. The assessee has also raised the claim of exemption u/s 54B of the Act which is also required to be verified and adjudicated by the A.O after giving an opportunity of hearing to the assessee.

7. In the result all the three appeals of the assessee(s) are allowed for statistical purpose.

Order pronounced in the open court on 28.08.2024.

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 28.08.2024
Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore