

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT
MEMBER**

AND

SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.1185 /Del./2010, A.Y. 2004-05

ITO, Ward-24(4), New Delhi	Vs .	Smt. Sudharshna Arora B-6/9, Vasant Vihar, New Delhi PAN: AAEP A8154H
(Appellant)		(Respondent)

**CO No.157/Del/2016
(in ITA No.1185/Del/2016)
(Assessment Year: 2004-05)**

Smt. Sudharshna Arora B-6/9, Vasant Vihar, New Delhi PAN: AAEP A8154H	Vs.	ITO, Ward-24(4), New Delhi
(Appellant)		(Respondent)

Assessee by	Shri Vinod Gupta, CA
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	08/01/2026
Date of Pronouncement	13/03/2026

ORDER

PER S. RIFAUH RAHMAN, AM

The Revenue has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-III, New Delhi [“Ld. CIT(A)”, for short] dated 03.11.2009 for the Assessment Year 2004-05. The assessee has also filed cross objections in this appeal.

2. The revenue has raised following grounds of appeal:

*“1. On the facts and on the circumstances of the case the Ld. CIT(A) has erred in law and on the facts in deleting the addition made by the A.O. on account of capital gain of Rs. 41932862/- which was computed relying on the basis of valuation report of DVO Ludhiana.
2. The appellant craves leave to add, later or amend any of grounds of appeal before or during the course of hearing of the appeal.”*

3. Brief facts are, the assessee filed her return of income on 30.10.2004 declaring income of Rs. 70,000/- and the same was processed u/s 143(1) of Income Tax Act, 1961 (in short ‘Act). Subsequently the case was selected for scrutiny. The notices u/s 143(2) and 142(1) were issued and served on the assessee. In response Ld. AR of the assessee attended and submitted the relevant information as called for.

4. During the assessment proceedings, the AO observed that the assessee had sold 10,50,000 shares of SJS Holding Ltd at Rs. 1.05 crores and the purchase price was Rs. 119,74,138/- and the capital loss was shown at Rs. 14,74,138/-. The AO

observed that the assessee had sold 500,000 shares during AY 2003-04 at Rs. 50 lakhs. The AO had proceeded to value the shares by obtaining the details of assets held by the company. Based on that valuation, he determined the value per share at Rs. 51.34. The AO adopted the same value for this year computation of long-term capital gain and after giving the indexation cost benefit, he determined the undisclosed capital gain of Rs. 419,32,862/- and added to the income of the assessee.

5. Aggrieved with the above order, the assessee preferred an appeal before Ld. CIT(A)-III, Delhi and filed detailed submissions. After considering the detailed submissions, Ld. CIT(A) deleted the addition with the below observations:

“4.1 The submissions made by the Counsel of the appellant were forwarded to the A.O. vide letter dated 22.03.2007. Later on, number of reminders were sent to submit the remand report. The A.O. vide letter dated 07.08.2007 justified the addition made in the assessment order. However, no comments were offered on the merits of the case.

5. I have carefully considered the facts of the case, the submissions made by the appellant and the observations of the A.O. After going through the facts of the case, it emerges that the primary objective of the lease of plot of land was construction of a charitable Hospital by "Gurdwara Bhaini Sahib". A land measuring 17,318.46 sq. yards located at Ludhiyana district was allotted by the government of Punjab, free of cost to Langar Sahib Gurudwara Shri Bhiani Sahib (a very religious sect of Namdharis Sikhs headed by Shri Satguru Ram Singh Ji). Shri Satguru Pratap Singh Ji S/o Shri Satguru Ram Singh Ji, with the main objective of setting up a hospital at the allotted land delegated the responsibility to dedicated devotees who were religiously attached and

also were financially sound to fulfill the desire of their guru Shri Satguru Pratap Singh Ji. The land was given on lease at a nominal lease rent of Rs. 21,000/- with the stipulation to build a hospital thereon. The lease was given to the appellant along with Mr. Surinder Singh Manchanda. The appellant with an intention to build a super specialty and world class hospital went before various forums for funds and other modalities. In that process it entered into project consultancy and hospital management agreement with M/s Apollo Hospital. Also as funding was to be taken from banks and that could have been possible only when there was a company to enter into an agreement with them the appellant sub-leased the land to M/s SJS Holdings Limited. The said sub-lease was made at a value of Rs.31,000/- in the financial year 2000-01. Thereafter and since then the land stands in the name of the company only and the hospital built on the said land is managed by M/s Apollo Hospitals. The appellant has no link or nexus with the said hospital now. Due to the involvement of the appellant in the process of building the hospital, a dispute arose between the two sects of the devotees which resulted into a civil litigation. The appellant looking into the feelings of the devotees and considering the complexity of the matter transferred the shares held by her in M/s SJS Holdings Limited to Shri Uday Singh Ji nephew of Satguru Shri Jagit Singh Ji. During the year under consideration i.e. the financial year 2003-04 the appellant transferred 10,50,000 shares to Mr. Uday Singh for a consideration of Rs. 1,05,00,000/-The said consideration was duly disclosed by the appellant in the return of income for the year under consideration. As on that date the appellant held 3.77% shares of the company M/s SJS Holdings Limited. The A.O. has brushed aside the crucial documentary evidence which clearly shows that there was no commercial interest of the appellant in the sub-lease of land to M/s SJS Holdings Ltd. The A.O. without gathering any evidence had come to a conclusion that the appellant had transferred shares to M/s SJS Holdings Ltd. for inadequate consideration. Initially, he estimated the price of per sq.yard of land at Rs. 5000/- on adhoc basis. Later on, the matter was referred to the valuation cell for valuation of land. The valuation cell has valued the price of land at Rs. 8000/- per sq.yard. The A.O. applied

the rate of Rs. 8000/- per sq. yard and calculated the value of per share at Rs. 51.34. The difference between the purchase price and the value calculated by him was taken as undisclosed income of the appellant. The provisions of Section 69B can be invoked only if -

- It is found that the assessee has made investment or the assessee is found to be the owner of any bullion, jewellery or other valuable articles, and*
- It is found that the amount expended on making such investment or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in that behalf in the books of account maintained by the assessee, and*
- Either the assessee offers no explanation about such excess amount, or the explanation offered by him is not satisfactory.*

The above circumstances are cumulative. If all these circumstances exist, the excess amount may be deemed to be the income of the assessee for the financial year in which such investment was made or the assessee became the owner of bullion, etc.

It may be noted that the legal fiction enacted in section 698 comes into effect only where all the above circumstances do factually exist. The onus to prove the existence of all these circumstances lies on the department. Thus, there is no room or scope for making any presumption about the existence of any of the requisite circumstances. The Commentary on Income Tax Law by Chaturvedi & Pithisaria observes as under:

Per Chaturvedi & Pithisaria Commentary on Income Tax Law: Section 69/69B Page 3211: VOLUME 25TH EDITION

"It may be noted that the legal fiction enacted in section 698 comes into effect only where all the above circumstances do factually exist. The onus to prove the existence of all these circumstances lies on the department. Thus, there is no room or scope for making any presumption about the existence of any of the requisite circumstances. Keeping in view the phraseology of section 69 B, it appears clear that

such "value on estimated basis" cannot be made the basis for extending the implication of the expression "expended" so far as the purchaser is concerned."

Per Chaturvedi & Pithisaria Commentary on Income Tax Law Section 145 Page 5000: VOLUME THREE FIFTH EDITION

"Sale of goods below the market price. In the absences of evidence to show either That the sales made below the market price were sham transactions or that the market Prices were in fact paid by the purchasers, the mere fact that the goods were sold at a Concessional rate would not entitle the income-tax department to assess the difference between the market price and the price paid by the purchaser, as profits of the assessee CIT v. A. Raman & Co., (1968)67 ITR 11,17 (SC); CIT v. Calcutta Discount Co.Ltd., (1973) 91 ITR 8 (SC); Sri Ramalinga Choodambikai Mills Ltd. V. CIT, (1955) 28 ITR 952

(Mad). Also see, CIT v. Keshavlal Chandulal, (1966) 59 ITR 120 (Guj); Gnanambika Mills Ltd. v. CIT, (1965) 58 ITR 795 (Mad); Das & Co.v. CIT, (1962) 45 ITR 369 (Pat); Patiala Biscuit Manufacturers P.Ltd.v. CIT, (1976) 103 ITR 208, 216-7 (Punj); Marghabhai Kishabhai Patel & Co.v.CIT, (1977) 108 ITR 54 (Guj); CIT v. Smt. Nandini Nopany, (1998) 230 ITR 679,682 (Cal)"

The Hon'ble Supreme Court in the case of K.P. Varghese Vs. Income Tax Officer reported in 131 ITR 597 observed as under: -

"It is a well settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue and the burden lies on the Revenue to show that there is an understatement of the consideration. Moreover, to throw the burden of showing that there is no understatement of the consideration on the assessee would be to cast an almost impossible burden upon him to establish a negative, namely, that he did not receive any consideration beyond that declared by him."

*The Hon'ble ITAT in the case of **Rupee Finance and Management Pvt. Ltd. reported in 120 ITD 539 (Mum)** observed as under:-*

"There was no allegation much less, any evidence to show that the assessee had received monies in excess of amount of sale consideration recorded or disclosed in the transaction for the sale of shares, the first appellate authority had rightly noted that under section 48, the starting point for computation of capital gains is the amount of full value of consideration received or accruing as a result of a transfer of the capital asset. The first appellate authority had rightly observed that, what in fact never accrued or was never received cannot be computed as capital gain. He rightly held that it is manifest that the consideration for the transfer of capital asset is what the transferor receives, in lieu of assets he parts wit, i.e. money or monies worth and expression 'full consideration cannot be considered as having reference to the market value of the assets transferred but refers to the price bargained for by the parties and it cannot refer to the adequacy of the consideration. He also rightly observed that the Legislature has used the words 'full value of the consideration' and not 'fair market value of the assets transferred'. He recorded that the Assessing Officer has not brought on record any material to show that the assessee has received more than what has been disclosed in the books and under these circumstances the difference cannot be brought to tax under the head 'Capital gains'. The Tribunal fully agreed with these findings and the appeals filed by the revenue failed."

Adverting back to the facts of the case, it is observed that the primary objective of the transfer of land was to construct a charitable hospital in the rural area of Punjab. The company M/s SJS Holding Ltd. was incorporated to facilitate the construction of the hospital and raising for the loans from the banks. The appellant was disciple of Baba Bhaini Sahib. She was asked by Satguru to work for the construction of the hospital. The share capital in the company was held by her more for religious purposes rather than having any commercial interest. The A.O. has not gathered even an iota of evidence to arrive at a

conclusion that the appellant received something more than what is disclosed in the books of accounts. The legal fiction enacted in Section 69B comes into effect only where all the above circumstances (discussed above) do factually exist. The onus to prove the existence of all these circumstances lies on the AO. Thus, there is no room or scope for making any presumption about the existence of any of the requisite circumstances. Keeping in view the phraseology of Section 69 B of the Act, it appears clear that such an estimation by the A.O. cannot be made the basis for extending the implication of the expression "expended" so far as the sale of shares is concerned. As such keeping in view the facts and following the judicial authorities discussed above, the addition made by the A.O. is deleted."

6. Aggrieved with the above order, the revenue is in appeal before us.
7. At the time of hearing, Ld. DR submitted that the CO filed by the assessee is not maintainable since the Ld. CIT(A) has given full relief to the assessee. Further, she submitted that the order passed by the AO is best judgement assessment due to non-cooperation of the assessee. With regard to the facts, she brought to our notice page 1 to 3 of the assessment order. She objected to the relief granted to the assessee by the Ld. CIT(A) and brought to our notice the findings at pages 41 to 46 of the impugned order. She heavily relied on the detailed findings of AO.
8. On the other hand, Ld. AR relied on the detailed findings of the Ld CIT(A).

9. Considered the rival submissions and material placed on record. We observe that the charitable hospital was constructed on the land allotted by the Government of Punjab at free of cost to Langar Sahib Gurudwara Shri Bhiani Sahib. The main objective to construct the above said hospital at the allotted land was delegated to the dedicated devotees associated to the committee. The above said land was given on lease to the assessee and Shri Surinder Singh Manchanda. In order to build the super speciality hospital, the entered project consultancy with the Apollo Hospital. In order to get the funding from the banks, they have formed a company to facilitate the relevant fundings and accordingly, the have leased the land to the company namely, SJS Holdings Limited. The hospital was built on the above land and managed by Apollo Hospitals.

10. Since there was no involvement of the assessee in the process of building the hospital and management of the same, the assessee had sold the shares as per the directions of the committee or devotees of the Shrine. Accordingly, the assessee had sold the shares at the face value during the AY 2003-04 and 2004-05. At that time, the assessee was only holding 3.77% shares of the SJS Holdings Limited, however, the AO brushed aside the various documents brought to his notice and proceeded to determine the capital gains without considering the fact that there was no commercial interest to the assessee and also the land was not

even belongs to the company, it is only an arrangement made to facilitate the construction of the hospital. The assumption itself is wrong that the land belongs to the company, and the AO tried to value the company on the basis of above said leased land. The original land belongs to the shrine, which was allotted by the government of Punjab to the shrine. Considering the above facts on record, we are inclined not to disturb the detailed findings of Ld. CIT(A). In the result, grounds raised by the revenue are dismissed. Similarly, the CO filed by the assessee also dismissed.

11. In the result, appeal filed by the revenue and the CO filed by the assessee are dismissed.

Order pronounced in the open court on this 13th March, 2026.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 13/03/2026

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(Appeals)
5. CIT-DR, ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI