

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 478/Jodh/2018
(ASSESSMENT YEAR-2013-14)**

Smt. Manjula Devi Jain 1-35, Housing Board, Pali.	Vs	Income Tax Officer, Ward-2, Pali.
(Appellant)		(Respondent)
PAN: AAMPJ4848D		

SA No. 13/Jodh/2019
(Arising out of ITA No. 478/Jodh/2018)
(ASSESSMENT YEAR-2013-14)

Smt. Manjula Devi Jain 1-35, Housing Board, Pali.	Vs	Income Tax Officer, Ward-2, Pali.
(Appellant)		(Respondent)
PAN: AAMPJ4848D		

Revenue By	Shri Amit Kothari (CA) & Shri Abhinav Kothari (CA)
Assessee By	Shri Abhimanyu Singh Yadav (JCIT-DR)
Date of hearing	18/03/2020
Date of Pronouncement	20/03/2020

ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of Ld. CIT(A)-1, Jodhpur dated 24/09/2018 for the assessment year 2013-14, wherein following grounds have been taken:

- “1. a. The Id. CIT(A) has erred in sustaining the part addition out of protective addition made by the Id. AO on account of sale of agriculture land at village Kharda, Pali.
- b. The land in question was not falling within capital assets and having accepted for part of the land, addition sustained for other part was not justified.
- c. The Id. CIT(A) has erred in sustaining the addition on account of sale of land for Samandar Khan on the ground that the details of his assessment was not known. The addition so sustained is bad in law and bad on facts.
2. The Id. CIT(A) has erred in sustaining addition of Rs. 2,15,642/- on account of interest expenditure. The addition so sustained is bad in law and bad on facts.
3. The Id. CIT(A) has erred in sustaining addition of Rs. 2,88,000/- U/s 68. The addition so sustained is bad in law and bad on facts.
4. The charging of interest u/s 234B and 234C is bad in law and on facts.
5. The appellant pray for suitable costs.
6. The appellant craves liberty to add, amend, alter and modify any of the ground of appeal on or before its hearing before your honour.”

2. In ground 1 of the appeal, the assessee had challenged the protective addition partly sustained by the Id. CIT(A) in relation to the sale of agriculture land.

3. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the assessee had sold two properties K.No. 999/321

Kharda Rohat, Agriculture land belonging to Samandar Khan and K.No. 998/321 Kharda Rohat, Agriculture land belonging to Smt. Prassan Devi. This addition was made on protective basis in the hands of the assessee. It was observed that the payment of sale of the agriculture land was received by the assessee and there are contradictory statements of the power of attorney holders and the assessee. The total consideration was received at Rs. 2,07,13,000/- towards sale of the aforesaid agriculture land and the payment to the above two parties was made at Rs. 23,51,000/- and therefore, for the balance amount of Rs. 1,83,62,000/- being sale of agriculture land was made on protective basis in the hands of the assessee.

3. We also observe that the above addition was made on protective basis in the hands the assessee and substantive was considered in the hands of Samander Khan and Parasann D Devi. However, the assessment order in the case of Prasann Devi was passed for AY 2013-14 by ITO Ward-4, Pali on 28.12.2017 in which the sale of such agriculture land was considered in her hands. It was further observed that the said land not falling within the definition of capital assets as was outside the prescribed limits and therefore no capital gains was chargeable on such sale of land. The addition in relation to sale of land relating to Prasann Devi was deleted.

However, in relation to agriculture land belonging to Samandar Khan since the details of his assessment was not available the addition in relation to his land was sustained. The assessee is therefore, aggrieved by such addition so sustained.

4. We also found that both the agriculture land are not capital asset and situated in the same location, and in view of the assessment order passed in the case of Prassan Devi, there was no justification for sustaining the addition relation to the land belonging to Samandar Khan also. Samandar Khan had given power of attorney to assessee for sale of his agriculture land like Prassan Devi and during the cross examination he had duly confirmed these facts. He had confirmed that he had given power of attorney for sale of his 15 bigha agriculture land to the assessee and also stated that the land was ancestral agriculture land and belonged to him and his brothers. He also accepted part payments being received. The assessee also relied upon certain decisions which states that on the basis of power of attorney he cannot become the owner of the asset. It was therefore stated that no addition can be sustained.

5. After careful consideration of the matter it is observed that the facts in relation to the property belonging to Samandar Khan and Prasann Devi are almost the same and the property are situated in

the same location. Simply because the assessment of Prasann Devi had been completed and the assessment of Samandar Khan is pending the same cannot be a basis to sustain the addition in the hands of the assessee. The execution of deed of power of attorney is not disputed and the same had been confirmed by the said person. The assessee as an agent derives a right to use his name and all acts, deeds and things done, by him and subject to the limitations contained in the said deed, the same shall be read as if done by the said person giving such authorities. Samandar Khan as land owner has not transferred the ownership of the land in favour of the assessee. The assessee, thus being neither owner nor a deemed owner of the said capital asset, the said capital asset, cannot be taken as property of the assessee. The sale consideration of the aforesaid and, therefore, could not be a subject matter of addition in the hands of the assessee. Further the department had already accepted the fact in relation to sale of agriculture land of Prasann Devi, and under the similar facts the addition sustained in relation to Samandar Khan does not seem to be justified and therefore, the addition so made is hereby deleted.

6. The next ground relates to addition on account of interest amounting to Rs. 2,15,642/-. We found from the record that the advance had been given for non earning purposes and therefore the

claim of interest cannot be allowed. The Id. CIT(A) also observed that the conditions of section 36(1)(iii) of the Act are not satisfied and the deduction of interest cannot be allowed when these are diverted into non business objects. The contention of the assessee had been that interest payment is being not disputed and there is no nexus of any diversion of interest bearing funds to the interest free advances and as such the interest disallowed was not justified.

7. After due consideration it is observed that it is observed that the issue raised by the AO and the Id. CIT(A) had not been controverted and there is no justification for non business advances being given. The addition so sustained by the CIT(A) is on the basis of valid reason and the addition is hereby upheld.

8. The next ground of the appeal relates to addition for cash credits. It is observed that AO made addition for Rs. 2,88,000/- on the ground that the assessee had submitted confirmation of the creditors but the same was not found to be satisfactory and the source of deposits in the bank account of the creditors could not be properly explained. The CIT(A) also sustained the said addition as creditworthiness of the creditors was not proved.

9. The assessee submitted that in relation to the Cash credits in the name of Ashish Lalwani, Bhanwarlal Lal Chand HUF, Chandra

Prakash Bhanwarlal HUF and Shri Manan, confirmation, return of income, computation were filed and the same were duly confirmed. The onus had been duly discharged and therefore the addition was not justified.

10. We have considered the facts and circumstances and the addition so made deserves to be deleted. The assessee had filed confirmations and these creditors are income tax assessee and credit is question had been duly confirmed by them. The onus had been duly discharged and there is no basis to make the addition simply on the basis of suspicion. The addition so made is therefore deleted.

11. In the result, appeal of the assessee is allowed.

12. Now we take S.A. No. 13/Jodh/2019

By way of this Stay application, the assessee seeks stay of demand raised by the department till disposal of the appeal.

13. As we have decided the appeal filed by the assessee from which this stay application arose. Therefore, this Stay application become infructuous.

14. In the result, this stay application is dismissed as infructuous.

15. In the result appeal of the assessee is allowed in part and S.A. of the assessee is dismissed as infructuous.

Order pronounced in the open court on 20/03/2020.

Sd/-
(R.C.SHARMA)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Dated :. 20/03/2020

*Ranjan

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File (ITA 478/Jodh/2018 & SA No. 13/Jodh/2019)

By order

Assistant Registrar
ITAT Jodhpur