

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 978/JP/2015
निर्धारण वर्ष/Assessment Year : 2010-11.

Kanhaiyalal Kalyanmal K.K. House, Bharat Mata Path, Jamnalal Bajaj Marg, C-Scheme, Jaipur.	बनाम Vs.	The Asstt. Commissioner of Income Tax, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACFK 9796 K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Pandey (CA)
राजस्व की ओर से/ Revenue by: Shri Shailendra Sharma (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 30.01.2017.
घोषणा की तारीख/ Date of Pronouncement : 31/01/2017.

आदेश/ ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the assessee is directed against the order of Id. CIT (A)-2, Jaipur dated 27.11.2015 pertaining to assessment year 2010-11. The assessee has raised the following grounds of appeal :-

" On the facts and in the circumstances of the case Id. CIT (Appeals) erred in –

1. Upholding the assessment order passed u/ 143(3) which I unjust and not following provisions of law.
2. In upholding the addition of Rs. 23,32,654/- on account of Short Term Capital Gain and taking amount of sale consideration to be the value for stamp duty purposes u/s 50C on sale of Plot No. 39, Mission Compound, Ajmer Road, Jaipur Rs. 65,78,244/- instead of actual sale consideration of Rs. 40 lacs and further erred in holding

that the appellant firm had not objected to the valuation u/s 50C of IT Act, 1961 and therefore not following provisions of law on issue of valuation.

3. In disregarding the crucial fact that 39 Mission Compound (the property sold) was under possession of a party and assessee was unable to restrain and evict the encroacher and the party had proved before the District and Session Court of his possession and therefore Id. CIT (A) disregarded the point of dispute had made assessee firm agree on sale of Rs. 40 lacs and the investment made by the firm was recouped.
4. Assessee objects to charge of interest u/ 234A, 234B and 234C.
5. Assessee reserves the right to add, alter, amend and withdraw of any of the grounds.

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 02.03.2013. While framing the assessment, the AO computed Short Term Capital Gain at Rs. 23,32,654/- by invoking provisions of section 50C of the Act. Aggrieved by this, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions partly allowed the appeal. While partly allowing the appeal, the Id. CIT (A) affirmed the addition made by the AO. Aggrieved, the assessee has filed the present appeal before this Tribunal.

3. At the outset, the Id. Counsel for the assessee submitted that the AO was not justified in not referring the matter to the Departmental Valuation Officer (DVO). He submitted that during the assessment proceedings, the assessee had claimed market value of the property lesser than the value adopted by the AO. Under these facts,

the AO ought to have referred the issue of valuation to the DVO in terms of section 50C(2) of the Act.

3.1. On the contrary, the Id. D/R supported the orders of the authorities below.

3.2. We have heard rival contention, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the AO has invoked the provisions of section 50C of the Act and adopted the valuation as per Stamp Valuation Authority. During the course of hearing, the Id. Counsel has drawn our attention to the assessment order wherein the submissions of the assessee are reproduced. In the submissions, the assessee has claimed the lesser market value of the property. Therefore, in our considered view, in terms of section 50C(2) of the Act, the AO ought to have referred the matter of valuation to the DVO. We, therefore, set aside the impugned order and restore the issue to the file of the AO with the direction that the AO would compute the Capital Gain afresh after obtaining the Valuation Report from the DVO in terms of section 50C(2) of the Act. Needless to mention that the AO would provide sufficient opportunity of being heard to the assessee. Grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 31.01.2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य/Accountant Member
Jaipur
Dated:- 31/01/2017.
Das/

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य/Judicial Member

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

1. The Appellant- Shri Kanhaiyalal Kalyanmal, Jaipur.
2. The Respondent – The ACIT, Circle-6, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 978/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

