

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, 'SMC', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No. 433 /CHD/2023**

**निर्धारण वर्ष / Assessment Year : 2018-19**

Shri Mohinder Kumar, #371, Dalima Vihar, Rajpaura 140401 Punjab	बनाम	The ACIT, Circle, Patiala
स्थायी लेखा सं./PAN NO: AENPK2131D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**आयकर अपील सं./ ITA No. 434 /CHD/2023**

**निर्धारण वर्ष / Assessment Year : 2018-19**

Shri Pawan Kumar, #372, Dalima Vihar, Rajpaura 140401 Punjab	बनाम	The ACIT, Circle, Patiala
स्थायी लेखा सं./PAN NO: ADGPK7482B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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**आयकर अपील सं./ ITA No. 435 /CHD/2023**

**निर्धारण वर्ष / Assessment Year : 2018-19**

Shri Surinder Kumar, #370, Dalima Vihar, Rajpaura 140401 Punjab	बनाम	The ACIT, Circle, Patiala
स्थायी लेखा सं./PAN NO: ABGPK8171R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

( Physical Hearing )

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate  
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04.11.2024  
उदघोषणा की तारीख/Date of Pronouncement : 03.12.2024

### आदेश/Order

The captioned appeals have been preferred by the different assessees against the separate orders each dated 12.05.2023 passed by the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. Since the facts and issue involved in all the three appeals are common, therefore, these have been heard together and are being disposed of by this common order. ITA No. 433/Chd/2023 is taken as a lead case for the purpose of narration of the facts:

#### **ITA No. 433/Chd/2023**

3. The Assessee in this appeal has taken following grounds of appeal :-

1. *That the Ld. Commissioner of Income tax (Appeals) has erred in law as well as on facts in enhancing the addition under the head capital gains to Rs. 50,52,879/- as against Rs. 16,66,667/- made by the assessing officer which is arbitrary and unjustified.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the addition of Rs. 16,66,667/- on account of Capital Gains which is arbitrary and unjustified.*

3. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the denial of deduction of Rs. 3,54,788/- claimed u/s 54B which is arbitrary and unjustified.*
4. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the addition of Rs.95,500/- on account of difference in amount surrendered by the assessee and the actual valuation of the building and land of Simran Dhaba treating it to be unexplained investment u/s 69-which is arbitrary and unjustified.*
5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

4. Ground Nos 1 & 2: The Assessee vide Ground Nos. 1 & 2 has contested the action of the Assessing Officer in making the addition of Rs. 16,66,667/- which has been further enhanced by the CIT(A) to Rs. 50,52,879/-.

5. The brief facts relating to the issue are that a survey action u/s 133A of the Income Tax Act, 1961 (in short 'the Act') was conducted at the business premises of the Assessee. During the course of survey, statement of the Assessee was recorded u/s 131 of the Act, wherein, the Assessee stated that the Assessee, Mohinder Kumar along with his two brothers Shri Surinder Kumar and Pawan Kumar, wife of the Assessee Smt. Raj Kaushayla and wives of his

brothers namely Naresh Rani and Lovleen Kakkar respectively had jointly acquired property consisting of land and building named as 'Simran Dhaba', Rajpura from one Shri Rattan Singh and Others in exchange of their lands / joint holdings. In addition to the transfer of their properties, the Assessee and his family members also overtook the loan of Rs. 1,20,00,000/-, which was the outstanding liability of Rattan Singh in respect of 'Simran Dhaba'. The aforesaid exchange of property took place vide agreement dated 3.5.2017. During his statement, the Assessee stated that the estimated capital gains in respect of the said transaction of exchange of property would be approx. Rs. 97 lacs. However, the Assessing Officer (A.O.) noticed that the Assessee had not offered any capital gains in the return of income. He further noted that the Assessee had computed the capital gains at Rs. 3,54,788/- against which deduction u/s 54B of the Act was claimed. The Assessing Officer observed that since the Assessee in his statement had stated that the total capital gains on transfer of the joint land by the Assessee and his family members in lieu of Simran Dhaba would be estimated at Rs. 97 lacs, therefore, he calculated the 1/6<sup>th</sup> share of the Assessee out of said capital gains at Rs. 16,66,667/-. He also denied the deduction claimed by the Assessee u/s 54B of the Act by observing that the Assessee has failed to prove that the land

purchased by the Assessee was agricultural land. He, accordingly, made impugned addition of Rs. 16,66,667/- in the hands of the Assessee.

6. Being aggrieved by the said order of the Assessing Officer, the Assessee preferred an appeal before the Id. CIT(A).

7. The Id. CIT(A), however, enhanced the capital gains to Rs. 50,52,879/-. He observed that the Assessee had exchanged his share in two lands, the details of which is as under:

- (i) Khewat Khata Nos. 381/798, Khasra No 912/815/3(1-19), 913/815/ 2(0-8), 915/816/ 1(0-3) measuring 2500 square yards, Village Dhakansu Kalan, Patiala with assessee having  $1/6^{\text{th}}$  share having total cost Rs.6,95,000/-.
- (ii) Khewat Khata No 382/799, Khasra No 914/816/1(0-9), 915/ 8' 3/1(2-1)- measuring 2500 square yards, Village Dhakansu Kalan, Patiala with assessee having  $1/3^{\text{rd}}$  share having total cost of Rs.4,90,000/-.

8. He further observed that the Assessee in his computation has taken the market value of the Simran Dhaba at Rs. 3,42,08,176/-. The Assessee had  $1/6^{\text{th}}$  share in the said Simran Dhaba and, hence, the Assessee's share comes to Rs. 57,01,360/-. He took this amount as the sale price of the share of the Assessee in the land that was exchanged in lieu of the share of the Assessee in Simran Dhaba. He,

accordingly, calculated the capital gains assessable in the hands of the Assessee as under: -

- I. Total valuation of the property = Rs. 3,42,08,176/-  
(As per the valuation of area measuring 5073 square yards)
- II. Assessee's share (1/6<sup>th</sup>) = Rs. 57,01,360/-
- III. Cost of acquisition of the properties as per the purchase deeds = Rs. 1,15,833/- + Rs. 1,83,333/- (shares in the properties owned and exchanged by the appellant)
  
- IV. Indexed Cost = Rs. 6,48,481/- (Rs. 2,99,166 X 1125/519)
- V. Capital Gain = Rs. 50,52,879/-

He, accordingly, enhanced the income of the Assessee.

9. Being aggrieved by the said action of the CIT(A), the Assessee has come in appeal before this Tribunal.

10. I have heard the rival contentions and gone through the record. The Id. Counsel for the Assessee, firstly, has submitted in his statement that though the Assessee had stated that there might be estimated over all capital gain of Rs. 97 lacs upon the sale of the said property, however, the capital gains are to be calculated after considering the cost of acquisitions, indexation thereupon and the sale consideration received by the Assessee. There was no question of estimation of capital gains and that the addition cannot be made merely because the Assessee had stated some other figures as an estimation, whereas, the actual figure of capital gain was less.

11. I find force in the aforesaid contention of the Id. AR. The A.O. without going into the parameters like cost of acquisition, indexation thereupon, and the value of consideration received by the Assessee has simply made the impugned addition just on the basis that the Assessee in his statement had stated that there would be estimated capital gains of Rs. 97 lacs on the property sold / exchanged by the Assessee. This action of the Assessing Officer is not sustainable.

12. However, Id. CIT(A) has gone into same for the purpose of computation of capital gains. The Id. AR, however, has demonstrated that the Id. CIT(A) while computing the capital gains has wrongly taken the figures of the amount of consideration and has also ignored some of the expenditure incurred by the Assessee. He, in this respect has invited my attention to the impugned assessment order to submit that it is an admitted case of the Revenue that the Assessee and his family members had overtaken / owed up the liability of Rs.1.20 Crores, which was outstanding against Sh Rattan Singh / Simran Dhaba. The Id. Counsel has taken me to the relevant part of the assessment order to show that even the Assessing Officer made the addition of Rs. 1.20 Crore on account of payment of loan by the Assessee and his family members which was outstanding against original owners of Simran Dhaba.

The Id. Counsel also taken me through the relevant part of the order of the CIT(A) whereby, the Id. CIT(A) after considering the explanation of the Assessee has held that the source of repayment of loan was established and deleted the addition on that account.

13. Though the Id. DR has pointed out that the aforesaid fact of over taking of loan of Rs. 1.20 Crores was not mentioned in the exchange deed, however, the said fact of owing of Rs. 1.20 crores outstanding against the original owner of Simran Dhaba has not been disputed either by the Assessing Officer or by the CIT(A). In view of this, the said amount of Rs. 1.20 Crores is required to be subtracted from the total sale consideration/market price of the Simran Dhaba for the purpose of calculation of capital gains.

14. The Id. Counsel has further invited my attention the relevant part of the order of the CIT(A) to submit that in relation to the issue of as to what was the fair market value of the Simran Dhaba at the time of the exchange deed which was taken as sale consideration of the properties / land transferred by the Assessee and his family members, though, the Assessee had taken the said value in the computation at Rs. 3.42 Crores, however, the matter was referred the to the Departmental Valuation officer who estimated the fair market value of the property at Rs. 3,89,41,260/-. The A.O. in the

assessment order had also noticed that there was some construction done on the said Simran Dhaba. The Assessee and his family members in respect of the said construction had offered Rs. 78 lacs on account of unexplained investment. Since the Assessee had contributed 1/3<sup>rd</sup> of the said amount, the Assessee, therefore, had offered Rs. 26 lacs as unexplained investment made on the said Simran Dhaba. Since the fair market value of the property was done by the DVO in the year 2021 and the value of the improvement was also added in the said valuation done by the DVO, therefore, the said amount of Rs. 26 lacs was required to be subtracted while calculating fair market value of the Simran Dhaba for the purpose of calculation of sale consideration of the Assessee's share in the land which has been transferred by the Assessee. It is an admitted fact on the file that the Assessee had contributed Rs. 40 lacs i.e., 1/3<sup>rd</sup> share out of liability of Rs. 1.20 crores owed by the Assessee and his two brothers. Therefore, the aforesaid amount are to be subtracted and the computation of the capital gains, thus, will be as under:-

1. Fair market value of the property as estimated by the DVO:  
= Rs. 3,89,41,260/-
2. 1/6<sup>th</sup> Share of the Assessee : Rs. 64,90,210/-

3. Less amount surrendered by the Assessee on account of unexplained investment in the property i.e. 1/3<sup>rd</sup> of Rs. 78,00,000/- : ( - ) 26,00,000/-
4. Less 1/3<sup>rd</sup> share of the loan amount overtaken / paid of Rs. 1.20 Crs. : ( - ) Rs. 40,00,000/-
5. Net amount : ( - ) Rs. 1,09,790/-

15. After giving the set off of cost of acquisition and indexation in respect of one land transferred by the Assessee, there will be negative net capital gains. In view of this, no capital gains were attracted in the aforesaid exchange of the property even though the Assessee's 1/6th share in the said Simran Dhaba had been taken as a sale consideration received by the Assessee in exchange of his share in the agricultural land transferred by him. However, as observed above, the Assessee has wrongly offered capital gains of Rs. 3,54,788/- against which the Assessee has claimed deduction u/s 54B of the Act. Though as observed above, since no capital gains were warranted in this case, therefore, the capital gains, if any, offered by the Assessee and deduction claimed thereof is to be ignored, yet the ld. Counsel for the Assessee has invited my attention to page 202 of the paper book which is a copy of the application even by the Assessee to Halka Patwari (Land Revenue official), whereupon, the said official reported that the land sold / exchanged by the Assessee was agricultural land. Further, the ld.

counsel has invited my attention to page 204 of the paper book, which is a copy of the application in respect of the land purchased by the Assessee, whereupon, the Halka Patwari has given report that the same was agricultural land. The Assessee, therefore, in view of the aforesaid evidence furnished, is otherwise entitled to deduction u/s 54B of the Act. In view of this, no addition are warranted in respect of the issues raised vide Ground Nos 1 and 2.

16. Ground Nos. 1 and 2 stands allowed.

17. Vide Ground No.3 the Assessee has contested the action of the lower authorities in denying deduction u/s 54B of the Act. This issue has already been adjudicated by me above. This ground is accordingly allowed in favour of the Assessee.

18. Ground No. 4: Vide Ground No. 4, the Assessee has agitated the action of the lower authorities in making and confirming the addition of Rs. 95,500/- on account of difference of amount surrendered by the Assessee and the actual valuation of the building and land of Simran Dhaba.

19. I find that this difference of amount has been taken by the Assessing Officer taking the market value of the land and building of Simran Dhaba at Rs. 4,22,94,676/- and compared the same with the value taken by the Assessee at Rs. 3,42,01,876/-. He arrived at

a difference of Rs. 80,86,500/- calculating the 1/3rd share of the Assessee at Rs. 26,95,500/-, and since the Assessee offered the amount of Rs. 26 lacs as unexplained investment he, therefore, made the impugned addition of the remaining amount of Rs. 95,500/-.

20. This action of the Assessing Officer, I find is not tenable at all. Once the fair market value of the property is taken and that has been adapted by the DVO at Rs. 3,89,41,260/- and capital gains as noted above have already been computed, there is no question of further addition on account of any difference of market value or otherwise adopted by the A.O. by taking some other figures mentioned in the computation, as the same have already been ignored and the report of the DVO has been taken as a benchmark for the purpose of calculation of capital gains. This ground is accordingly allowed in favour of the Assessee.

**ITA No.434 & 435/Chd/2023:**

21. The facts and issue involved are exactly identical in these two appeals, therefore, the impugned additions made on identical grounds in these appeals are also ordered to be deleted. Accordingly, these appeals stand allowed.

22. In the result, all the three captioned appeals are allowed.

Order pronounced on 03.12.2024.

Sd/-

**(SANJAY GARG)**  
**Judicial Member**

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar