

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCH '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. 613/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10

Shri Arpit Khairari 116/1, Hari Marg, Civil Lines Jaipur	बनाम Vs.	The ITO Ward- 2(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: BAVPK 5368 P	
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri R.S. Poonia, Advocate
राजस्व की ओर से/ Revenue by : Ms.Chanchal Meena, JCIT-DR

सुनवाई की तारीख/ Date of Hearing : 17/02/2020
घोषणा की तारीख/ Date of Pronouncement : 13 /03/2020

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of ld.
CIT(A)-1, Jaipur dated 01-02-2018 for the Assessment Year 2009-10.

The assessee has raised the following grounds.

“1. Under the facts and circumstances of the case the ld. CIT(A) erred in law and fact in confirming issuance of notice u/147/148 by the AO without having jurisdiction, kindly quash the entire proceedings which initiated without jurisdiction.

2. Under the facts and circumstances of the case the Id. CIT(A) erred in law and fact in confirming issuance of notice u/s 148/147 by the AO without reasons to believe, without having any material in his possession, and using section 50C which is not applicable in case of sale by agreement arbitrarily, so kindly quash the entire proceedings on the basis of said notice.

3. Under the facts and circumstances of the case the Id. CIT(A) erred in law and fact in confirming the order disposing off objection raised by the assessee erroneously. So kindly quash the entire proceedings and consequential assessment order.

4. Under the facts and circumstances of the case the Id. CIT(A) erred in law and fact in confirming the addition of Rs. 25,69,606/- (Rs. 26,27,403 minus relief granted Rs. 57,797) as made by the AO on account of Long Term Capital Gain ("LTCG" for short) as against Rs. 1,93,215/- declared by the assessee by rejecting the deduction u/s 54F of the Act of Rs. 23,76,391/- as claimed by the assessee. The rejection so made and confirmed by the Id. CIT(A) being totally contrary to the provisions of law and facts of the case, the appellant be held entitled to the deduction u/s 54F as claimed."

2.1 The Ground No. 1 and 2 of the assessee are regarding the validity of initiation of proceedings u/s 147/148 of the Act.

2.2 The assessee is an individual and filed his return of income on 24-03-2010. Thereafter the AO received information about the transfer of immovable properties by the assessee during the financial year relevant to Assessment Year under consideration. The AO conducted an enquiry by

issuing notice u/s 133(6) of the Act calling for certain information from the assessee. Thereafter the AO issued notice u/s 148 of the Act on 30-03-2016 after recording the reasons that income on account of capital gain arising from transfer of the immovable properties has escaped assessment. In the reassessment proceedings, the AO computed the Long Term Capital Gain at Rs. 26,27,403/- after disallowing the claim of deduction u/s 54F of the Act. The assessee challenged the action of the AO before the Id. CIT(A) and also questioned the validity of reopening of the assessment. The Id. CIT(A) has found no merits in the objection of the assessee against reopening of the assessment.

2.3 Before us, the Id.AR of the assessee has submitted that as per the reasons recorded by the AO, he proposed to assess the capital gain on account of transfer of immovable properties by considering the stamp duty valuation and found that considering the return of income filed by the assessee wherein the assessee after claiming deduction u/s 54F of the Act has offered capital gains to tax at Rs. 1,93,215/-. The Id.AR of the assessee referred to notice issued by the AO u/s 133(6) of the Act prior to reasons recorded by the AO and submitted that the assessee has duly replied the said notice by filing the letter dated 09-03-2016 wherein the

assessee explained that the assessee has duly disclosed this transaction in the return of income and also claimed deduction u/s 54F of the Act and remaining amount of capital gain has been offered to tax. Thus the Id.AR of the assessee submitted that when the assessee has disclosed the facts in the return of income after claiming deduction u/s 54F of the Act then reopening of the assessment without considering the facts disclosed in the return of income is without application of mind. He has further contended that even the approval granted by the Pr. CIT u/s 151 of the Act is without application of mind but mechanical one. In support of his contentions, the Id.AR of the assessee relied on following decisions.

1. CIT vs Kelvinator of India Ltd. (2010) 187 Taxman 312 (SC)
2. Ravindra Kumar, HUF vs CIT (2019) 110 Taxmann.com 58 (Patna)
3. CIT vs S. Goyanka Lime & Chemical Ltd. (2015) 64 Taxmann.com 313(SC)
4. CIT vs S. Goyanka Lime & Chemical Ltd. (2015) 56 Taxmann.com 390 (M.P.)

The Id.AR of the assessee also relied on the decision of this Coordinate Bench dated 10-10-2019 in the case of Shri Ram Mohan Rawat vs ITO in ITA No. 1014/JP/2018 for the Assessment Year 2007-08 and submitted that the Tribunal has held that when the reasons recorded by the are based on incorrect and incomplete facts then reopening is not valid and

liable to be quashed. Taking the support of the decision, the Id.AR of the assessee pleaded that factually the reasons recorded by the AO are incorrect and, therefore, the reopening is not valid.

2.4 On the other hand, the Id. DR has submitted that the assessee has transferred these two plots of lands vide registered agreement and also shown sale consideration in cash except Rs. 1.00 lac. Therefore, when the AO received the information from the DIT (I&CI) that the assessee had sold the immovable properties situated at Plot No. N-70(83), Hanuman Vatika-II, Heerapura, Ajmer Road, Jaipur and Plot No.N-69(76), Hanuman Vatika-II, Heerapura, Ajmer Road, Jaipur on 30-05-2008 to one Shri Jai Prakash S/o Shri Norang Lal and Sub-Registrar has adopted the value of sale consideration of the properties at Rs. 26,57,797/-. The AO after taking prior approval conducted an enquiry by issuing notice u/s 133(6) of the Act. The AO has clearly stated in the reasons that the assessee filed reply but no evidence was filed for claiming deduction u/s 54F of the Act of Rs.24,04,500/-. Therefore, the AO was having prima facie reasons to believe that income assessable on account of capital gain has escaped assessment. The Id. DR further contended that the AO has taken into consideration the return of income filed by the assessee as well

as reply filed by the assessee but neither in the reply nor in the return of income the assessee has either furnished or given reference to any documentary evidences of investment made in the new residential house. Thus the ld. DR relied on the orders of the authorities below.

2.5 We have considered the rival submissions as well as the relevant materials available on record. During the year under consideration, the assessee has transferred two plots of lands bearing Plot No. N-70(83), Hanuman Vatika-II, Heerapura, Ajmer Road, Jaipur and Plot No.N-69(76), Hanuman Vatika-II, Heerapura, Ajmer Road, Jaipur vide two agreements to sell dated 17-05-2002. It appears that the Stamp Duty Authority took up this matter for the purpose of levying stamp duty as these agreements to sell were not registered with the Sub-Registrar and no stamp duty was paid. Therefore, this information was forwarded by the Sub-Registrar to Income Tax Authority. In the return of income, the assessee has shown the sale consideration of immovable properties at Rs. 26.00 lacs and after claiming indexed cost as well as deduction u/s 54F the assessee has shown income from capital gain at Rs. 1,93,215/-. The AO has recorded the reasons for reopening of the assessment as under:-

“Information has been received from DIT(I&CI), Rajasthan, Jaipur that the assessee has sold the immovable property situated at Plot No. N-70(83), Hanuman Watika-II, Heerapura, Ajmer Road and Plot No. N-

69(76), Hanuman Watika-II, Heerapura, Ajmer Road, Jaipur for Rs. Nil/- on 03-05-2008 to Shri Jai Prakash S/o Norang Lal, D-92, Jaipur. The Sub-Registrar, Jaipur has adopted the sale consideration of property sold at Rs. 26,57,797/- stamp duty purposes. As per I.T. Act, 1961, the higher of two values is to be adopted for purposes of calculation of capital gain.

After taking prior approval from Pr. CIT –I, Jaipur notice u/s 133(6) was sent to the assessee for ascertaining the taxability of capital gain income on above transaction. The letter sent to the assessee and in response to that the assessee has filed reply in this office. From the record of this office, it is seen that the assessee has filed his return of income on 24-03-2010. The assessee has taken indexed cost and claimed deduction u/s 54F of Rs. 24,04,500/- for which no evidence are furnished. Therefore, the taxability of above transactions could not be ascertained.

In view of above, I have reason to believe that the income to the extent of Rs. 26,57,797/- has escaped assessment within the meaning of Section 147 of the I.T. Act, 1961. Therefore, it is a fit case for issuance of notice u/s 148 of I.T. Act, 1961.

In view of the above reasons, it is requested that necessary approval as laid down under sub section 2(2) of the Section 151 of the Act, 1961 may kindly be accorded.”

It is manifest from the reasons recorded by the AO that the AO had received information from DIT (I&CI) regarding transfer of the immovable properties in question by the assessee. Further as per the said information, the sale consideration was given as Nil whereas the Sub-Registrar has adopted the value for stamp duty purposes at Rs. 26,57,797/-. These facts show that no stamp duty was paid by the parties at the time of this transfer because the agreement to sale was not registered with the Sub-Registrar. Subsequently, the Sub-Registrar valued these properties at Rs. 26,57,797/- for the purpose of stamp duty. These

facts are not in dispute. The AO then issued notice u/s 133(6) of the Act to the assessee for ascertaining the facts about the taxability of capital gain. In reply, the assessee has claimed that he has filed the return of income and shown this transaction but claimed deduction u/s 54F as well as Indexed Cost. The reply of the assessee is very brief and not with the details of the deduction u/s 54F. Further the assessee has not furnished any evidence during the said enquiry conducted by the AO prior to recording the reasons. Therefore, the assessee, despite the enquiry conducted by the AO, has not disclosed the facts regarding the investment made by him for purchase or construction of the new residential house. This fact indicates that the assessee has made this claim without any supporting evidence and even during reassessment proceedings the assessee could not produce the documentary evidence to the satisfaction of the AO and the claim of the assessee u/s 54F of the Act was rejected. The assessee also claimed indexed cost of acquisition of these plots of lands by taking the date of acquisition as F.Y. 1997-98. The assessee has claimed during the reassessment proceedings that these two plots of lands were allotted to the assessee by Jai Amber Cooperative Housing Society Ltd. on 8-06-1997. The assessee has produced the allotment/ transfer

certificates of the society at pages 18 to 21 of assessee's paper book. On bare reading of these certificates, it is noted that in the year 1997, the assessee was less than 13 years old. The date of birth of the assessee is 27-10-1984 and therefore, as on the date of allotment, the assessee was less than 13 years old and he cannot be the member of the Cooperative Housing society except in extraordinary circumstances of inheritance or succession. Therefore, the genuineness of the claim of the assessee of indexed cost is highly doubtful. The documents produced by the assessee appear to be non-genuine. The Id. CIT(A) has rejected the objection raised by the assessee against reopening of the assessment in para 3.1.2 as under:-

“3.1.2. Determination

(i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted that in the reasons recorded by the AO for initiating proceedings u/s 147 of the Act, it has been stated that the appellant has claimed deduction u/s 54F of the Act at Rs. 23,76,391/- in its return of income filed on 24.03.2010, for which no evidence was furnished even in its reply to notice issued by the AO u/s 133(6) of the Act and therefore, the AO had reason to believe that income has escaped assessment. I do not find any merit in the submissions of the appellant as reproduced above. It is to be noted that at the time of initiation of proceedings u/s 147 of the Act, the AO is not required to prove that the income had escaped assessment and it is sufficient that the Assessing Officer had cause or justification to know or suppose that income had escaped assessment.

(ii) It may be mentioned that in the case of Shumana Sen Vs CIT, reported in 2012-TIOL-895-HC-DEL-IT, it was held by the Hon'ble High Court of Delhi that:

"it is well-settled that the reasons recorded u/s 148(2) should be based on credible material which should have a live link or nexus with the belief that there was escapement of income. At the stage of recording the reasons and issuing notice u/s 148, it is only a prima facie belief or tentative opinion that needs to be formed by the AO. He is not at that stage required to make an assessment or record firm or final conclusions. The belief should however be held in good faith and objectively; it cannot be a mere pretence. The material on the basis of which the AO forms the belief should not be mere gossip or rumour. It should not be a bare suspicion. The relevancy of the reasons is justifiable; their adequacy or sufficiency is not. "(emphasis supplied)

(iii) It may be mentioned that the proceedings u/s 147 of the Act in the instant case under consideration was initiated by the AO on the basis of report received from the office of DIT (MCI), Jaipur and in the case of Ankit Agrochem (P.) Ltd. Vs JCIT [2018] 89 taxmann.com 45 (Rajasthan), it was held by the Hon'ble jurisdictional High Court of Rajasthan that the proceedings initiated u/s 147 of the Act on the basis of report received from DIT (Inv.) were valid. The relevant extracts are being reproduced as under:

“As per Explanation 2(b) to section 147, where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed the excessive loss, deduction, allowance or relief in the return, the same is deemed to be case where income chargeable to tax has escaped assessment. [Para 13]

In the instant case, a perusal of the reasons recorded by the Assessing Officer for issuing notice under section 148 reveals that during the assessment proceedings it was noticed that the assessee had received share application money from several entities which was utilised during the year and subsequently returned in financial year 201314. That apart, on further examination of certain information received from

the Directorate of Investigation, which had carried the investigation in the case of the entities, details whereof has been set out in the reasons recorded, it was ascertained that those entities which were companies with no real business and are only engaged in business of providing accommodation entries of bogus nature to beneficiary concerns which was further confirmed by the directors/dummy directors/key persons of the said entities in their respective statements. Thus, on the basis of the material on record, Assessing Officer opined that the appellant company has received and utilised the share application money received from bogus sources lacking genuineness, creditworthiness, genuine identity, which fall within the purview of section 68. [Para 14]

It is true that the reasons recorded or the material available on record must have nexus to the subjective opinion formed by the Assessing Officer regarding the escapement of the income but then, while recording the reasons for belief formed, the Assessing Officer is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the Assessing Officer had cause or justification to know or suppose that income had escaped assessment. It is also well settled the sufficiency and adequacy of the reasons which have led to formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined by the Court. [Para 16]"

(iv) It may be mentioned that the Courts cannot look into the sufficiency of the reasons recorded by the AO for reopening the assessment u/s 147 of the Act. Reliance is placed on the decision of Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd. Vs ITO [1999] 236 ITR 34 (SC), wherein it was held by their lordship that:

“In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of

facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed."

(v) Further, in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [2007] 291 ITR 500 (SC), it was held by the Hon'ble Apex Court that if the AO, for whatever reason, has reason to believe that income has escaped assessment, it confers jurisdiction to re-open the assessment. It is a fact that no assessment was made earlier u/s 143(3)/144 of the Act in the case of the appellant, therefore, the ratio in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (Supra) applies squarely to the facts of the instant case under consideration.

(vi) Therefore, in view of the above discussion, it is held that the AO was justified in reopening the case of the appellant for the year under consideration u/s 147 of the Act and was having reason to believe that income had escaped assessment. Hence, this ground of appeal is hereby rejected."

There is no quarrel on the point that at the time of reopening of the assessment, it is required for formation of belief based on the reasons recorded by the AO. Once there is a direct nexus between the reasons recorded by the AO and formation of belief then quantum of income finally liable to be assessed is only the secondary aspect and not forming the primary condition to constitute a tangible material for formation of

belief. Once the AO has brought on record the facts and reasons to form the belief that income is assessable to tax on account of capital gain then the quantum of the income finally computed is not a material aspect at the stage of initiation of proceedings u/s 147/148 of the Act. Therefore, the objection raised by the assessee regarding the correct amount of capital gain as recorded in the reasons cannot be a ground for quashing the proceedings u/s 147/148 of the Act when the AO has shown the relevance between the reasons recorded and the formation of belief on the subject matter and the source of income which has escaped assessment. Therefore, the decisions relied by the Id.AR of the assessee are not applicable in the facts of the present case. When the reasons are itself self-explanatory and speaking the link between the material and the formation of belief then the approving authority i.e. Pr. CIT is not required further to supplement the reasons to believe as recorded by the AO. Hence, in view of the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the Id. CIT(A). Thus Ground No. 1 and 2 of the assessee are dismissed.

3.1 During the course of hearing, the Id.AR of the assessee has not pressed the Ground No. 3. Therefore, the same is dismissed being not pressed.

4.1 The Ground No. 4 of the assessee is regarding disallowance of deduction u/s 54F of the Act.

4.2 The Id.AR of the assessee submitted that the AO has denied the claim of deduction u/s 54F of the Act on the ground that the property which was claimed to be reconstructed/ renovated was not owned by the assessee whereas the assessee has filed the MOU showing that property is a HUF property and it is a residential house of assessee's family which was reconstructed by utilizing the sale consideration in question. Thus the Id.AR of the assessee submitted that when the assessee has invested the sale consideration in the construction of residential house which is ancestral property then such investment is eligible for deduction u/s 54F of the Act. The Id.AR of the assessee further submitted that AO has also rejected the claim of construction made on the property and the receipts produced by the assessee were held to be bogus. The Id.AR of the assessee contended that the assessee was residing in the residential house situated at 116/1, Hari Marg, Civil Lines, Jaipur, since his birth. Such

residential house is an ancestral property of the father of the assessee and his father inherited the said property through Will. The said Will was also got probated through Court and therefore, there is no dispute regarding the ownership of the property inherited by the father of the assessee through Will. The Id.AR of the assessee further submitted that the assessee produced the documentary evidences of the reconstruction of the old house which includes the estimates of the Architect, giving the details of cost of construction. The father of the assessee decided to hand over the construction work to one Shri Raghav Choudhary, Architect. However, the material was to be supplied by the owner. The Id.AR of the assessee referred to various documentary evidences which include MOU with the Architect, affidavit of the Neighbour, photograph of the property, notice by the local authority, purchase bills of material, contract for elevator, certificate by the valuer. Thus the Id.AR of the assessee submitted that it is a matter of close family relation like father and son and therefore, no formal agreement was executed with the Architect by the assessee as it was in the name of the father of the assessee. Thus the Id.AR of the assessee submitted that when the assessee has invested the money in the construction of house then the deduction u/s 54F is

allowable to the assessee. In support of his contentions, the Id.AR of the assessee relied on the following decisions:-

- (i) Shri Ganesh Chawla vs ACIT (ITA No452/JP/2017 dated 25-01-2018), ITAT Jaipur Bench
- (ii) Smt. Kalavathy Sundaram vs ITO (ITA No.3187/CHNY/2016 dated 07-09-2018), ITAT Chennai Bench

The Id.AR of the assessee also referred to the additional evidences which has been filed before this Tribunal during the appellate proceedings and submitted that the said evidences may be admitted under Rule 29 of ITAT Rules, 1963. These additional evidences are regarding the ownership of the assessee as well as expenditure incurred by the assessee for construction of the house.

4.3 On the other hand, the Id. DR has submitted that the AO has duly examined the Architect as well as father of the assessee and noted that residential house in question is not owned by the assessee but it is the property of assessee's father who has entered into a MOU with the Contractor / Architect for construction of the house. Therefore, the assessee has not produced any documentary evidences to prove that assessee has constructed the residential house in question. Thus the Id. DR has submitted that when the assessee has failed to establish the

investment of the sale consideration in construction of new house then the claim of deduction u/s 54F is not allowable. The ld. DR relied on the orders of the lower authorities.

4.4 We have considered the rival submissions as well as the relevant materials available on record. Though the assessee has claimed deduction u/s 54F of the Act of Rs. 23,76,391/- as the said amount was stated to be incurred in construction of residential house situated at 116/1, Hari Marg, Civil Lines, Jaipur however, the assessee himself has explained that the said house is owned by his father who inherited the same through Will and there is a probate order from the Court. Once the Court has issued the Probate Certificate of the Will then Will cannot be questioned till the said order is set aside or reversed. However, the ownership of the house through Will by the father of the assessee proves the fact that such residential house is exclusively owned by the father of the assessee and not a HUF property. The assessee has no right or share in the said house. The assessee claimed that he has invested the money in the construction of said house. However, the entire documents produced by the assessee shows that there was a MOU between the father of the assessee and Architect who took the contract of construction of the house. Once the

said house was got constructed under MOU between the father of the assessee and the Architect then in the absence of any other documentary evidence to show that said construction was financed by the assessee, the claim of the assessee cannot be accepted. The Id. CIT(A) has considered this issue in para 3.4.2 as under:-

3.4.2 Determination

(i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. During the year under consideration, the appellant has claimed a deduction of Rs. 23,76,391/- u/s 54F of the Act on account of construction in the new house property which was not allowed by the AO by observing that the appellant was neither the owner of the property nor could prove the construction of a residential house as claimed by it.

(ii) During the appellate proceedings, it was submitted by the appellant that his father Shri Murari Lal Khairari had inherited a residential house situated at 116/1, Hari Marg, Civil Lines, Jaipur from his father. The appellant and his father entered into a MOU on 20.10.2007 for construction of a residential house at 116/1, Hari Marg, Civil Lines, Jaipur after demolishing the existing house and as per the MOU, the ground and first floor were to be constructed by the father of the appellant and second and third floor were to be constructed by the appellant. It was submitted by the appellant that it has constructed second and third floor with his own funds and through the above referred MOU, these floors belong solely and exclusively to the appellant and in the absence of a registered deed, the assessee at the most could not become a registered legal owner but in any case, it was a beneficial owner of the second and third floor. Shri M.L. Khairari, father of the appellant, has obtained an estimate dated 12.10.2007 from the Architect, Shri Raghav Choudhary, who estimated the cost of construction of the house (consisting of ground, first, second and third floor) at Rs. 53,50,000/-. Shri Raghav has constructed the house including the second and third floor claimed to be made by the appellant from his own sources, for which it has claimed deduction u/s 54F of the Act.

(iii) It may be mentioned that during the assessment proceedings, the appellant has filed a receipt dated 31.08.2008 claimed to be issued by Shri Raghav Choudhary wherein, a sum of Rs. 1 lakh was stated to be received from Shri Arpit Khairari, the appellant. It also stated therein

that it has received previously a sum of Rs. 23,04,500/-and with the receipt of Rs. 1 lakh, it has received full and final amount on construction of second and third floor. However, in his statement recorded on oath on 21.11.2016, recorded by the AO, Shri Raghav Choudhary has denied to issue the above referred receipt claimed to be issued by him. It was also stated by Shri Raghav that he has constructed the house of Shri M.L. Khairari, father of the appellant and he has made agreement with Shri M.L. Khairari only and not with the appellant. It is noted that vide letter dated 25.11.2016, as reproduced in the assessment order, a show cause notice was issued to the appellant in this regard wherein a copy of the statement of Shri Raghav Choudhary was also enclosed, however, no compliance was made to the above show cause notice and consequently, the AO has disallowed deduction u/s 54F of the Act.

(iv) During the appellate proceedings, the appellant has filed affidavits of the neighbours Shri Yashwant Singh and Shri Kishor Singh and the photographs of the newly constructed house as additional evidence under Rule 46A of the Act by stating that since, the assessment was made in haste and therefore, it could not have produced these affidavits before the AO. These additional evidences were admitted under Rule 46A of the I.T. Rules in the interest of natural justice. However, it is noted that both the affidavits are dated 03.01.2018 and identically worded and it would be appropriate to reproduce hereunder the contents of affidavits of Shri Yashwant Singh as under:-

“1 यह कि मैं उपरोक्त पते पर पिछले 40 वर्ष से सपरिवार निवास कर रहा हूँ।

2 यह कि हमारे पड़ोस के मकान नम्बर 116/1, हरीमार्ग में श्री मुरारीलालजी खैराड़ी निवास करते हैं।

3 यह कि हमारी जानकारी के अनुसार इन्होंने वर्ष 2008-09 में अपना तीन मंजिल का नया मकान बनाया था।

4 यह कि प्राप्त जानकारी अनुसार उक्त मकान का निर्माण करने में भूतल व प्रथम मंजिल का खर्चा श्री मुरारीलालजी खैराड़ी ने व द्वितीय तथा तृतीय तल का खर्चा उनके पुत्र श्री अर्पित खैराड़ी ने स्वयं की आमदानी से किया था।”

(v) The above affidavit is nothing but a self serving document and thus, no cognizance could be given to it as it is based on hearsay only. I fail to understand how a neighbor could state in an affidavit that the second and third floor were constructed by the appellant from his own income and that

too after a period of almost 9 years. Further, the photographs submitted by the appellant do not show the dates on which these photographs were taken. Therefore, these additional evidences filed by the appellant are of no use to it. Shri Raghav Choudhary has filed the details of amount received for the period 02.10.2007 to 04.08.2010 wherein, the total amount was shown at Rs. 22,40,000/- only which could be taken as the payments made by Shri M.L. Khairari for whom the house was constructed by Shri Raghav Choudhary. The appellant has failed to bring on record any evidence which may establish that it has constructed the second and third floor at 1/116, Hari Marg, Jaipur. It may be mentioned that the onus was on the appellant to prove the deduction claimed u/s 54F of the Act which, it failed miserably. In fact, besides the above receipt of Rs. 1 lakh claimed to be issued by Shri Raghav Choudhary, no other receipt for making the payment on earlier occasions was furnished by the appellant. Therefore, in view of the totality of facts and circumstances of the case, it is held that the AO was justified in not allowing deduction u/s 54F of the Act and hence, the action of the AO is hereby upheld. ‘

Even in the additional evidences which were sought to be filed by the Id.AR of the assessee, there is nothing to show that the assessee has invested the money in the construction of the house. Further, when the assessee has no right in the house then even if it is financed by the assessee the ownership of the property would not change. Accordingly, the additional evidences produced by the are not going to support the claim but only support the claim of ownership of the father of the assessee. The affidavit which has been sought to be filed by the assessee, could have been filed before the lower authorities. After a gap of about 12 years, the affidavit filed by the assessee cannot be accepted, being after thought and self serving. Hence, in view of the facts and

circumstances of the case, we do not find any error or illegality in the impugned order of the Id. CIT(A). Thus Ground No. 4 of the assessee is dismissed.

5.0 In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 13 /03/2020.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 13/03/ 2020

*Mishra

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

1.अपीलार्थी / The Appellant- Shri Arpit Khairari, Jaipur

2.प्रत्यर्थी / The Respondent- ITO, Ward- 2(2), Jaipur

3.आयकर आयुक्त(अपील) / CIT(A),

4.आयकर आयुक्त / CIT,

5.विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6.गार्ड फाईल / Guard File (ITA No.613/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar