

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.72/JP/2024
निर्धारण वर्ष / Assessment Year : 20

Shri Balu Ram 161, Bairwo Ka Bas Ramdev Ji Mandir Ke Pass, Muhana, Sanganer, Jaipur	बनाम Vs.	The ITO Ward 7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BCQPR 1154 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Yogesh Kumar Sharma, Adv.
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 30/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 23 /09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 16-11-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 raising therein following grounds of appeal.

“1. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 stating that "the appellant along with other 14 persons have signed the sale deed in their respective individual capacities and the sale deed is not signed by anyone person in the capacity as a

"Karta' of any HUF. The appellant has also brought no evidence on record to show that the impugned property sold is belonging to the HUF not the individual persons. The appellant has also failed to show that the HUF has filed the return of income for the relevant previous year, has declared the transaction sale of impugned land in such return of income filed, computed capital gains and offered such capital gain in the hands of this HUF and paid due taxes thereon. It is therefore evident that all the individual who have signed the sale deed in their individual capacities are the co owners in the said land sold.", whereas (a). All the members of the Karta's family can be members of the HUF. The male members are called coparceners, while the females are referred to as just members. The difference between the two is that any of the coparceners can demand partition of the HUF. The female members do not have this right in most parts of the country, except for some states like Maharashtra and Tamil Nadu that have allowed unmarried daughters to function as coparceners. (b) the sale deed was signed by all members in the capacity of the coparcener of the HUF including female member, further female members have signed without receiving any Benefit as confirming party being member of the HUF only. (c) The sold property of the HUF was ancestral land not buy any member of the HUF, such ancestral agricultural land situated at Patwar Muhana, tehsil sangnact, Jaipur Khasra No. 1078,1083,1084,1085,1087,1088,1089,1090,1161,1162,1163 & 1164, Further, at the time of just before of the Registry the agricultural Land was converted into the Residential land but there were no single patta in the name of the member of the HUF. (d) Filing of the Income tax Return is applicable when the income of the HUF is more the exemption limit and filling of the return cannot be criteria to judge status of the HUF or Not. (e) Karta who govern the family, is always senior most person in HUF (1). Whereas in case of HUF, liability of each member, except the Karta, is limited to the extent of his share in the property of the family.

2. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 stating that "The decision of Hon'ble Tribunal in the said case is therefore not applicable to the appellant's case. The value determined by the assessing officer is therefore found to be justified." Whereas (a) The decision of Satya Dev Sharma Vs ITO(Jaipur

Tribunal 2014) (39 CCH 0428 Jaipur) by Hon'ble Tribunal is totally applicable on the appellant's case where the property is ancestral property, No DLC rate was available at that time, the property is situated at the prime location nearby Biggest Fruit, vegetable and grain Mandi in Jaipur (b) the Value determined by the AO on the Basis of the agricultural Land, however, the property was sold in the Residential capacity. Further, the value of the Residential property in the same area in 1983 was Rs. 263 approx square yards.

3. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 stating that "For the purpose of claiming exemption 54F of the LT Act, it was required on the part of the appellant to bring on record authentic documentary evidences to establish that the appellant has within a period of three years after the date of the transfer of impugned land has constructed one residential house in India, the cost of which (new asset) is of Rs.25,25,600/-. The appellant has brought no such evidence except the valuation report of the registered valuer dated 20.04.2019 who has determined the value of residential property at Plot No.115, Anand Vihar, Navata Rd., Mohana, Tehsil Sanganer, Jaipur, Rajasthan at Rs. 24,35,246/- wherein the valuer has merely mentioned the year of commencement of construction and year of completion as November 2010 to July 2011. This period of construction stated by the registered valuer is without any basis or any authentic documentary evidences. Therefore this period of construction stated by the valuer cannot be taken as true and correct" Whereas the appellant is farmer and no ideas about the recording of Bills and related hereto, moreover the construction was for the period November 2010 to July 2011, and with the valuation report which clearly substantiates the appellant's contentions. From the date of transfer of the asset to reassessment proceedings almost 10 years lapsed and therefore furnishing of bills and vouchers of construction of the house may not be practically possible at this juncture. Therefore, considering the facts and circumstances of the case and to meet the ends of justice, the assessee's contentions should be hereby considered favourably. Further in this context with the written submission, the appellant shall submit the affidavit of the persons who were the witness of the construction

4. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023, that taxation was done on the full value of mentioned in section 50C of the Act ie value of Rs. 49,50,750 whereas the net sale consideration value of Rs. 25,25,600 was invested in construction hence the taxation on full value as per section 50C is not justified legal and valid, on the ground of the period of the construction can not be taken as true and correct.

5. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023, that the proceeding initiated u/s 147 of the IT Act, against the appellant is barred by limitation since the notice has to issued on or before 31/03/2018 were notice u's 148 issued to appellant on 11/09/2018.

6. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 by ignoring the expenses of actual improvement cost of agricultural land such as Brokerage, mitti bharai (sand filling), muddi, well digging. conversion of the land and legal expenses etc.

7. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 that the Ld. AO has not considered the point that the at the time of Sale deed i.e. 11/11/2010, the total area was mentioned as "total rakba 5.74 is situated out of the total khasara kita 12 total rakha 7.13 hectares... but no area mentioned in the residential area as meter/yards etc.... hence on the basis of the land situation, the value of the sale should be considered as agricultural land of Rs. 4,04,09,600.

8. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 that the Ld. AO has not considered the point that the at the time of Sale deed ie 11/11/2010, the land was using exclusively as agricultural land the crop was developed at that time, hence on the basis of the use the land, the value of the sale should be considered as agricultural land of Rs. 4,04,09,600,

9. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt.16.11.2023 that the Ld. AO has not considered the point that the at the time of Sale deed i.e 11/11/2010, as per the point mentioned in the sale deed on the page no. 7"....the Re-allotment to be done in favour of fist part or members/nominated members of the first part..... In this context without fulfilment of such mentioned condition, land was using exclusively as agricultural land, hence on the basis of the use the land, the value of the sale should be considered as agricultural land of Rs. 4,04,09,600.

10. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 16.11.2023 that the Ld. AO has not considered the point that the at the time of Sale deed ie 11/11/2010, as per the point mentioned in the sale deed on the page no. 8 with the pattas to be allotted from JDA....."In this context another mentioned condition THE PATTA TO BE ALLOTTED is also pending land using exclusively as agricultural land, hence on the basis of the use of the land, the value of sale should be considered as agricultural land ofRs.4,04,09,600/-“

2.1 At the very outset of the hearing, it is noticed that there is a delay of 09 days in filing the appeal by the assessee. In this regard, the ld. AR of the assessee has drawn the attention of the Bench to the application for seeking condonation of delay filed u/s 5 of the Limitation Act wherein it has been mentioned that the delay in filing the appeal was on account of the fact that the assessee was having health issue as he is in his advanced age of 79 years old and is suffering from ailments. Therefore, he was under medical treatment and in this regard, an affidavit has also been filed.

2.2 On the contrary, the ld. DR objected to the delay of filing the appeal by the assessee but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 After hearing the Counsel for both the parties and perusing the material available on record and also taking into consideration the application for condonation delay raised by the assessee alongwith affidavit, the Bench noticed that there is a merit in the application of the assessee as to condonation of delay. Hence in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. MSt. Katiji and Others, 167 ITR 471 (SC), the delay is condoned and appeal of the assessee is admitted for consideration on merit.

3.1 Further at this stage, the ld. AR has moved an application under Rule 29 for admission of additional evidence. Through the present application, the ld. AR has drawn the attention of the Bench to the list of documents of additional documents which are annexed at PB pages 1 to 107 and such documents include the copy of the order of Coordinate Bench of ITAT, Certified copies of residential sale deed, Valuation Report from the Registered Valuer, Copy of the Bank Statement, Affidavit regard period of construction, Copy of Electricity Bill of house, Affidavit of contractor stating period the construction, Computation of Income, Copy of the sale deed dated 11-11-2010 and Copy of the letter given to the AO at the time of assessment. According to the ld. AR, these additional evidences could

not be produced before the AO as well as before the Id. CIT(A) because of the reasons that the copies of these documents could not be obtained by the assessee. The Id AR further submitted that these documents are crucial material for just decision of the appeal.

3.2 On the contrary, the Id. DR strongly contested this application for leading the additional evidences and submitted that the documents now filed record are not public documents and are self styled documents. Therefore, none of these documents are required to be admitted as additional evidences.

3.3 After having heard both the Counsel for the parties on this application of the assessee, I am of the view that none of the documents now placed on record before the Bench are public documents and no plausible reasons have been submitted by the Id. AR of the assessee as to why these documents could not be obtained or placed before the Revenue Authorities earlier during the course of assessment. However, a glaring fact has also been placed on record by the Id. DR that in the shape of report wherein it has been mentioned that there were 15 co-owners relating to the land in question and the cases of other similarly situated persons are either pending before the Id CIT(A) or before the AO and in this regard detailed reports have been submitted vide letter No.ITO/W-7(2)/JPR/2024-25/402dated 28-06-2024 and the same is reproduced as under:-

S.N	Name of Family Members	Status
1.	Balu Ram (PAN-BCQPR1154M)	Ld. CIT(A) dismissed the appeal of assessee vide order dated 16.11.2023. Assessee filed further appeal before the Hon'ble ITAT which is pending. The appeal of the assessee was dismissed and the appellant was not found eligible for the claim of exemption u/s 54F of the Income-tax Act, 1961 as the assessee failed to establish that the residential house has been constructed within a period of 3 years from the date of transfer of impugned land and also the evidence showing the cost of construction of Rs.25,25,600/-
2.	Govind Ram (PAN-BCQPR1184P)	Ld. CIT(A) partly allowed the appeal of the assessee vide order dated 30.01.2020. The Ld. CIT(A) deleted the addition made by the AO of Rs.13,21,070/ under the head capital gain since the assessee invested entire actual sale receipt in the construction of new house eligible for deduction u/s 54F of the Act.
3.	Shri Mool Chand (PAN-ASFPC0936Q)	Matter is pending before the Ld. CIT(A)
4.	Shri Ram Karan (PAN BRNPK3479E)	Matter is pending before the Ld. CIT(A)
5.	Shri Ram Dayal (PAN-BDGPD7809A)	Matter is pending before the Ld. CIT(A)
6.	Shri Krishan (PAN-DQGPK1333H)	Matter is pending before the Ld. CIT(A)
7.	Smt. Soni Devi L/H Shri Mahendra (Grandson) Kumar (PAN-DOXPK0561Q)	Matter is pending before the Ld. CIT(A)
8.	Shri Gouri Lal (PAN DOPPS0366D)	Matter is pending before the Ld. CIT(A)
9.	Shri Ganpat Lal (PAN-ARKPJ7016Q)	Matter is pending before the Ld. CIT(A)
10.	Shri Virendra Kumar (PAN-AAZPB9679H)	Matter is pending before the Ld. CIT(A)
11.	Shri Prahlad (PAN-AKLPJ5834G)	Matter is pending before the Ld. CIT(A)
12.	Shri Brahmanand (PAN-ARKPJ2643K)	Matter is pending before the Ld. CIT(A)
13.	Smt. Manna Devi through L/H Shri Mahendra Kumar (Son) (PAN-DOXPK0561Q)	Matter is pending before the Ld. CIT(A)
14.	Shri Shankar Lal (PAN-AMHPL7146B)	Ld. CIT(A) dismissed the appeal of the assessee for statistical purpose vide order dated 29.01.2024. The appeal of the assessee was dismissed on account of being filed beyond the period prescribed under the Act. No opinion on merits of the case was expressed
15.	Shri Vivekanand (PAN-ADOP81224A)	AO passed order u/s 144/147 of the Act on 18.12.2018 at total income of Rs.1,48,840/- and no addition was made.

After having gone through the facts of the case and also considering the fact that similarly placed persons who are family members of the assessee and claim the co-owner of the property in question and the case of other similarly situated

persons are pending before the Revenue Authorities and in case the Bench decides the present appeal on merit then its order would apply on other cases pending before the Revenue Authorities. Hence, be that as it may and in order to meet the ends of justice, and also keeping in view the facts that cases of other similarly situated family members are pending before the Id. CIT(A) and the assessee also wants to place on record the documents so that clear picture could emerge and the crucial point raised in the present appeal could be legitimately decided. The Bench is of the view that ends of justice should be met in case the matter is restored back to the file of the AO with the direction to the assessee to place on record the above mentioned documents/ evidence for adjudication at the end of the AO. The Bench also feels that lis between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of being heard to the assessee. Hence, the matter is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. The assessee is also directed to place on record the additional evidences as raised before this Bench to settle the issue in question. Thus the appeal of the assessee is allowed for statistical purposes.

3.4 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.

4.0 In the result, the appeal filed by the assessee is allowed for statistical purposes with no orders as to costs.

Order pronounced in the open court on 23 /09/2024.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23 /09/2024

*Mishra

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

1. The Appellant- Shri Balu Ram, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward 7(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 72/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar