

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' 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. 383/JP/2019  
निर्धारण वर्ष / Assessment Year :2010-11

Sh. Ashok Kumar Dusad 36, Prahlad Colony, Airport Circle, Tonk Road, Jaipur	बनाम Vs.	The ITO, Ward 7(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYPD6823G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/07/2020  
उदघोषणा की तारीख / Date of Pronouncement: 07/07/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 08.02.2019 wherein the assessee has taken following grounds of appeal:-

"1. The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of indexed cost of improvement of Rs. 4,18,500/- claimed by the assessee on sale of plot, thereby computing the long term capital gain at Rs. 4,17,235/- as against long term capital loss of Rs. 1,265/- computed by the assessee.

2. The Ld. CIT(A) has erred on facts and in law in holding that agreement with contractor and his affidavit in respect of expenditure incurred on cost of improvement looks an afterthought story without any material & basis."

2. During the course of hearing, the Id AR submitted that the assessee filed his return of income on 09.07.2010 declaring total income of

Rs.2,05,580/-. Thereafter, the AO issued notice u/s 148 on 27.03.2017 for the reason that assessee has sold a plot for Rs.9 lacs but the same is not declared in the return. In response to notice u/s 148, the assessee again filed the return declaring same income of Rs.2,05,580/-. In course of reassessment proceedings, the assessee explained that he has sold a plot situated at Plot No.10, Bajrang Nagar, Village- Cha Getor, Tehsil-Sanganer, District Jaipur measuring 133.33 sq. yd. for consideration of Rs.9 lacs to Sh. Shyam Singh Tanwar and Shobha Tanwar vide sale deed dt. 18.01.2010. He purchased this plot measuring 200 sq. yd. on 21.05.2004 for Rs.5,50,000/-. Thus, the corresponding cost of plot sold is Rs.3,66,657/-. Thereafter, he constructed a basement on the said plot before sale on which expenditure of Rs.4,18,500/- was incurred. In support of the same, assessee filed the agreement dt. 30.04.2009 with the contractor Sh. Mangalram Kumawat and his affidavit dt. 23.10.2017 to the AO. Thus, on sale of plot after considering the indexation, there was long term capital loss of Rs.1,265/-.

3. It was submitted that the AO allowed the indexed cost of acquisition of plot at Rs.4,82,765/- ( $3,66,657 \times 632/480$ ) but not allowed the claim of cost of improvement of Rs.4,18,500/- for the reason that no supporting bills/ vouchers in support of the same were produced by assessee. The contract note and affidavit produced by assessee is also without any supporting evidences. It is an afterthought story made by the assessee to avoid payment of taxes. Accordingly, he disallowed cost of improvement of Rs.4,18,500/- and computed long term capital gain at Rs.4,17,235/-. The Ld. CIT(A) confirmed the disallowance made by the AO and against the said findings, the assessee is in appeal before the Tribunal.

4. The Id AR submitted that from the facts stated above, it can be noted that the only dispute in the present case is the allowability of expenditure of

Rs.4,18,500/- incurred on construction of basement on the said plot. The fact that at the time of sale, there was construction of 900 sq. ft. is evident from the sale deed and the site plan attached with the sale deed. At the time of purchase of this plot, there was no construction as is evident from the purchase agreement. Thus, the fact of construction at the time of sale is evident against which no contrary material is brought on record by the lower authorities. The issue therefore remains is what is the cost of construction. In support of the same, assessee has filed an agreement dt. 30.04.2009 with contractor Mangalram Kumawat along with his affidavit dt. 23.10.2017 where it is mentioned that assessee has given the contract to Sh. Mangalram Kumawat for construction on said plot @ Rs.465/- per sq. ft. Thus, cost incurred at Rs.4,18,500/- (900 sq. ft. \* Rs.465 per sq. ft.) is reasonable. The lower authorities have not accepted these documents by holding that no supporting bills/ vouchers in support of the same were produced by assessee. However, the fact of construction is not denied. Further, when assessee has filed the agreement and also the affidavit of Sh. Mangalram Kumawat, the same cannot be brushed aside without bringing any contrary material on record. Hon'ble Supreme Court in case of Mehta Parikh & Co. Vs. CIT 30 ITR 181 has held that the rejection of affidavit filed by assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so. In the present case neither Sh. Mangalram Kumawat was required to be produced nor the fact of construction was denied by the AO. Therefore, simply presuming that the document filed by the assessee is an afterthought story is on surmises & conjectures. In view of above, the Id AO be directed to allow the claim of cost of improvement at Rs.4,18,500/- and consequently delete the addition of Rs.4,17,235/- made by him in computing the long term capital gain.

5. The Id DR is heard who has vehemently argued the matter and submitted that the documents submitted by the assessee in support of cost of improvement has rightly been rejected by the Id. AO and the Id CIT(A). It was submitted that the contract note signed by the contractor is not a legal document, there is no proof that the construction has been actually carried out and at which part of the plot since only a part of the plot has been sold, there is no proof of payment to the contractor and there is no valuation report which has been submitted in support of cost of construction/improvement.

6. We have heard the rival submissions and perused the material available on record. The assessee owns a plot of land measuring 200 sq yards and a part of the said plot measuring 133.33 sq yards, has been sold during the year. On perusal of the sale deed so executed by the assessee, the description of the property sold is shown as residential plot no. 10 Plot No.10, Bajrang Nagar, Village- Cha Getor, Tehsil-Sanganer, District Jaipur and even the site plan attached with the sale deed depicts the plot of land and doesn't show any constructed area thereon. At the same time, there is averment towards the end of the said sale deed that in the plot so sold, there is constructed area of 900 sq feet. We therefore find inconsistency in the sale deed so executed so far as the exact description of the property is concerned. Secondly, where constructed area of 900 sq feet constituted 75% of plot of land measuring 133.33 sq yards equivalent to 1200 sq feet so sold, it is unclear why the description of the property has been shown in the sale deed as plot of land only and not as a plot of land with construction thereon. Further, there is nothing on record in terms of buyer's confirmation/affidavit or photographs of the property at the time of sale which can corroborate that what has been purchased/sold is not just a plot of land but a plot of land along with construction thereon. Therefore, the

claim of the assessee that out of 1200 sq feet of plot of land, there is construction of 900 sq feet and what has therefore been sold is a plot of land along with construction thereon cannot be accepted. The agreement with the contractor dated 30.04.2009 and subsequent affidavit of the contractor dated 23.10.2017 therefore doesn't inspire any confidence and cannot be accepted. Unless the assessee is able to demonstrate with verifiable evidence that there was actual construction on the property so sold, these agreement and affidavit cannot come to the aid of the assessee. The agreement is only an understanding between the two parties to carry out certain work and therefore, merely reflect an intention and understanding between the two parties and cannot therefore be relied to support the actual construction on the part of the plot of land so sold by the assessee. The subsequent affidavit talks about period starting 4.5.2009 and ending on 31.12.2009 during which the work was carried on and we find that the sale deed has thereafter been executed in less than a month on 18.01.2010. Firstly, we find it unusual that construction of 900 sq feet as so claimed by the assessee has taken around eight months time to construct and thereafter, as soon as construction was completed, the assessee has sold the property in less than a month. If the intention of both the parties was to sell and purchase a constructed property, in such a scenario, the description of the property so stated in the sale deed should have been a constructed property instead of a plot of land. Further, what stops the assessee in submitting the affidavit of buyer and the photographs of the property in support of its claim rather than merely relying on a third party averments. Therefore, the third party averments can come to the aid of the assessee once it is proved that there was actual construction and then, in support of cost of construction, such averments may be examined along with proof of actual payment which again is absent in the instant case. In light of aforesaid discussions, we are of the considered view that the assessee has failed to discharge the necessary onus

placed on him in support of his claim of construction on the property at the time of sale and cost of construction as so claimed has therefore rightly been rejected by the lower authorities and the matter is decided against the assessee and in favour of the Revenue.

In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 03/07/2020.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/07/2020

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Ashok Kumar Dusad, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(2), Jaipur
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. 383/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar