

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. 817/JP/2023  
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Manish Dhankar 101, First Floor, Park Saroj, Plot No. R-7 Yudhishtir Marg, C-Scheme, Jaipur 302001	बनाम Vs.	The ITO Ward -2 Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIJPD 4701 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None  
राजस्व की ओर से / Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 26/09/2024  
उदघोषणा की तारीख / Date of Pronouncement: 17 /10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 30-10-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2014-15 raising therein following grounds of appeal.

“1 On the facts and circumstances of the case, the Ld. CIT (A) has grossly erred in law and facts by declining to accept the application for admission of additional evidences by the assessee inspite of the fact that assessee's case was well covered under Rule 46A of the statute book. Same is also against the principles of natural justice. It is hereby prayed to hold the

action of Ld. CIT(A) as incorrect and give consequential relief to the assessee.

2. On the facts and circumstances of the case, the Ld. CIT (A) has grossly erred in law and facts by confirming the addition made by the Ld. A.O of Rs 3618070.00 on account of difference between the face value (actual purchase value) and DLC value ignoring the actual facts and circumstances of the case. Further, the fact that the legal status of land is residential in government records was also ignored. Hence, it is hereby prayed to delete the additions so made.

3. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in law and facts by confirming the additions made by the Ld. A.O applying the provisions of section 56(2)(vii)(b)(ii) and ignoring the fact that the assessee has purchased the same as stock in trade and not as capital asset. Hence, it is hereby prayed to delete the additions so made

5. On the facts and circumstances of the case. the Ld assessing officer as well as ld. CIT(Appeals). grossly erred in law and facts by not referring the valuation adopted by AO to DVO in spite of same being disputed before them by the assessee. It is hereby prayed to grant relief to assessee accordingly

2.1 Apropos ground No. 1 to 4, the facts as emerges from the order of the ld.

CIT(A) wherein the ld. CIT(A) dismissed the appeal of the assessee by observing

as under:-

“4. Decision:-I have carefully considered the facts on record, the assessment order relevant details/documents/additional evidences and written submission made by the appellant during appellate proceedings. The sole issue relates to addition of Rs. 36,18,067/- in respect of difference between purchase value and

DLC value of an immovable property u/s 56(2)(vii)(b)(ii) of the Act. Briefly, the appellant has purchased a plot from M/s Sunshine Properties and Builders on 22.01.2014 for a consideration of Rs. 29.90 Lacs for which stamp duty was paid on the basis of DLC value of Rs 66,08,067/. During the assessment proceedings, the AO noticed that this plot was registered as commercial plot and the Registrar adopted commercial value of plot at Rs. 66,08,067/-, hence, made an addition of Rs. 36,18,067/- on a/c of difference between purchase value and DLC value.

4.1.1 During the appellate proceedings, the appellant contended that the AO has wrongly made addition of Rs. 36,18,067/- on a/c of difference between actual purchase price and DLC rate. In this regard, the appellant contended that the status of the plot is still residential since from the original purchase of the plot and M/s Sunshine Properties and Builders (seller) did not converted this plot from residential to commercial. The appellant further contended that he has shown this plot as stock in trade and the provision of section u/s 56(2)(vii)(b)(i) is not applicable on stock in trade. The appellant stated that the AO neither served any show cause notice Whereas SCN is mandatory before drawing any negative inference nor accepting the land as stock in trade. The appellant further submitted that the number of hearings was available in the assessment order but the basis of order was not discussed in these hearings. In support of his contention, the appellant refer to Article 265 of Constitution of India. The appellant contended that he was not having any income from proprietary business and only from partnership firm, therefore, ITR Form 3 was automatically applicable and assessee had no choice to file ITR Form 4. The appellant contended that there was a dispute regarding valuation of property which was clarified by AO from revenue authorities and secondly, the commercial rate was applied only because by clerical error commercial nature was written on registry document. The appellant stated that if the stamp duty valuation is disputed, the same should have been referred to DVO and too has not been done by AO.

4.1.2 The matter has been examined and it is seen that the appellant has furnished various relevant details/document such as copy of ITR of A.Y 2014-15, copy of order passed by the CIT(A)-4, Jaipur, copy of order of Hon ble ITAT Jaipur bench, DLC rate chart, declaration from the seller, copy of extract of Municipality record and copy of registration of purchase of property etc in support of his claim. Since these are the additional evidences, the same were forwarded to the AO, who had objected the admission of these documents/evidences. After considering the request of the appellant and objection of the AO, I am not convinced with the appellant's submission that these evidences were not produced before the AO due to lack of ample opportunities because the assessment order as well as remand report shows that the AO had issued several notices and Mr. Mahendra Yadav, Advocate and Authorised Representative of the appellant attended the hearings and furnished his submission Further, the AO has rightly pointed out in the Remand Report that the appellant failed to specify the clause of Rule 46A(1) under which his case falls because all the additional evidences were available with the appellant at the time of assessment proceedings and merely making submission that it could not be produced before AO as ample opportunities were not provided for producing the same, is not sufficient to fall under the exceptional circumstances as enumerated in Rule 46A(1). Further, the appellant was aware about the reason for selection of the case for scrutiny and hence, it is not a case, where the appellant was unaware about the issue involved in the scrutiny proceedings and the AO made the addition without the knowledge of the appellant. The last para of page 1 of the assessment order also specify the explanation called by the AO for making the addition on a/c of difference between purchase value and DLC value during the assessment proceedings. Thus, it can't be said that no show cause notice/letter was issued before making the addition by the AO. In view of these facts, I am convinced that ample opportunities were granted to the appellant by the AO during the assessment proceedings and therefore, there was no reason for not producing these additional evidences before the AO and the appellant failed to justify that its case falls under any clause of Rule 46A(1)

Hence. the request of the admission of these additional evidences of the appellant is hereby rejected.

4.2.1 Without prejudice to the above, the issue involved in the present appeal is also being decided on merit after considering the evidences furnished during the assessment as well as appellate proceedings. Briefly, a plot No. 126 measuring about 575.44 square yard situated at Chirawa, Ward No. 5/23 was purchased vide file no. 22/04 dated 20.05.2004 by Sri Subhash Chandra, S/o Sri Banwari Lal Bhagaria. The said plot was sold on 20.06.2011 to M/s Sunshine Properties & Builders at a sale consideration of Rs 17,00,000/- Later on, M/s Sunshine Properties & Builders sold this plot to the appellant at Rs. 29.90 lacs in 22.01.2014-Perusal of the sale deed dated 22.01.2014 reveals that this land/plot is situated in densely populated area and in the nature of commercial plot (refer page 2, 3, 4, 5 & 6 of the sale deed). Accordingly, the Registrar of the area determined its DLC Rate at Rs 66,08,067/- and collected stamp duty on DLC rate instead of purchase consideration of Rs. 29.90 lacs, which has not been objected by the appellant. This shows that there was no clerical mistake in writing the nature of plot in the sale deed. Thus, it is clearly evident that the seller M/s Sunshine Properties & Builders sold a commercial land measuring about 420.66 square yard to the appellant. So far as the declaration from seller is concerned, it is declared on a plain paper and not in the form of affidavit on stamp paper and that too without any documentary evidence in support of the declaration. Also, the extract of municipality record doesn't show that the nature of plot was residential as claimed by the appellant. In fact, this document is a notification dated 05.10.2018 for obtaining objection, if any, for change of owner's name of these plots including the plot of the appellant. Further, it is also observed that the sub-registrar confirmed that the document produced was for the commercial property and accordingly, the rate of commercial was applied at Rs. 65,08,067/- In view of these facts, the A/R of the appellant vide order sheet dated 08.11.2016 has accepted the difference in the purchase price and DLC value of the property and agreed for an addition of Rs. 36,18,067/- Thus, the appellant failed to justify

that the nature of plot was residential and not commercial and also failed to show that he had objected the decision of the Registrar adopting the DLC rate of commercial plot instead of residential plot.

4.2.2 Alternatively, the appellant claimed that he has shown this plot as stock in trade as he is engaged in real estate business and the provision of section u/s 56(2)(vii)(b)(ii) is not applicable on stock in trade. This issue has been examined and it is seen that the appellant has merely taken this line of argument without any supporting documentary evidences such as Balance sheet. Profit & Loss A/c. Ledger, etc. Further, the AO has clearly stated in the remand report that no such declaration is made in the ITR filed for AY 2014-15. Against this comment the appellant submitted that he had no choice to furnish other than ITR 3. This submission of the appellant is examined and it is seen that if any person is engaged in business or profession then he has to furnish Form 4 wherein separate schedule is available for showing stock-in-trade and also schedule-IF showing the interest in partnership firm is available to declare firm's income. So the plea that the appellant didn't had choice to select Form 4 to declare the plot as stock-in-trade is factually incorrect. Thus, it is held that the plot was never declared before the Income Tax Department as stock-in-trade and therefore, plea of the appellant on this count is rejected

4.2.3 It is also seen that statutory notices u/s 143(2)& 142(1) of the IT. Act were issued to the appellant, which was duly served to the appellant and the authorised representative Shri Mahendra Yadav, Advocate of the appellant attended the proceedings before the AO from time to time and submitted relevant details/documents before the AD. Therefore, sufficient opportunities of being heard were provided to the appellant.

4.2.4 The appellant further stated that if the stamp duty valuation is disputed the same should have been referred to DVD and too has not been done by AO. This issue has been examined and it is seen that the appellant has taken this ground

without showing that he had objected the adoption of DLC rate of the plot as purchase consideration during assessment proceedings and asked the AO to refer the valuation to the DVO. Therefore, this line of argument is also rejected.

4.2.5 Further, the appellant contended that no tax shall be levied or collected except by authority of law In this regard, it is seen that AO is empowered to assessed the correct income of the appellant and the AO has rightly applied the provision of 56(2)(vii)(b)(ii) of the Act. which provides the taxation of difference between stamp duty value and purchase value exceeding Rs. 50,000/-. Thus, I am of the considered view that the AO has assessed the difference of Rs. 36,18,067/- as per the provision of the Income Tax Act.

4.2.6 After considering the above discussion, I don't find any infirmity in the order of the AO in adopting DLC rate / Stamp Duty Value of plot at Rs. 66,08,067/- and made an addition of Rs. 36,18,067/- on account of difference between Actual purchase price and DLC rate. Hence, the sole ground of appeal is dismissed.

5. In the result, the appeal of the appellant is dismissed.”

2.2 During the course of hearing, none appeared on behalf of the assessee when the case was called out for hearing as the Bench wanted certain clarifications in the matter from the ld.AR of the assessee who had earlier filed the written submission in this case.

2.3 On the other hand, the ld. DR supported the order of the lower authorities.

2.4 The Bench heard the ld. DR and perused the written submission filed by the assessee. It is noted that none appeared on behalf of the assessee on the date of

hearing to counter the order of the Id.CIT(A). Hence, the Bench has no other alternative except to confirm the order of the Id. CIT(A). Thus the appeal of the assessee is dismissed.

3.0 In the result, the appeal filed by the assessee stands dismissed with no order as to costs.

Order pronounced in the open court on 17 /10/2024.

Sd/-  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17/10/2024

\*Mishra

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

1. The Appellant- Shri Manish Dhankar Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2, Jhunjhunu
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 817/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar