

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5717/DEL/2015
Assessment Year: 2008-09

Smt. Balwant Kaur Mangat,
B-32, Pratham Tal,
Kaushambi,
Ghaziabad

Vs. ITO, WARD-1(2)
Ghaziabad

(PAN: AGYPM8614Q)
(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Rajeev Ahuja, CA
Revenue by : Sh. T. Vasanthan, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 30.7.2015 of the Ld. CIT(A), Ghaziabad pertaining to assessment year 2008-09 on the following grounds:-

"The under mentioned Grounds of Appeal are without prejudice to each other-

1. That on the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeals), Ghaziabad [hereinafter referred to as CIT(A)] grossly erred in dismissing the appeal of the Appellant, which is bad in law and not called for.

2. That on the facts and circumstances of the case and in law, the order passed by the Learned Assessing Officer, (hereinafter referred to as Ld. AO) is bad in law and the liability determined under Section 147/143(3) of the Act is liable to be deleted. The order passed by the Ld. AO is perverse, without application of mind and without jurisdiction. (Ground No.2)

3. (a) That on the facts and circumstances of the case and in law, Both the Ld. CIT(A) and the Ld. AO erred in law and on the facts of the case in treating the gift of the immovable property by the appellant to her daughter as sale and computing the long term capital gain by applying Gains to the income of the Appellant, in the year under consideration section 50C of the Act, which is bad in law and not called for.

(b) That on the facts and circumstances of the case and in law, the learned AO erred in adding a sum of Rs. 26,24,032/- as Long Term Capital which is bad in law and not called for. (Ground No.3)

That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.”

2. The brief facts of the case are that having gathered the information that the Assessee had sold a property for Rs. 32,76,300/- on 14.2.2008. During the year under consideration, the notice u/s. 148 of the Income Tax Act, 1961 (hereinafter referred as the Act) was issued on 20.3.2013 as the assessee had not filed the return of income. In response to this notice, the return of income was filed at Rs. 34,710/- on 13.8.2013. Subsequently, notice under section 143(2) and 142(1) of the I.T. Act, 1961 were issued. When the assessee was asked to produce the details of sale property amounting to Rs. 32,76,300/- and details of capital gain liability on the same, it was submitted on behalf of the assessee that the assessee Mrs. Balwant Kaur Mangat had transferred a residential house to her daughter, an NRI. However, by mistake of the deed writer it was registered as the sale deed instead of a gift deed. The token amount of Rs. 2.5 lacs, was shown as consideration, but was never received. The AO not being convinced with this argument and finding that the property had been transferred through sale deed for Rs. 2.5 lacs, whose valuation for stamp duty purposes was Rs. 35,11,704/-, applying provisions of Section 50C completed the Long Term Capital Gains at Rs. 26,24,032/- as against the Long Term Capital Gains of Rs. 25,07,032/- as computed by the assessee, the difference being on account of not accepting the claim of the assessee regarding the indexed cost of improvement of Rs. 2,35,470/- in the absence of any supporting evidence. Thus, the

AO has completed the assessment on total income of Rs. 34,710/- and Long Term Capital Gain of Rs. 26,24,032/- vide his order 29.10.2013 passed u/s. 143(3) of the I.T. Act, 1961. Aggrieved with the assessment order dated 29.10.2013, assessee appealed before the Ld. CIT(A) who vide his impugned order dated 30.7.2015 has dismissed the appeal of the assessee on the legal ground as well as on merit.

3. Aggrieved with impugned order dated 30.7.2015, assessee filed an appeal before the Tribunal.

4. At the time of hearing, Ld. Counsel of the assessee has stated that AO's order is bad in law and liability determined under section 147/143(3) of the Act is liable to be deleted. It was further stated that AO is perverse, without application of mind and without jurisdiction. He further stated that the AO has wrongly treated the gift of the immovable property by the assessee to her daughter as sale and computing the long term capital gain by applying section 50C of the Act, which is bad in law and not called for. It was further submitted that adding a sum of Rs. 26,24,032/- as Long Term Capital Gains to the income of the assessee, in the year under consideration which is bad in law and not called for. In support of his contention, he filed a Paper Book containing pages 1 to 127 having the copy of Paper Book filed before the CIT(A), Ghaziabad which is copy of written submissions, copy of the sale deed dated 14.2.2008 and copy of purchase deed; copy of AIR query letter dated

21.1.2013 and its submission; copy of notice under section 148 of the Income Tax Act, 1961; Copy of letter filing income tax return in response to notice u/s. 148 of the Act alongwith copy of income tax return; copy of bank statement; copy of documents filed related to Ms. Milanjeet Kaur Mangat before the AO- notice of AIR query including submissions; copy of following case laws i.e. Addl. CIT, Delhi-I vs. Mrs. Avtar Mohan Singh 136 ITR 645 and Rashtriya Ispat Nigam Limited vs. Diwan Chand Ram Saran 4SCR1.

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

5.1 I have heard both the parties and perused the records and gone through the orders of the authorities below, especially the contention raised in the grounds of appeal and the Paper Book filed by the assessee, as aforesaid. I find that Ld. CIT(A) has elaborately discussed and adjudicated the issues in dispute vide para no. 6.2 to 6.3 at page no. 3 to 5 of his impugned order. For the sake of convenience, I am reproducing the said relevant finding as under:-

"6.2 In Ground of Appeal 2, the Appellant has contended that the order under Section 147/143(3) is bad in law as reasons to believe were not provided to assessee. The assessee has contended that in view of the decision of Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. ITO (2003)

259 ITR 19 (SC) the AO is bound to furnish reasons within a reasonable time on receipt of which the notice, is entitled to file objections to issuance of notice and the AO is bound to dispose off the same by passing a speaking order which in this case has not been done.

Having considered the facts of the case, I find that the assessing officer before issuance of notice u/s. 148 has issued a letter inquiring about the property transaction and whether any return of income had been filed. During the scrutiny assessment after filing of return of income in response to notice under section 148, the assessee was given a notice under section 142(1) in which the query regarding property transaction and computation of capital gain was raised. The assessee had answered this query and submitted the details of property transaction as well as the computation of capital gains. The assessee had also submitted that the transaction was in nature of gift and not in nature of sale and therefore was not liable for Capital Gain Taxation. During the proceedings of

assessment, the assessee never asked for the reasons for reopening. It is apparent from the record that the assessee was aware of the reasons of issuance of notice under section 148 and therefore at this stage, the contention that the reasons were not supplied and hence the assessment is invalid is not tenable. When assessee was aware of the reasons of reopening and he had been given due opportunity on the only issue involved in assessment, the assessee cannot take shelter that the reasons were not supplied to him and hence he could not rebut them. The Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. ITO 259 ITR 19 (SC), has laid the following procedure:- "However, we clarify that when a notice u/s. 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the AO is bound to dispose off the same by passing a speaking order." In this case

I find that the reasons have not been sought by the assessee at assessment stage. After issuance of notice u/s. 148, the assessee has filed return of income and participated in assessment proceedings and the assessment has been completed after taking into account the submission of assessee. Had the assessee sought the reasons and had AO denied the same, the matter would have been different. Therefore, the above judgment of Hon'ble Supreme Court does not apply to facts of the present case. The contentions of the assessee are rejected. Ground of appeal 2 is dismissed."

"6.3 In Grounds of Appeal 3.1 and 3.2 the assessee has contended that the impugned property had been transferred to her daughter as a gift and therefore charging Long Term Capital Gains applying provisions of Section 50C is bad in law. In its written submission on behalf of the assessee appellant, the Ld. AR of the assessee has contended that the intention of the assessee was to transfer the property as a gift to her daughter and not to earn any capital gain and avoid taxes thereon. The

intention was to provide the full ownership right to the daughter and the gift has been effectuated by way of registered deed. On the advice of the deed writer the transaction was shown as the sale for a consideration of Rs. 2,50,000/-, whereas no consideration was received by the appellant from her daughter. The bank account of assessee does not show any receipt from her daughter. It is contended that the AO has failed to look the said transaction in substance and has not appreciated the intention of the parties. The order passed by AO is not speaking while rejecting the contentions of the appellant. The assessee has placed reliance on the cases of Rashtriya Ispat Nigam Limited vs. Diwan Chand Ram Saran (2012) 4 SCR 1 and Addl. CIT vs. Mrs. Avtar Mohan Singh (1982) 136 ITR 645 (Del). It is also contended that the said transaction has been treated as a gift in hands of the assessee's daughters Ms. Milanjeet Kaur. It is also contended that this transaction was a gift and therefore by virtue of section 47(iii), it was not liable for capital gain taxation.

The assessment order, the written submission, facts and circumstances of the case and rival contentions have been considered. I find that the transaction is clearly through sale deed. This fact is not controverted. The submission that it was a gift is not borne out from the deed of transfer. In the deed, consideration has been shown to have been received. The mode of receipt of consideration not mentioned. Since the consideration has not received through cheque, there is no question of it being reflected in the bank account of the daughter. It is also true that for the purpose of stamp duty valuation. The property has been valued in Rs. 35,11,704/-. The provisions of section 50C are clearly applicable in this case as it is a case of transfer of property through sale deed at a price lower than the value adopted for stamp duty valuation. The case of Rashtriya Ispat Nigam Ltd. (Supra) does not apply to the facts of the case as it was in a different context that the intention is material. In the facts of this case, the registered sale deed is the best evidence to ascertain the actual

nature of transaction. Had the assessee intended to transfer the asset through a gift she could have very well drawn at gift deed. When allegedly no money has been received from the transferee there was no need to mention so in the sale deed. Therefore, the contention regarding it being a gift is not tenable. The case of Mrs. Avtar Mohan Singh (Sura) also does not help the case of assessee because section 47(iii) comes to play only in cases of transfer through gift or will or an irrevocable trust. Transfer in the present case is not through these modes.

The contention that the transaction has been held to be gift in the hands of the daughter, the transferee, and therefore it should be held so in the case of the assessee also is not tenable because in case of the daughter the consideration as per stamp duty valuation is not taxable as per proviso to section 56(2)(vii). However, the provisions of capital gains taxation and the income from other sources are independent of each other. The income in the hands of the daughter having been held to be

exempt, does not absolve the assessee from the capital gain liability.

The contention of appellant are therefore rejected and the grounds of the appeal 3.1 and 3.2 are dismissed.”

5.2 After perusing the aforesaid finding of the Id. CIT(A), with regard to effective ground no. 2 relating to jurisdiction is concerned, I find that the assessee has contended that in view of the decision of Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC) the AO is bound to furnish reasons within a reasonable time on receipt of which the notice, is entitled to file objections to issuance of notice and the AO is bound to dispose off the same by passing a speaking order which in this case has not been done. However, in this case, the AO officer before issuance of notice u/s. 148 of the I.T. Act, 1961 had issued a letter inquiring about the property transaction and whether any return of income had been filed. During the scrutiny assessment after filing of return of income in response to notice under section 148 of the Act, the assessee was given a notice under section 142(1) of the Act in which the query regarding property transaction and computation of capital gain was raised. The assessee had answered this query and submitted the details of property transaction as well as the computation of capital gains. The assessee had also submitted that the transaction was in nature of gift and not in nature of sale and therefore was not liable for Capital Gain Taxation. During the proceedings of assessment, the assessee never asked for the reasons for reopening. It is

apparent from the record that the assessee was aware of the reasons of issuance of notice under section 148 of the Act and therefore at this stage, the contention that the reasons were not supplied and hence the assessment is invalid is not tenable. When assessee was aware of the reasons of reopening and he had been given due opportunity on the only issue involved in assessment, the assessee cannot take shelter that the reasons were not supplied to him and hence he could not rebut them. I further note that the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. ITO 259 ITR 19 (SC), has laid the following procedure:- *"However, we clarify that when a notice u/s. 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose off the same by passing a speaking order."* In this case I find that the reasons have not been sought by the assessee at assessment stage. After issuance of notice u/s. 148 of the Act, the assessee has filed return of income and participated in assessment proceedings and the assessment has been completed after taking into account the submission of assessee. Had the assessee sought the reasons and had AO denied the same, the matter would have been different. Therefore, the above judgment of Hon'ble Supreme Court does not apply to facts of the present case. In view of the above, the contentions of the assessee were rightly rejected by the Ld. CIT(A), which does not need any interference on my

part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and reject the issue in dispute raised by the assessee.

5.3 Apropos ground no. 3 relating to computing the long term capital gain and added back the same as Long Term Capital Gain is concerned, I find that assessee has contended that the impugned property had been transferred to her daughter as a gift and therefore charging Long Term Capital Gains applying provisions of Section 50C is bad in law. In its written submission on behalf of the assessee, the Ld. AR of the assessee has contended that the intention of the assessee was to transfer the property as a gift to her daughter and not to earn any capital gain and avoid taxes thereon. The intention was to provide the full ownership right to the daughter and the gift has been effectuated by way of registered deed. On the advice of the deed writer the transaction was shown as the sale for a consideration of Rs. 2,50,000/-, whereas no consideration was received by the appellant from her daughter. However, the bank account of assessee does not show any receipt from her daughter. It is contended that the AO has failed to look the said transaction in substance and has not appreciated the intention of the parties. I am of the view that the order passed by AO is not speaking while rejecting the contentions of the assessee. The assessee has placed reliance on the cases of Rashtriya Ispat Nigam Limited vs. Diwan Chand Ram Saran (2012) 4 SCR 1 and Addl. CIT vs. Mrs. Avtar Mohan Singh (1982) 136 ITR 645 (Del). It is also contended that the said transaction has been treated as a gift in hands of the assessee's daughters Ms. Milanjeet Kaur. It is also contended that this transaction was a gift and therefore by virtue of section 47(iii), it was not liable for capital gain taxation. I find that the transaction is clearly through sale deed.

This fact is not controverted. The submission that it was a gift is not borne out from the deed of transfer. In the deed, consideration has been shown to have been received. The mode of receipt of consideration not mentioned. Since the consideration has not received through cheque, there is no question of it being reflected in the bank account of the daughter. It is also true that for the purpose of stamp duty valuation, the property has been valued in Rs. 35,11,704/-. The provisions of section 50C are clearly applicable in this case as it is a case of transfer of property through sale deed at a price lower than the value adopted for stamp duty valuation. The case of Rashtriya Ispat Nigam Ltd. (Supra) does not apply to the facts of the case as it was in a different context that the intention is material. In the facts of this case, the registered sale deed is the best evidence to ascertain the actual nature of transaction. Had the assessee intended to transfer the asset through a gift she could have very well drawn at gift deed. When allegedly no money has been received from the transferee there was no need to mention so in the sale deed. Therefore, the contention regarding it being a gift is not tenable. The case of Mrs. Avtar Mohan Singh (Sura) also does not help the case of assessee because section 47(iii) comes to play only in cases of transfer through gift or will or an irrevocable trust. Transfer in the present case is not through these modes. I further note that the transaction has been held to be gift in the hands of the daughter, the transferee, and therefore it should be held so in the case of the assessee also is not tenable because in case of the daughter the consideration as per stamp duty valuation is not taxable as per proviso to

section 56(2)(vii). However, the provisions of capital gains taxation and the income from other sources are independent of each other. The income in the hands of the daughter having been held to be exempt, does not absolve the assessee from the capital gain liability. In view of the above, the contention of assessee was rightly been rejected by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and reject the issue in dispute raised by the assessee.

6. In the result, Assessee's appeal is dismissed.

Order pronounced in Open Court on this 08-08-2017.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated :08-08-2017

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.