

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHANDIGARH

HYBRID HEARING

**BEFORE HON’BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकर अपील सं. / ITA No. 946/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2015-16)
&
2. आयकर अपील सं. / ITA No. 947/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Prem Singh The Palace, Chamba Himachal Pradesh – 176310	बनाम/ Vs.	DCIT Circle, Palampur Himachal Pradesh - 176061
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAMPR-8876-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ajay Jain (CA) – Ld. AR
Revenue by	:	Shri Bharat Bhushan Garg (CIT) (Virtual) - Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	13-11-2025
घोषणाकीतारीख / Date of Pronouncement	:	13-01-2026

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The assessee is in further appeals before us for Assessment Years (AY) 2015-16 & 2017-18 which arises out of separate orders of learned first appellate authority. First, we take up appeal for Assessment Year (AY) 2015-16 which arises out of an order of learned Commissioner of Income Tax (Appeals), NFAC [CIT(A)] dated 22-07-2025 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) of the Act on 29-12-2017. The assessee is aggrieved by computation of Capital

Gains and denial of deduction u/s 54. The grounds of appeal read as under: -

1. On the facts and in circumstances of the case and in law the assessing officer was incorrect and unjustified in:

i) Disallowing indexed cost of construction of Rs.54,07,089 on the house sold, while computing capital gain, on the basis of estimating and also by ignoring the valuation report.

ii) Rejecting the valuation report which certified and admitted the construction cost and also the existence of the residential units/house without proving the valuation report as untrue or fake.

iii) Disallowing the claim of deduction of Rs.45,00,000 claimed on account of facilitators fees out of the capital gain, being entitled for deduction, while calculating the amount of capital gain.

iv) Disallowing claim of Rs.5,37,533 spent on account of property tax and claimed as deduction while calculating the capital gain on account of expenditure incurred wholly and exclusively in connection with transfer of the house under sold.

v) Disallowing a sum of Rs.1,25,00,000 claimed as deduction on account of lawyer fees on the ground that the same was not entitled for deduction under section 48 while calculating the amount of capital gain even though the same has been incurred in relation to the transfer of the house under consideration and entitled for deduction.

2. On the facts and in circumstances of the case and in law the assessing officer was incorrect and unjustified in holding that the assessee was not entitled to the claim of exemption from capital gain tax as permissible under section 54 of IT Act.

3. On the facts and in the circumstances of the case and in law the assessing officer was incorrect and unjustified in holding that the assessee was not entitled to the claim of exemption from capital gain tax as permissible under section 54F of IT Act.

4. On the facts and in the circumstance of the case and in law the assessing officer was incorrect and unjustified in concluding that the assessee has not sold the house and was not entitled for exemption under section 54 because the assessee failed to comply with the notices issued on 22/12/2017, 23/12/2017 and 26/12/2012.

5. On the facts and the circumstance of the case and in law the assessing officer was incorrect and unjustified in concluding that the assessee was not entitled for exemption under section 54 since the assessee did not attend and comply with the show case notice issued by the AO on 26/12 for 28/12.

6. On the facts and in the circumstances of the case and in law the assessing officer was incorrect and unjustified in rejecting the claim of the assessee for exemption of long term capital gain without providing any reasonable opportunity to explain the claim of deduction since the show cause notice in this regard dated 22/12, 23/12 and 26/12 for 28/12 is not reasonable and a valid opportunity to reply to the show case notice issued by the AO and disallowing the claim only for this reason.

7. On the facts and in the circumstance of the case and in law the assessing officer was incorrect and unjustified in treating the long term capital gain of Rs 74,02,00,000 as income of the assessee after disallowing the claim of exemption from capital gain of this amount.

8. On the facts and in circumstances of the case and without prejudice ground No 6, the assessee's representatives left, Delhi to attend the proceedings, on 26th Dec but unfortunately met with an accident on 27th Dec at Thirathpur Sahib and consequently could not reach the officer of the AO on 28th Dec and were in fact both the representatives were admitted to the hospital and thus were prevented to reply to the show cause notice.

During the course of appellate proceedings, the appellant filed application u/s 250(5) with request to accept following additional ground(s):-

9. That on law, facts and circumstances of case, the assessing officer has wrongly converted the impugned assessment from limited to complete scrutiny even when there did not exist circumstances justifying the said conversion and therefore the impugned assessment deserves to be quashed.

2. The Ld. AR advanced arguments and referred to various documents as placed on the paper-book. Reliance has been placed on various judicial decisions to support the arguments. The copy of the same have been placed on record. The Ld. CIT-DR also advanced arguments and referred to the findings of lower authorities. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

Assessment Proceedings

3.1 The assessee filed his return of income declaring income of Rs.327.15 Lacs which was subjected to scrutiny assessment proceedings. During the course of assessment proceedings, it transpired that the assessee owned 19 Acres 2 Guntas of certain land bearing survey nos. 69/1, 69/2, 69/3 & 171/1. The land was acquired by the assessee vide deed dated 30-11-1981 for Rs.38,000/-. The land in survey nos. 69/1, 69/2 & 69/3 was to the extent of 17 Acres 31 Guntas whereas land in survey no. 171/1 was to the extent of 1 Acre 11 Guntas. The assessee sold the land in survey nos. 69/1, 69/2 & 69/3 during this year to M/s APG Intelli Homes Private Ltd. (AHPL) vide sale deed dated 12-02-2015 for total sale consideration of Rs.81.05 Crores. However, the assessee claimed full indexed cost of acquisition for Rs.3,89,120/- out of which proportionate amount of Rs.25,088/- was disallowed by Ld. AO for the portion of land which was not sold during the year. This adjustment is not in dispute.

3.2 The sale of land resulted into Long-Term Capital Gains (LTCG) in the hands of the assessee. While computing Long-Term capital gains (LTCG), the assessee claimed to have incurred construction cost of Rs.6.22 Lacs during FYs 1982-83 to 1985-86 (tabulated at para 4 of the assessment order). The indexed cost thereof for Rs.54.07 Lacs was, accordingly, claimed by the assessee. However, the same was not allowed by Ld. AO on the observation that as per sale deed dated 12-02-2015, it was nowhere mentioned that the assessee had sold residential house / shed to the purchaser. The Ld. AO accordingly concluded that the assessee only sold land to the purchaser and not a residential house.

3.3 In support of its claim, the assessee furnished valuation report which was rejected by Ld. AO on the ground that the valuation report was not annexed with registered sale deed of the scheduled property. The valuer mentioned land measuring 19 Acres and 2 Guntas whereas the assessee had sold 17 Acres and 31 Guntas only. The assessee did not sell survey no. 171/1 land measuring 1 Acre and 11 Guntas. The valuer mentioned that he and his assistant personally inspected the property on 01-04-2024 in the presence of the owner whereas the property was sold on 12-02-2015 i.e., approx. 10 months before the date of sale. The valuer should have mentioned the survey number on which residential house / shed was constructed but he did not mention the same. The Ld. AO also observed that no cost of residential shed was mentioned in the sale deed. In the schedule of property, it was mentioned that the land was underdeveloped.

3.4 The assessee refuted the allegation of Ld. AO on the ground that for construction cost, it was not possible to maintain construction bills for a period of 30 years. The valuer estimated construction cost of Rs.8 Lacs

(2000 square feet built-up area @Rs.400/- per square feet) which was based on physical inspection of the property. The valuer was an approved valuer of the department. As against the valuation, the assessee only claimed actual construction cost of Rs.6.22 Lacs in the computations. It was pointed out that the valuation exercise was carried out by approved valuer of the department who estimated the construction cost as under: -

Particulars	Area in sft	Rate/ sft	Property Value
Land of Value as on (01.04.2014)	8,29,818	800	66,38,54,400/-
Note: Land was converted in 2012			
Value of (19.02 Acres)	8,29,818		66,38,54,400/-
Construction cost of 2000 sft of residential built-up living Quarters	2000	400	8,00,000/-
Depreciation at 1.5% pa for 31 years	0.015*31		-3,72,000/-
Value of Built Up of 2000 sft in 2014			4,28,000/-
Value of 19.02 Acres Converted land with 2000 sft built up			66,42,82,400/-

On the basis of the same, the assessee contended that there was built up residential shed of approx. 2000 Sq. Ft. located in the concerned property at the center. The assessee further pointed out that the remaining portion of 1 Acre and 11 Guntas was sold during FY 2016-17 wherein the assessee did not claim any construction cost. An affidavit to that effect was also filed with Ld. AO. The assessee also asserted that the valuation report was valid for a period of one year from the date of the valuation report. However, going by recitals in the sale deed, Ld. AO rejected the construction claim of the assessee and did not grant indexed cost of construction for Rs.54.07 Lacs to the assessee. From the valuation report, it appeared that the assessee had constructed workers' quarters and residential shed of 2000 Square Feet. The same was valued at Rs.400/- per square feet. The same was on the higher side and it was to be estimated at Rs.35/- per Square Feet. But in the sale deed, it

was nowhere mentioned that the assessee had sold residential house and therefore, the deduction of the same would not be allowable to the assessee. No substantial evidences were filed by the assessee to support construction on the said land. Finally, the deduction of indexed cost of construction as claimed by the assessee was denied in *toto*.

3.5 The assessee had paid an amount of Rs.45 Lacs to Corporate Properties INC of Bangalore towards facilitation fees for sale of land which was proposed to be disallowed by Ld. AO though the assessee claimed that it was incurred wholly and exclusively in connection with transfer of property which would be allowable u/s 48. However, Ld. AO rejected this claim of the assessee.

3.6 Similarly, the assessee paid amount of Rs.125 Lacs to M/s Sahijpal & Associates (Advocates) towards consultation services with respect to sale of land. The copies of bills and bank statement highlighting the payments were furnished to Ld. AO. The assessee stated that it was not feasible for the assessee to take care of all the legal aspects relating to the sale transactions and it was necessary for the assessee to appoint a professional who would effectively carry out the entire complex transaction. The quantum of transaction and technicality involved in the execution of sale deed involved four parties and required professional and legal expertise to carry out the transaction correctly. The legal complexities were handled by M/s Sahijpal & Associates and the expenditure was incurred wholly and exclusively in connection with transfer of property which was allowable u/s 48. However, Ld. AO denied the deduction of the same to the assessee.

3.7 The assessee also claimed property tax payment for Rs.5,37,533/- which was denied by Ld. AO on the ground that the same could not be regarded as cost of construction.

3.8 Against computed capital gains, the assessee claimed deduction u/s 54 for Rs.75.02 Crores on the ground that it deposited the said amount in Capital Gains Account Scheme (CGAS). However, since an opinion was formed by Ld. AO that the assessee had sold land only, the said deduction could not be allowed to the assessee. The deduction u/s 54 could be allowed only on Long-Term capital gains arising from the transfer of a residential house property. Finally, the deduction as claimed by the assessee u/s 54 on account of deposit in CGAS was denied to the assessee.

3.9 The assessee made alternative claim u/s 54F which is applicable in case of LTCG on transfer of asset other than a residential house property. The same was also denied by Ld. AO on the ground that the assessee owned more than 2 residential properties i.e., (i) property at Palace Chamba; (ii) House No.127 at Golf Links; & (iii) Chamba House at 153, Golf Link. Accordingly, this alternative deduction was also denied to the assessee.

3.10 Finally, the assessment was framed wherein Taxable Long Term Capital Gains on sale of property were computed at Rs.79.17 Crores. Aggrieved, the assessee assailed the action of Ld. AO in first appeal.

Appellate Proceedings

4. The assessee vehemently opposed the rejection of valuation report on the ground that if AO was not satisfied with the valuation report, he could have referred the matter to Valuation officer. In case no reference was made u/s 55A, he has to accept the valuation report of approved

registered valuer as held by Chandigarh Tribunal in the case of **Sh. Barjinder Singh Bhatti (ITA No.1101/Chd/2014 dated 15-07-2015)**. The land sold by the assessee was continuous single piece land and non-mentioning the survey number in the valuation report would not lead to a conclusion that there was no residential building on the said land. The residential building fall in the sold land only. In support of its claim, the assessee furnished receipt issued by Government of Karnataka, Receipt No.031378 dated 12-07-1996 and Receipt No.80920 dated 17-11-1994 to prove that the residential budling was constructed on sold land. The assessee stated that the value was fixed as per mutual negotiation and the stamp duty was paid on total sale consideration and not on the land value alone since there was no requirement to bifurcate the sale consideration of land and building as the deal had been struck for whole property as-on-where basis. The assessee referred to the inspection carried out by the valuer and cost of construction as estimated by the valuer. It was also stated that under the Registration Act, there was no requirement to attach valuation report with the sale deed. The report of approved valuer could not be ignored by Ld. AO. It was further pointed out that the buyer was a builder who purchased the land for developing residential colony. After purchase, he demolished the residential portion on the land purchased by him as old residential building could not be used in his project and the buyer was interest in land & therefore, factum of old residential building was not mentioned in the sale deed. Moreover, the value of the building was insignificant having regard to the value of the land and therefore, the same was not mentioned separately. Further, the conclusion of Ld. AO was not based on any independent enquiry. From the valuation report, it was quite clear

that the sold property had built-up portion to the extent of 2000 square feet. The assessee had sold the remaining portion of land during AY 2017-18 wherein the assessee did not claim any construction cost. Therefore, the claim was in order.

5. The assessee' submissions were subjected to remand proceedings. In remand report dated 25-07-2019, Ld. AO reiterated that estimated cost of Rs.35/- per square feet could not be allowed since it was nowhere mentioned in the sale deed that the assessee had sold residential shed to the purchaser. It was also not acceptable that the assessee had taken five years to construct 2000 square feet of residential shed from 1982 to 1986. The property was sold almost 10 months after physical inspection by valuer. However, Ld. AO concurred that in the said government receipts as furnished by the assessee, the fact of construction of unauthorized residential building on the land was mentioned. However, no government due receipts for the earlier year or subsequent years were filed and therefore, the assessee might have constructed residential shed in 1996 and the same was demolished subsequently since no action seems to have been taken by the Government on the unauthorized construction. The other claim as made by the assessee were also rejected and the findings of assessment order were reiterated.

7. The assessee refuted the finding of Ld. AO by drawing attention to the fact that it entered into agreement for sale of land & building on 29-09-2014 & in agreement to sell, the property sold was all that piece and parcel of property bearing survey numbers 69/1,69/2 & 69/3 situated in village *Kodathi village* totally measuring 17 Acres 31 Guntas for sum of Rs.4,56,01,050/- per acre and total sum of Rs.81,05,58,664/- & the same property was mentioned in registered sale deed executed on 12-02-2015.

The word *piece and parcel* include every movable or immovable property situated on the land at the time of agreement. The assessee had constructed building in FY 1983-84 to 1985-86 & approx. 30 years had elapsed after construction & old residential building had insignificant value in comparison to the total value of land & therefore, the same was not specifically mentioned in the registered sale deed but piece and parcel of land include all property on land. The land as sold by the assessee was single piece continuous land and non-mentioning of survey number in valuation report will not result in denial of fact that there was a residential building on the sold land. The residential building was constructed on land situated in survey nos. 69/1,69/2 & 69/3. The same was evident from the receipts issued by Government of Karnataka on 17-11-1994 and 12-07-1996 which would prove that the residential building as constructed on land fall in said survey numbers as sold during the year. The electricity connection as taken during construction was disconnected in subsequent year due to non-availability of any responsible person at the site. The water was stated to be taken from own bore situated near the residential house. Further, non-availability of electricity & water bills would not lead to a conclusion that the assessee had not constructed any residential building on the impugned land. The Ld. AO himself admitted the possibility of house being constructed in the year 1996. However, he could not arbitrarily assume that the building must have been demolished subsequently. The deduction could not be denied on mere assumption and suspicion. The assessee also demonstrated that the collector value of the sold land was Rs.61.94 Crores whereas the complete property was sold for Rs.81.05 Crores which would show that the sale consideration includes consideration of

land and building both. The assessee also controverted the findings of Ld. AO on the issue of estimation of cost of construction on the ground that no reference was made to Valuation officer and therefore, he has to accept the valuation as given by approved and registered valuer.

8. The aforesaid submissions of the assessee did not find favour with Ld. CIT(A) on the ground that in the absence of any verifiable evidence, the conclusion of AO that the building was not existing on the sold land, was justified. Therefore, the denial of cost of construction as well as denial of consequential deduction u/s 54 was in order. The denial of deduction of property tax, facilitation fees and consultation fees were also upheld on the ground that it was not incurred wholly and exclusively in connection with the transfer of capital asset. The alternative claim as made by the assessee u/s 54F was held to be not admissible on the findings that the assessee owned more than one residential house and accordingly, not eligible for impugned deduction u/s 54F. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

9. We find that the basic material facts are not in dispute. It emerges that the assessee owned 19 Acres 2 Guntas of land bearing survey nos. 69/1, 69/2, 69/3 & 171/1. The said land was acquired way back in the year 1981 for a consideration of Rs.38,000/-. The substantial portion of land in survey nos. 69/1, 69/2 & 69/3 to the extent of 17 Acres 31 Guntas have been sold by the assessee during this year whereas the remaining land in survey no. 171/1 to the extent of 1 Acre 11 Guntas has been sold during AY 2017-18. The undisputed fact that emerges is that the assessee has claimed whole cost of acquisition of land as well as cost of improvement / construction in this year only and it has not claimed any

cost of acquisition or cost of improvement in AY 2017-18. An affidavit to that effect was also placed on record before lower authorities. The same is also evident from computation of income for AY 2017-18 as placed on record. The prime claim of the assessee u/s 54 rests on the ground that it has sold a residential house during this year. The provision of Sec.54 enables the assessee to claim impugned deduction in case of sale of a residential house property. In support of its claim, the assessee has furnished valuation report from registered valuer of the department who has carried out physical inspection of the property. The said valuation report has been placed on page Nos. 44 to 47 of the paper-book wherein the valuer has valued the property as under: -

Particulars	Area in sft	Rate/ sft	Property Value
Land of Value as on (01.04.2014)	8,29,818	800	66,38,54,400/-
Note: Land was converted in 2012			
Value of (19.02 Acres)	8,29,818		66,38,54,400/-
Construction cost of 2000 sft of residential built-up living Quarters	2000	400	8,00,000/-
Depreciation at 1.5% pa for 31 years	0.015*31		-3,72,000/-
Value of Built Up of 2000 sft in 2014			4,28,000/-
Value of 19.02 Acres Converted land with 2000 sft built up			66,42,82,400/-

In the valuation report, it has clearly been certified that the built-up area of the property which was inspected physically was approx. 2000 Square Feet of residential built-up living quarters built in stages from 1982 to 1986. The construction cost has been valued at Rs.400/- per square feet and the valuer has valued the construction cost of built-up portion as Rs.8 Lacs. After depreciating the same, the value of the built-up portion in the year 2014 has been determined as Rs.4.28 Lacs. In the said report, a certificate has been issued by valuer as under: -

The subject property measuring 19.02 Acres or 8,29,818 sft along with workers quarters & built residential shed of approx. 2000 sft has good potential. It is well located close to the state highway, and I certify that to the best of my knowledge and belief and in my

considered opinion, the fair and reasonable market value or intrinsic value (IV) of the property valued above as in the year 2014 is Rs.66,42,82,400/- (Rupees Sixty Six Crores Forty Two Lakh Eighty Two Thousand Four Hundred & Paise Nil Only.

Pertinently, the said valuation has been done on the basis of personal inspection of the property on 01-04-2014 when construction to the extent of 2000 Square Feet was found existing on the said land. The report is stated to be valid for a period of 365 days and the assessee has sold the property during the validity of the report. The claim of the assessee is duly backed by valuation report of registered valuer which has not been contradicted by any other factual findings by Ld. AO and the conclusion of Ld. AO proceed merely on assumption and presumptions. If Ld. AO was not satisfied with any fact in the valuation report, he could very well make a reference to a valuation officer in terms of extant provisions to ascertain the correct facts. However, nothing of that sort has been done by Ld. AO and the facts as mentioned in valuation report remain uncontroverted.

10. It could also be seen that the construction has been done more than 30 years ago and requiring the assessee to furnish supporting bills qua construction could not be held to be justified. The remaining portion of the land has been sold by the assessee in AY 2017-18 wherein the assessee has not claimed any cost of construction. The Ld. AO, to certain extent, concurred that the assessee might have constructed workers' quarters and residential shed of 2000 Square Feet. The observation that the same would have been demolished subsequently is merely an assumption. This being so, the construction claim of the assessee was to be accepted.

11. Pertinently, in support of construction claim, the assessee had furnished two receipts issued by Government of Karnataka i.e., Receipt No.031378 dated 12-07-1996 and Receipt No.80920 dated 17-11-1994. The receipt dated 17-11-1994 established the factum of construction on survey nos. 69/1, 69/2 & 69/3 which have been sold during this year. By furnishing this document, the assessee, in our considered opinion, has duly discharged the onus of establishing the factum of construction on the said land. The onus was on Ld. AO to disprove the claim of the assessee which has not been done. In fact, Ld. AO, in remand report, has accepted the fact that the government receipt established the fact that there was construction on the said land. The Ld. AO has merely assumed that the said construction might have been demolished by the assessee subsequently. The said conclusion of Ld. AO is bereft of any material substance. As against this, the assessee furnished a valid explanation that the sale consideration was fixed as per mutual negotiation and the stamp duty was paid on total sale consideration and not on the land value alone since there was no requirement to bifurcate the sale consideration of land and building as the deal had been struck for whole property as-on-where basis. Under the Registration Act, there was no requirement to attach valuation report with the sale deed. The buyer being a builder purchased the land for developing residential colony. After purchase, he demolished the residential portion as old residential building could not be used in his project and the buyer was interested in land only & therefore, factum of old residential building was not mentioned in the sale deed. Moreover, the value of the building was insignificant having regard to the total value of the property and therefore,

the same was not mentioned separately. This explanation was a plausible explanation and is to be accepted accordingly.

12. Another fact to be noted is that the collector value of the sold land was Rs.61.94 Crores as against reflected sale consideration of Rs.81.05 Crores which would show that the sale consideration includes consideration of land and building both. The reflected sale consideration is much higher than the collector's rates.

13. Proceeding further, upon perusal of relevant sale deed as placed on Page Nos. 29 to 43 of the paper-book, it could be seen that the same referred to the Scheduled Property which has been described as under: -

All that piece and parcel of converted (converted from agricultural to non-agricultural residential purposes) and undeveloped land totally measuring 17 Acres 31 Guntas bearing Survey Number 69/1, 69/2 & 69/2 situated in Kodathi Village, Varthur Hobli, Bangalore East Taluk, Bangalore District as detailed below.....

A cursory glance of the same would reveal that all *piece and parcel* of converted land has been sold by the assessee to the seller. The expression *piece and parcel*, in our considered opinion, was wide enough to include the residential sheds as constructed by the assessee on the said land. The same is further fructified by the fact that the sale consideration as reflected in the deed was much higher than the collectors' rate and therefore, the claim of the assessee is to be accepted.

14. Considering the totality of enumerated facts and circumstances of the case, we would hold that the assessee had sold land along with constructed residential sheds to the seller and consequently, the assessee would be entitled to lay claim on impugned deduction u/s 54 as claimed by the assessee in its return of income. Delving into alternative claim u/s 54F has been rendered infructuous and we see no reason to

deal with the same. The Ld. AO is directed to grant the deduction u/s 54 since it has nowhere been disputed that the assessee has deposited the sale consideration in CGAS scheme and fulfilled all the prescribed conditions as required under law. We order so.

15. Another grievance of the assessee is denial of deduction of payment of Rs.45 Lacs as paid to Corporate Properties INC of Bangalore towards facilitation fees for sale of land. The assessee is also aggrieved by denial of deduction of Rs.125 Lacs which are stated to be paid to M/s Sahijpal & Associates of Gurgaon as consultation services with respect to sale of land. We find that considering the nature of transaction and the location of the property, these expenses were essential component to carry out the deal successfully. The assessee has already furnished copies of relevant bills and bank statement highlighting the payment to the payees through banking channels. It would not have been feasible for the assessee to take care of all the legal aspects relating to the sale transactions and it was necessary for the assessee to appoint a professional who would effectively carry out the entire complex transaction. The quantum of transaction and technicality involved in the execution of sale deed involved multiple parties which would require professional and legal expertise to carry out the transaction smoothly. In our considered opinion, both these expenditures are incurred wholly and exclusively in connection with the impugned sale transaction and therefore, allowable to the assessee. The Ld. AO is directed accordingly.

16. The assessee seeks deduction of indexed cost of construction for Rs.54.07 Lacs. In view of our finding in para-14 qua construction claim of the assessee, the deduction of indexed cost of construction would be available to the assessee. The working of the same has already been

extracted in the assessment order. The Ld. AO is directed to grant the deduction of the same.

17. The assessee also seeks deduction of property tax payment of Rs.5,37,533/-. However, this expenditure is a routine expenditure and could not be said to be incurred wholly and exclusively in connection with transfer of property. The same has rightly been denied to the assessee.

18. In the result, the appeal of the assessee stands partly allowed to the extent as indicated in the order.

Assessment Year 2017-18

19. In AY 2017-18, assessment has been framed on similar line by Ld. AO vide order u/s 143(3) dated 28-11-2019. The assessee is aggrieved by – (i) Disallowance of Legal Fees for Rs.80 Lacs and disallowance of commission payment for Rs.97 Lacs; (ii) Confirmation of Addition of bank deposits for Rs.30.63 Lacs; (iii) Addition of Interest on Tax Refund for Rs.1.54 Lacs; The facts and circumstances leading to impugned additions are as under.

20. Disallowance of legal fees, brokerage and commission on sale of land

20.1 In this year, the assessee sold the remaining land in survey no. 171/1 measuring 1 Acre 11 Guntas for sale consideration of Rs.58.14 Lacs on 05-08-2016. Against sale consideration, the assessee did not claim cost of acquisition in the regular return of income but claimed expenditure of Rs.174 Lacs. Later on, the assessee revised its return of income and made claim of indexed cost of acquisition for Rs.80 Lacs and revised the expenditure wholly and exclusively incurred in connection with transfer for Rs.97 Lacs. The amount of Rs.80 Lacs was nothing but payment made to M/s Sahijpal & Associates of Gurgaon towards

professional / legal charges in connection with transfer / sale of the land. The services rendered by payee were stated to include service charges towards due diligence, legal fees, out-of-pocket expenses etc. The complete sale transaction was stated to be handled by the payee. The same include legal formalities to be completed by the assessee. The representatives of payee visited Bangalore for identification of customer, bargaining with customers and finalization of sale transaction. The copy of relevant bill was furnished by the assessee. The notice issued 133(6) to M/s Sahijpal & Associates did not elicit any response initially but reply was received later on confirming receipt of payment of Rs.80 Lacs from Smt. Devya Devi w/o Shri Prem Singh. The details of payment were also furnished by the assessee. However, the submissions were rejected by Ld. AO on the ground that the relevant sale deed was drafted by N.M. Thyagariraj Advocate of Bangalore. If the expenditure was genuine, the assessee would have made this claim in the regular return of income. The assessee already sold substantial land to the buyer and the buyer was already known to the assessee and therefore, the question of commission payment would not arise. Similarly, the assessee claimed to have paid brokerage of Rs.97 Lacs to two other persons also. The Ld. AO noted that the payment to all the three payees aggregated to Rs.177 Lacs which represent more than 30% of total sale proceeds of the land which was not possible. There could not be three brokers for sale of one property. The land in question was already sold by the assessee to confirming parties (M/s Hemali Resorts Ltd. & M/s Assetz Communities Dev. Pvt. Ltd.). Therefore, the expenses of Rs.80 Lacs as claimed by the assessee was disallowed. In addition to payment to M/s Sahijpal & Associates, the assessee paid commission of Rs.97 Lacs (Rs.48.50 Lacs

each to Shri Raghvendra Iyer of Bangalore and Shri Sandeep V. Shetty of Bangalore). The assessee filed confirmation and PAN details of the two payees in support of its claim. The confirmation from the two payees revealed that the payment was made towards rendering of civil contract services which include cleaning, levelling, land scaping, fencing etc. The contract receipts were reflected by the payees in their respective income tax returns. However, it was noted by Ld. AO that the sale deed was executed on 05-08-2016 whereas the payment to was made to Shri Raghavendra on 17-08-2016. The date of payment to another person was not known. Further, the receipts issued by the two payees revealed that the same relate to land bearing survey nos. 69/1,69/2 & 69/3 which was sold in earlier years. Therefore, the impugned payment of Rs.97 Lacs was disallowed and considered as Long-Term Capital Gains in the hands of the assessee.

20.2 During first appeal, the assessee stated that M/s Sahijpal & Associates were appointed by the assessee whereas M/s N.M. Thyagariraj, Advocates were appointed by the buyers to complete the legal formalities. The sale deed was drafted by M/s N.M. Thyagariraj in consultation with assessee's advocate. Mere clerical error in claiming the same as cost of acquisition would not be fatal to a genuine claim. All the payments were through banking channels and payees were income tax assesseees. The services of the payees were necessary and the assessee could not sell the property himself. The Ld. CIT(A), following first appeal order for AY 2015-16, upheld the disallowance of payment made to M/s Sahijpal & Associates. The disallowance of payment made to the two payees as commission was also confirmed by endorsing the

findings of Ld. AO. Aggrieved, the assessee is in further appeal before us.

20.3 The issue of payment to M/s Sahijpal & Associates has already been adjudicated by us in AY 2015-16 in assessee's favor. The payment has been made towards legal compliance with respect to sale of property. Therefore, the expenditure is to be considered to be incurred wholly and exclusively in connection with transfer of land and hence, allowable to the assessee. The Ld. AO is directed to grant deduction of Rs.80 Lacs to the assessee.

20.4 So far as the payment of Rs.97 Lacs is concerned, we find that the assessee had furnished confirmation from the two payees regarding receipt of money in connection with sale of land along with their respective PAN details. The payments to both the payees have been made through banking channels only. These two persons were engaged by M/s Sahijpal & Associates which is evident from the confirmation of Shri Sachit Kumar Sahijpal as placed on record. The confirmation of these two persons as forwarded to Ld. AO in response to notice issued u/s 133(6) would show that these persons have duly filed their respective Income Tax Returns and nowhere it has been stated by them that the work was related with Survey Nos. 69/1, 69/2 & 69/3 and not with respect to survey no. 171/1. The payment has apparently been made towards civil contract services which include cleaning, leveling, land-scaping, fencing etc. which would be nothing but cost of improvement of the land and hence, allowable deduction to the assessee. Considering all these facts, we direct Ld. AO to grant the deduction of Rs.97 Lacs to the assessee. The corresponding grounds of appeal stand allowed accordingly.

21. Addition of bank deposits for Rs.30.63 Lacs

21.1 The assessee deposited cash of Rs.32.63 Lacs in its bank account during demonetization period and accordingly, required to prove the sources thereof. The deposits were during the period from 10-11-2016 to 13-12-2016. The assessee stated that the deposits were out of earlier withdrawals from Standard Chartered Bank (Rs.20.61 Lacs), ICICI Bank (Rs.10 Lacs) and Yes Bank (Rs.2.53 Lacs) as made during the period from 22-03-2016 to 01-11-2016 which are tabulated on Page 15 onwards of the assessment order. The withdrawals thus aggregated to Rs.33.14 Lacs. The claim was not accepted by Ld. AO since the withdrawals were in smaller amount and after granting credit of Rs.2 Lacs, Ld. AO added remaining deposits of Rs.30.63 Lacs u/s 69A r.w.s. 115BBE of the Act.

21.2 Upon further appeal, Ld. CIT(A), considering utilization of cash, observed that the withdrawals during FY 2015-16 were Rs.68.89 Lacs. The personal household expenses were around Rs.28 Lacs and thus, cash as available with the assessee as on 01-04-2016 would be around Rs.40 Lacs. The cash was much more than the cash required to meet the cash requirement for entire year. Still, the assessee continued to withdraw the amounts during this year which was not usual. The assessee withdrew Rs.20 Lacs in 22-03-2016 and still continued to withdraw small amounts of Rs.10,000/- thereafter. Up-to demonetization period, the withdrawals were Rs.12.65 Lacs as against estimated household expenditure of Rs.16.31 Lacs which indicate that the assessee utilized earlier cash withdrawals also. Finally, the impugned addition was confirmed against which the assessee is in further appeal before us.

21.3 From the findings of Ld. CIT(A), it is clear that the cash as available with the assessee as on 01-04-2016 would be around Rs.40 Lacs. Up-to demonetization period, the withdrawals were Rs.12.65 Lacs as against estimated household expenditure of Rs.16.31 Lacs leaving a gap of Rs.3.66 Lacs. If the same is assumed to be spent out of opening balance, the assessee would still have probable cash balance of Rs.36.34 Lacs which is much more than the impugned deposit of Rs.32.63 Lacs. Therefore, this addition is unsustainable. We order so.

22. Interest on Tax Refund for Rs.1.54 Lacs;

22.1 The assessee was granted Income Tax Refund on 25-01-2017 which include interest u/s 244A for Rs.1,54,301/-. The assessee did not reflect the same in his return of income and therefore, the same was added as income from other sources. During first appeal, the assessee stated that the refund relates to AY 2016-17 for which return of income was filed on 05-08-2016. The refund amount was Rs.34,28,960/-. The return was processed and refund was granted. However, the assessee revised return of income on 07-02-2017 which had no refund. The refund amount along with interest amount was deposited on 30-03-2017. The copy of Form 26AS for AY 2016-17 was attached to support the same. Considering the same, Id. AO was directed to verify the claim of the assessee. Aggrieved, the assessee is in further appeal before us.

22.2 It appears that the assessee has initially received interest on tax refund but apparently, after revised return of income, the said interest has been deposited by the assessee. Therefore, the directions of Ld. CIT(A) are to be endorsed. If the interest has subsequently been deposited by the assessee due to the fact that no refund was due to the assessee owing to revision of return of income, the same could not be

considered to be the income of the assessee. The Ld. AO is directed to verify the same and carry out the directions of Ld. CIT(A). The corresponding grounds stand allowed for statistical purposes.

23. In the result, the appeal for AY 2017-18 stands partly allowed.

Conclusion

24. Both the appeals stand partly allowed.

Order pronounced on 13th January, 2026.

-Sd-
(RAJPAL YADAV)
VICE PRESIDENT

-Sd-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated:13-01-2026

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH