

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 449/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-2015

The ITO, Ward-2(1), Alwar.	बनाम Vs.	Shri Trilok Chand Sain S/o Shri Ram Swaroop Sain, 805, Wonder Residency, 200Ft. Road, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BPYPS 6036 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No. 10/JP/2018
(Arising out of ITA No. 449/JP/2018)
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Trilok Chand Sain S/o Shri Ram Swaroop Sain, 805, Wonder Residency, 200Ft. Road, Alwar.	बनाम Vs.	The ITO, Ward-2(1), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BPYPS 6036 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Dr. Ashvini Hosahani (JCIT)

सुनवाई की तारीख / Date of Hearing : 16/10/2018
उदघोषणा की तारीख / Date of Pronouncement: 07/01/2019

आदेश / ORDER

PER: SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of the Id. CIT(A), Alwar dated 11.01.2018 for the assessment year 2014-15 and the cross objection filed by the assessee wherein the respective grounds of appeal are as under:-

ITA No.449/JP2018 (Revenue's Grounds of appeal):

"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 1,51,06,224/- made by the AO on account of difference amount of stamp duty value and purchase value holding arbitrarily view that the land in question is not a capital asset as per the provisions of Section 2(14) of the I.T. Act, 1961.

2. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in reducing the addition from 23,00,000/- to Rs. 8,41,000/- made by AO without appreciating the material facts of the case."

CO No. 10/JP/2018 (Assessee's Grounds of appeal):

"1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 8,41,000/- by treating the source for purchase of land to this extent as unexplained.

2. The Ld. CIT(A) has correctly held that the agricultural land purchased by assessee during the year is not a capital asset as per section 56(2)(viib) both on account of the fact that it is a rural agricultural land

and otherwise it is stock-in-trade of the assessee and therefore, rightly deleting the addition made by AO under this section.”

2. Briefly the facts of the case are that the assessee has purchased three plots of land during the year under consideration and has claimed that these plots of land are agricultural land and doesn't fall in the definition of capital asset as per the provisions of Section 2(14) of the Act. The AO, however invoked the provisions of Section 56(2)(viib) of the Act and made an addition of Rs. 1,74,06,224/- which includes an amount of Rs. 1,51,06,224/- being difference between the sale consideration as per the sale deeds and the stamp valuation determined by the Stamp Valuation Authority, and Rs. 23 lacs as unexplained investment in purchase of these properties. The AO however, accepted the source of expenses incurred on account of stamp duty and other transfer charges amounting to Rs. 9,38,600/-.

3. On appeal by the assessee, the Id. CIT(A) has held that the land in question being an agricultural land is not a capital asset as per the provisions of Section 2(14) of the Act and therefore, not being a capital asset, the transaction does not attract the provisions of Section 56(2)(viib) of the Act. Further, the Id. CIT(A) has held that the assessee in the business of sale/purchase of property and the land so purchased is his stock-in-trade and since the stock-in-trade is also excluded from the definition of capital asset, on this account as well, the provisions of Section 56(2)(viib) of the Act are not attracted. Accordingly, he deleted the addition of Rs. 1,51,06,224/- in the hands of the assessee and granted the necessary relief. He however reduced the addition from

23,00,000/-to Rs. 8,41,000/- made by AO as unexplained investment in purchase of these properties. Now, the Revenue is in appeal against the deletion of addition made by the AO and the assessee is in appeal against the addition so confirmed by the Id CIT(A).

4. We have heard the rival contentions and perused the material available on record. The relevant provisions of section 56(2)(vii)(b) which are under consideration read as under:

"(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a

Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :

Provided further that this clause shall not apply to any sum of money or any property received—

- (a) from any relative; or*
- (b) on the occasion of the marriage of the individual; or*
- (c) under a will or by way of inheritance; or*
- (d) in contemplation of death of the payer or donor, as the case may be; or*
- (e) from any local authority as defined in the Explanation to clause (20) of section 10; or*
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or*
- (g) from any trust or institution registered under section 12AA;
or*
- (h) by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vij) of section 47.*

Explanation.—For the purposes of this clause,—

- (a) *"assessable" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 50C;*
- (b) *"fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;*
- (c) *"jewellery" shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of section 2;*
- (d) *"property" means the following capital asset of the assessee, namely:—*
 - (i) *immovable property being land or building or both;*
 - (ii) *shares and securities;*
 - (iii) *jewellery;*
 - (iv) *archaeological collections;*
 - (v) *drawings;*
 - (vi) *paintings;*
 - (vii) *sculptures;*
 - (viii) *any work of art; or*
 - (ix) *bullion;*
- (e) *"relative" means,—*
 - (i) *in case of an individual—*

- (A) *spouse of the individual;*
- (B) *brother or sister of the individual;*
- (C) *brother or sister of the spouse of the individual;*
- (D) *brother or sister of either of the parents of the individual;*
- (E) *any lineal ascendant or descendant of the individual;*
- (F) *any lineal ascendant or descendant of the spouse of the individual;*
- (G) *spouse of the person referred to in items (B) to (F); and*

(ii) *in case of a Hindu undivided family, any member thereof;]*

(f) *"stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;"*

5. The above provisions thus provides that where an individual receives in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017, any immovable property for a consideration which is less than the stamp

duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be income chargeable to tax under the head "Income from other sources".

6. In the instant case, the assessee has purchased three plots of land during the year under consideration. The sale consideration as per the respective sale deeds amounts to Rs 23,00,000 and the stamp duty value of such properties as determined by the Stamp duty authority amounts to Rs 1,74,06,224/- and therefore, there is difference to the tune of Rs 1,51,06,224/- between the sale consideration as per the sale deeds and the stamp valuation determined by the Stamp Valuation Authority. To this extent, the facts are not disputed and have been accepted by both the parties. The limited point of dispute is the nature of immovable property which has been purchased by the assessee. The assessee's contention is that which he has purchased are three plots of agricultural land and the same doesn't fall in the definition of capital asset as per the provisions of Section 2(14) of the Act and provisions of section 56(2)(vii)(b) cannot be invoked. The Revenue's contention is that the provisions of Section 56(2)(vii)(b) talks about any immovable property and thus even an agriculture land falls under the definition of an immovable property and the provisions of Section 56(2)(vii)(b) are clearly attracted. On reading of provisions of 56(2)(vii)(b), we find that it refers to any immovable property and the same is not circumscribed or limited to any particular nature of immovable property. It refers to any immovable property which by its grammatical meaning would mean all and any property which is

immoveable in nature, i.e, attached to or forming part of earth surface. In the instant case, the assessee has purchases three plots of agricultural land and such agricultural land is clearly an immoveable property. Whether such agriculture land falls in the definition of capital asset u/s 2(14) or whether such agriculture land is stock-in-trade of the assessee, in our considered view, are issues which cannot be read in the definition of "any immoveable property" used in context of section Section 56(2)(vii)(b) and are thus not relevant. In the result, we set-aside the order of the Id CIT(A) to this extent and upheld the order of the Assessing officer. In the result, ground no. 1 of the Revenue's appeal is allowed.

7. Regarding the addition of Rs. 23 lacs on account of unexplained investment in purchase of three properties, we have gone through the findings of the AO and the Id CIT(A) and other material available on record. We hereby affirm the following findings of the Id. CIT(A) which are contained at para 6.4 and 6.5 of his order reproduced as under:-

"6.4 The addition of Rs.23 lakhs have been made on the unexplained investment in the purchase of the above mentioned lands as per details below:

i. Purchased a land on 08/01/2014 at Vill: Chandbaas, Chirkhana Tehsil: Bahadarpur, Distt: Alwar from Sh. Sahabuddin for a cash consideration of Rs. 8 lakhs. However, stamp valuation authority has valued the land at Rs.72,14,000/- for stamp duty purpose. Stamp duty and transfer charges paid by the appellant was Rs.4,27,000/-.

ii. Purchased a land on 10/02/2014 in the same village as mentioned above from Sh. Jakamdin for a consideration of Rs.8 lakhs but stamp valuation authority has valued the land at Rs.57,71,000/- for stamp duty purpose. Stamp duty and transfer charges paid by the appellant was Rs. 3,69,300/-.

iii. Purchased a land on 06/02/2014 in the same village as mentioned above from Sh. Imrat for a consideration of Rs.7 lakhs but stamp valuation authority has valued the land at Rs.44,21,224/- for stamp duty purpose. Stamp duty and transfer charges paid by the appellant was Rs. 1,17,230/-.

In the assessment order the A.O. had accepted the source of expenses incurred on account of stamp duty and other transfer charges amounting to Rs. 9,38,600/-. However, the purchase consideration amounting to Rs. 23 Lakhs have been added as unexplained investment u/s 68 of the Act. During appellate proceedings, the appellant has filed additional evidences in support of its claim under rule 46A of the IT Rules, 1962. For the reasons mentioned therein the same has been taken on record and the additional evidences were sent to A.O for his examination and comments. The A.O has submitted the remand report vide letter dated: 09/10/2017. The copy of the remand report was forwarded to the appellant for his cross reply. The appellant has filed the cross reply vide letter dated: 26/12/2017.

6.5 I have considered the remand report and the cross reply submitted by the appellant. It is seen that following persons have attended the

remand proceedings and confirmed their transactions with the appellant:

<i>S.N.</i>	<i>Name of the person</i>	<i>Dated of attendance</i>	<i>Transaction(Advance/Gift)Amount</i>
	<i>Smt. Uganti Devi(Mother of the assessee), Dausa</i>	<i>01.08.2017</i>	<i>1,00,000/- (Gift)</i>
	<i>Sh.Ram Swaroop Sain (Father of the assessee, Dausa.</i>	<i>01.08.2017</i>	<i>10,50,000/- (Gift)</i>
	<i>Sh.Shyam Lal Bisariya, Alwar</i>	<i>01.08.2017</i>	<i>50,000/- (Advance)</i>
	<i>Sh.Bharat Lal Sain,</i>	<i>03.08.2017</i>	<i>50,000/- (Advance)</i>
	<i>Smt. Seema Sain (Wife of the assessee), Alwar</i>	<i>11.08.2017</i>	<i>1,00,000/- (Gift)</i>
	<i>Sh. Trilok Chand Sain(Assessee)</i>	<i>11.08.201 to 14.08.2017</i>	<i>--</i>
	<i>Smt. Sarla w/o Indra Lal, Alwar</i>	<i>21.08.2017</i>	<i>40,000/-(Advance)</i>
	<i>Sh.Ramu Jatav, Alwar</i>	<i>21.08.2017</i>	<i>1,00,000/- (Advance)</i>
	<i>Hukam Chand, Alwar</i>	<i>21.08.2017</i>	<i>50,000/- (advance)</i>

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As per the chart above the source of Rs. 15,40,000/- have been reasonably explained. I have also taken into consideration that some of the persons from whom the appellant has claimed advances have either not attended to the remand proceedings or their addresses were incomplete. One of such person Sh. Yogesh Sharma from whom the appellant has claimed to have got advance of Rs.1,50,000/- has denied the transaction.

The appellant has also declared an income of Rs.5,77,600/- in the return of income besides a car sold by him for a consideration of Rs.3,80,000/-and the appellant has claimed to have used the money for the purchase of the land.

After taking into consideration all the above mentioned facts, a total of Rs. 24,97,600/- was available with the appellant from the explained sources. The total investment in the land including stamp duty and other transfer charges comes to Rs. 32,38,600/-. Considering a reasonable household expenditure of Rs. 1 lakh, it is reasonable to infer that investment to the extent of Rs. 23,97,600/- is explained. Therefore, the balance investment of Rs. 8,41,000/- remain unexplained and liable to be taxed U/s 69 of the Act. Accordingly, the addition on this account is reduced to Rs. 8,41,000/-. Appellant's ground of appeal on this issue is partly allowed."

8. In the result, ground no. 2 of the Revenue's appeal and ground no. 1 of the assessee's cross objection are dismissed.

In the result, the appeal of the Revenue and cross objection of the assessee are disposed off with above directions.

Order pronounced in the open Court on 07/01/2019.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/01/2019.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

***Santosh.**

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

1. अपीलार्थी / The Appellant- ITO, Ward-2(1), Alwar.
2. प्रत्यर्थी / The Respondent- Shri Trilok Chand Sain, Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. ITA No. 449/JP/2018 & CO No. 10/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar