

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ **ITA.No.86/Ahd/2012**
निर्धारण वर्ष/ **Asstt. Year: 2008-2009**

Nanubhai Keshavlal Chokshi HUF 11, Shaligram Bunglows-I Nr.Samrudhi-I, Thaltej, Ahmedabad 380 059. PAN : AA EHN 6692 R	Vs	ITO, Ward-6(2) Ahmedabad.
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आयकर अपील सं./ **ITA.No.87/Ahd/2012**
निर्धारण वर्ष/ **Asstt. Year: 2008-2009**

Lallubhai Keshavlal Chokshi, HUF 201, 1 st Floor, Blossom-5 26, Motinagar Society Jogger Park, Navrangpura 380 009. Ahmedabad. PAN : AABHA 5466 L	Vs	ITO, Ward-6(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Parimal Singh, Parmar-AR
Revenue by :	Shri Jagdish, CIT-DR.

सुनवाई की तारीख/**Date of Hearing** : **13/06/2016**
घोषणा की तारीख /**Date of Pronouncement**: **01/08/2016**

आदेश/O R D E R

Present two appeals are directed at the instance of the assessee against the orders of the Id.CIT(A) dated 22.11.2011 passed on their respective appeals in the Asstt.Year 2008-09. Since one of the issues is involved in both the appeals is common, therefore, I heard them together and deem it appropriate to dispose of them by this common order.

2. Solitary grounds of appeal taken in ITA No.87/Ahd/2012 is common with ground nos.1 and 2 taken in the ITA No.86/Ahd/2012. The issue in this grounds of appeal is whether both the assessee are entitled for deduction of the amounts paid by them to their brothers for getting the premises vacated while computing the capital gains on sale of house-property.

3. Shri Nanubhai Keshavlal Chokshi, HUF has filed its return of income on 28.3.2009 declaring total income at Rs.32,390/-. He has shown income from long term capital gain from sale of property and the income from other sources. The assessee has shown long term capital gain of sales proceeds of Rs.2.07 crores from the sale of property. He has claimed deduction of Rs.21.00 lakhs on the ground that this amount was paid to his brother, Shri Laxmanbhai K. Chokshi for vacating the house.

Shri Lallubhai Keshavlal Chokshi, HUF has filed return of income on 28.3.2009 showing total income of Rs.790/-. He has shown long term capital gain on sale proceeds of Rs.1.71 crores and has claimed a deduction of Rs.31.00 lakhs on account of payment to his younger brother, Shri Jagdishbhai K. Chokshi for vacating the house. The finding recorded by the AO in both the assessment orders is almost identical. Similarly, the Id.CIT(A) has passed almost verbatim orders. The Id.CIT(A) has noticed four reasons assigned by the AO for declining these deductions to both the assesseees. These are verbatim same except a little variation at serial no.3. These reasons read as under:

In the case of Nanubhai K. Chokshi, HUF

"(i) *Municipal tax bills submitted by you shows that you were the sole occupant of the property on which he is claiming that it was also occupied by the tenant;*

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(ii) *In the valuation report of the property dated 22-06-2007 which were done before sale of the said property, also states that assessee was the sole occupant of the property. (Sr.No.24 (1) of the valuation report);*

(iii) *Shri Laxmanbhai K.Chokshi has stated in his statement recorded u/s. 133(1) that he was living with you not in capacity as a tenant and was not paying any rent to you, but was staying in the house as per your will and he was not having right over the property in any capacity.*

(iv) *As per the will of father of the assessee dated 12-06-1957, the different properties were distributed between the assesses and Shri Laxmanbhai K.. Chokshi so that both of them should get- equal amount of properties valuing Rs.35,000/- each. That shows that the assesses has exclusive right over the property on which the assesses claims that his brother was occupying as tenant."*

In the case of Lallubhai K. Chokshi, HUF

(1) *Municipal Tax Bills submitted by you shows that you were the sole occupant of the property on which he is claiming that it was also occupied by the tenant;*

(2) *In the valuation report of the property dated 22.06.2007 which were done before sale of the said property, also states that assessee was the sole occupant of the property. (Sr. No.24 (1) of the valuation report);*

(3) *Denial by Shri Jagdishbhai K. Chokshi for the two notarized affidavits produced during the course of assessment proceedings stating that he has no idea about the same and he has simply signed the affidavit on your say;*

(4) *Shri Jagdishbhai K, Chokshi has stated in his- statement recorded u/s. 133(1) that he was living with you not in capacity as a tenant and was not paying any rent to you, but was staying in the house as per your will and he was not having right over the property in any capacity.*

(5) As per the will of father of the assessee dated 12,06.1957, the different properties were distributed between the assessee and Shri Jagdishbhai K. Chokshi so that both of them should get equal amount of properties valuing Rs.35,000/- each. That shows that the assessee has exclusive right over the property on which the assessee claims that his brother was occupying as tenant.

4. With the assistance of the ld.representatives, I have gone through the record carefully. There is not much dispute between the parties on the facts. The dispute is with regard to inference drawn from the evidence available on the record. Before embarking upon an inquiry on the nature of evidence produced by the assesseees, and the reasons assigned by the AO for rejecting the explanation of the assesseees, I would like to take note of section 48 of the Income Tax Act. This section contemplates mode of computation of capital gains. It provide that income chargeable under the head "Capital Gains" shall be computed by deducting from the full value of the consideration received or accruing, as a result of the transfer of the capital asset the following amounts, viz. (i) *the expenditure incurred wholly and exclusively in connection with such transfer, and (ii) cost of acquisition of the asset and the cost of any improvement thereto, provided* The question before me is whether the payment made by both the assesseees to their bothers is to be considered as expenditure incurred for improvement of asset or the title. According to both the assesseees, their brothers were residing in the house owned by them and while selling the house in order to get vacant possession, payment of Rs.21 lakhs was made by Shri Nanubhai Keshavlal Chokshi, HUF in his case, and Rs.31 lakhs in the case of Shri Lallubhai Keshavlal Chokshi, HUF. As far as payment part is concerned, there is no dispute. The payment was made through account payee cheques. Both brothers have confirmed receipt of money. They also filed affidavit to this effect. Their statement has also been recorded. They were residing in the house, but not making payment of any

rent. On an analysis of the record, I find that the Id.Revenue authorities' approach to the controversy in strictly mechanical way. Whereas in the present appeals, situation was required to be appreciated, keeping in mind social circumstances and the relationship of the brothers. What was their settlement while residing together? What was feeling of elder brother towards their younger brother, when they displaced them from a property where they were residing for last more than 24 years ? Had the controversy been appreciated in a mechanical manner, and if both the brothers, who were residing in the house refused to vacate the house, then, what would be the situation before these assesseees. They have to file a suit for possession that might be decided against, and young brother ejected from the premises, but that would consume time in our judicial process of at least more than ten to fifteen years. The prospective buyers may not be available in such circumstances. Shri Laxmanbhai K. Chokshi as well as Shri Jagdishbhai K. Chokshi were candid in their statement that they were residing in these houses along with their brothers. Shri Laxmanbhai K. Chokshi, though had not been paying any rent, but he was paying electricity bills. I am of the view that the payments were made for improvement of title of the property and they are entitled to claim deduction of cost of payment. Therefore, I allow solitary ground of appeal raised in the case of Shri Lallubhai Keshavlal Chokshi, HUF and direct the AO to grant him deduction of Rs.31 lakhs for computing the long term capital gain. Similarly, I allow ground nos.1 and 2 in the case of Shri Nanubhai Keshavlal Chokshi, HUF and direct the AO to allow deduction of Rs.21 lakhs while computing the long term capital gain.

5. In the appeal of Shri Lallubhai Keshavlal Chokshi, HUF no other grounds were pressed by the Id.counsel for the assessee except charging of interest under section 234B which is consequential in nature.

6. In ITA No.86/Ahd/2012, the assessee has raised two more grounds of appeal. In this next ground of appeal, the assessee pleaded that the assessee had claimed additional expenditure for improvement of this property. This claim has been allowed to the assessee, but the Id.CIT(A) has allowed it at Rs.2,88,370/-, whereas, the correct figure is of Rs.6,75,000/-.

7. Brief facts of the case are that the assessee has purchased property at 11, Shaligram Bungalow-1, Thaltej, Ahmedabad for a sum of Rs.46,25,000/-. He further incurred an expenditure of Rs.6.75 lakhs, and accordingly claimed deduction under section 54 of the Income Tax Act. The Id.AO has disallowed the claim of the assessee with regard to the expenditure of Rs.6.75 lakhs. A perusal of the paragraph 3.00 and 3.2 of the CIT(A)'s order, it would reveal that the Id.CIT(A) has allowed the claim but wrongly mentioned the amount of Rs.2,88,370/-. To my mind, it is an apparent error committed at the end of the Id.CIT(A). Otherwise, in the assessment order as well as in all other details, the expenditure incurred by the assessee at Rs.6.75 lakhs has been mentioned. Accordingly, I allow this ground of appeal, and direct the AO to grant deduction of Rs.6.75 lakhs from the sale proceedings while computing long term capital gain as cost of improvement.

8. In the next ground of appeal, the grievance of the assessee is that the Id.CIT(A) has erred in confirming the action of the Id.AO for taking indexed cost of acquisition at Rs.18,21,000/- as against the value of Rs.19,79,160/- adopted by the assessee as on 1.4.1981.

9. Brief facts of the case are that the assessee had valued its property as on 1.4.1981 at Rs.19,79,160/-. This valuation was supported by the report of valuer, Shri Hasmukh C. Patel dated 22.6.2007. According to the assessee, he

has half-share in the property and other half was with Shri Ashokbhai Keshavdas Chowkshi. While considering the case of Shri Ashokbhai Keshavdas Chowkshi and Shri Lallubhai Keshavlal Chokshi, HUF, it was considered by the AO that value of the land will be taken at Rs.2,000/- per square meter and built-up is to be valued at Rs.1,000/- per sq.meter. In the case of assessee, valuation for land was made separately, and value for the constructed area was made separately. According to the assessee, the AO has appraised this fact to the registered valuer, who had written a letter dated 10.11.2010 and apprised the AO that in the case of assessee, composite valuation of Rs.3,000/- per sq.meter be considered, and the building valuation was shown as NIL. In other words, the registered valuer has observed that he adopted composite rate of Rs.3,000/- per sq.meter. The contentions of the assessee is that the value of the land is to be taken at Rs.18.21 lakhs plus half share of the constructed area comes to Rs.1,58,160/-. This aspect was not considered by the AO. When this aspect was brought to the notice of the Id.CIT(A), then, the Id.CIT(A) has observed that the value of the land was Rs.15.81 lakhs and value of the building was Rs.2,32,150/-. If working of this annexure is believed, then, total value of the property will come at Rs.18,91,50/-. In this way, the Id.CIT(A) has considered various aspects, but did not interfere in the working given by the Id.AO.

10. With the assistance of the Id.representatives, I have gone through the record carefully and perused the valuation report which is available at page no.66 of the paper book. The property in question is situated at F.P.No.80, T.P.S. No.20, 35/North Side, Sardar Patel Nagar Society, Ahmedabad. It comprised an area of 1821.00 sq.meters. There is a distribution deed dated 18.8.2006 between the assessee and Shri Ashokbhai Keshavdas Chowkshi. Thus, the assessee has an area of 910.50 sq.meters. The Id. Registered valuer

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has estimated the total value at Rs.36.42 lakhs. It represents to the area of 1821.00 sq.meters. Similarly, there was a built-up area of 316.32 sq.meters. He applied the rate of 1000/- and valued at Rs.3,16,320/-. The total value has been shown at Rs.39,58,320/-. The assessee has half share and the value has been shown at Rs.19,79,160/- . Against this valuation report, all other correspondences, i.e. confirmation etc. from valuer is totally irrelevant at the end of the AO, because the valuer was never cross-examined as to how he can change his report unilaterally. The Id.Revenue authority has made reference to all irrelevant details for scaling down the valuation of the property as on 1.4.1981. I direct the AO to take value of the property at Rs.19,79,160/-, and thereafter, compute the long term capital gain in the hands of the assessee.

11. In the result, appeals of the assessee are allowed.

Order pronounced in the Court on 1st August, 2016 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 01/08/2016