

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

- (1) INCOME TAX APPEAL No. 68 of 2004
C I T, JODHPUR
V/S
BHANWARLAL MURWATIYA
- (2) INCOME TAX APPEAL No. 69 of 2004
C I T, JODHPUR
V/S
BHANWARLAL MURWATIYA
- (3) INCOME TAX APPEAL No. 70 of 2004
C I T, JODHPUR
V/S
SMT.CHOTI DEVI MURAWATIYA
- (4) INCOME TAX APPEAL No.4 of 2005
C I T, JODHPUR
V/S
SMT.CHOTI DEVI MURWATIYA
- (5) INCOME TAX APPEAL No. 5 of 2005
C I T, JODHPUR
V/S
SMT.CHOTI DEVI MURWATIYA
- (6) INCOME TAX APPEAL No. 7 of 2005
C I T, JODHPUR
V/S
PAPPU RAM
- (7) INCOME TAX APPEAL No. 8 of 2005
C I T, JODHPUR
V/S
BHANWARLAL MURWATIYA
- (8) INCOME TAX APPEAL No. 9 of 2005
C I T, JODHPUR
V/S
SMT.KAMLA DEVI
- (9) INCOME TAX APPEAL No. 6 of 2005
C I T, JODHPUR
V/S
OMA RAM MURAWATIYA

Mr. K.K.Bissa, for the appellant / petitioner.
Mr. Anjay Kothari, for the respondents.

Date of Order : 11.2.2008

HON'BLE SHRI N P GUPTA, J.

HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

All these nine appeals, arise out of the same judgment of the learned Tribunal dated 13.1.2004, passed with reference to different assessees, and for different assessment years. However, they have all been admitted, by framing common questions of law as under:

"1. Whether on the facts and in the circumstances of the case, the learned ITAT was legally justified in dismissing the appeal of the department and upholding the order of the learned CIT(A) deleting the additions made by the A.O. on account of unexplained investment in purchase of land by the assessee?

2. Whether the learned ITAT has erred in law in reversing the finding recorded by the learned A.O. that in the transaction of land in question, the sale consideration received was a sum of Rs.61,00,000/-, as against Rs.9,00,000/- on the basis of admission of the seller corroborated by independent witnesses and material on record?

3. Whether the findings recorded by the learned Tribunal are contrary to record and perverse?"

Bereft of unnecessary details, the precise facts are that the assessing officer made the assessment, and while so making assessment, found that certain land was sold to Bhanwarlal by Shri Suresh Soni, by registered sale deed, which sale deed was registered for a consideration of Rs.9 lacs. However, the department on its own investigation, found that the sale was effected for a price of Rs.61 lacs and, therefore, relying on the material, collected during investigation, made additions of different amounts in the assessment of different assessees, while some assessments were made as protective assessments also. The assessees filed appeals before the learned Commissioner, who partly allowed the appeals, and deleted the additions made. Against that, the Revenue filed appeals before the learned Tribunal, and the learned Tribunal dismissed all the appeals.

A look at the judgment of the learned Tribunal shows, that in para 13, it has been observed as under:

"13. These additions were made, admittedly, on the sole statement of Shri Suresh Kumar Soni, the vendor. The said Shri Suresh Kumar Soni retracted from the statement and almost tried to prove that these statements were extracted from him under duress and pressure. We also agree with the finding of the ld. CIT (A) in this regard because of the following reasons:

a) A retracted statement of any person cannot be made the sole basis for addition because an

admission is an extremely important piece of evidence. But it cannot be stated that it is conclusive. It is open to the person who made the admission to show that it is incorrect. Needless to say that this is the law laid by the Highest Court of this country in the case of Fullangods Rubber Produce Co. Ltd. Vs. State of Kerala & Ors. reported in 91 ITR 18.

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Then, even giving apart other reasons, reason (g) has again been given as under:

g) There is no evidence on record which can prove that any amount was paid to this appellant except the retracted statement of Shri Suresh Kumar Soni.

Thus, the entire case was sought to be hanged by the Revenue on the peg of statement of Shri Suresh Kumar Soni, said to have been recorded from time to time, who had given varying statements, at different times. Learned Assessing Officer also relied upon certain statements, said to have been recorded by the ADIT, of Amar Chand, Bhanwarlal and Radhey Shyam, but then, no reliance was placed on those statements by the learned Tribunal.

Assailing the impugned judgment, it is contended, with all vehemence, that it is more than clearly established on record, that a consideration of Rs.61 lacs did pass, so much so that Suresh Kumar Soni has

been assessed, his balance sheets have been considered, and it is writ large, that during the relevant time, his resources had disproportionately increased, which obviously was on account of the above consideration. Likewise, the aforesaid three witnesses viz; Amar Chand, Bhanwarlal and Radhey Shyam, have also clearly given out, that the land was sold for Rs.61 lacs and, thus, there was no occasion for deleting the additions.

On the other hand, learned counsel for the assessee submitted that none of the witnesses were examined by the assessing officer, and even Suresh Kumar Soni had given varying statements at different occasions, apart from the fact that he was also not examined by the assessing officer, nor did the assessee have any opportunity to cross examine on the version of Suresh Kumar Soni, so as to test his veracity or reliability, and the statements of the said witnesses, recorded by the other authority, could not be looked into, as they are not even relevant, in view of the provisions of Section 32 of the Evidence Act. It was also contended that even an independent enquiry was got conducted, wherein the learned Dy.Commissioner had found, that the valuation of the land was not above the one, as shown in the sale deed, and thus, no interference is required to be made.

We have considered the submissions, and after going through the impugned orders, are of the view that all said and done, the question as to what was the price of the land at the relevant time, is a pure question of fact. Apart from the fact, that even if, it were to be assumed, that the price of the land was different than the one, recited in the sale deed, unless it is established on record by the department, that as a matter of fact, the consideration, as alleged by the department, did pass to the seller from the purchaser, it cannot be said, that the department had any right to make any additions. It is a different story as to, to what extent and how, the statement of Suresh Kumar Soni, as given before different authorities, at different times, can be used against the assessee. More so, when none of the witnesses were examined before the Assessing Officer, and the assessee did not have any opportunity to cross examine them.

In any case, the question as to whether the consideration of Rs.61 lacs, or any other higher consideration than the one, mentioned in the sale deed, did pass from the assessee to the seller or not, does nonetheless remain a question of fact, and it is not shown by the department, that any relevant

material has been ignored, or misread by the learned Commissioner, or the learned Tribunal.

In that view of the matter, in our view, the questions, as framed, cannot be even said to be arising, and in any case, are required to be answered against the Revenue, and in favour of the assessee.

Accordingly, the questions are answered as above, and the appeals are dismissed.

(DEO NARAYAN THANVI), J.

(N P GUPTA), J.

RANKAWAT JK, PS