

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 4218/Del/2015
Assessment Year: 2009-10**

Upma Shukla Proprietor Troubleshooters, Upma Shukla, House No. 731, Sector-9A, Gurgaon. PAN No. ADZPS1670E	vs	ITO Ward 2(2), HSIIDC Building, Vanijaya Nikunj, 5 th Floor, Udyog Vihar, Phase-V, Gurgaon.
APPELLANT		RESPONDENT

Assessee by	Shri Kanishk Rana, Adv.
Revenue by	Ms. Rakhi Vimal, Sr. DR

Date of Hearing	09.10.2019
Date of Pronouncement	14.10.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by the assessee has been directed against the order of Ld. CIT(Appeals)-1, Gurgaon dated 10.02.2015 for AY 2009-10, challenging the additions of Rs. 9,90,000/- on account of long term capital gains arising from transfer of land and addition of Rs. 10 lakhs on account of short term capital gains arising from transfer of building.

2. We have heard Ld. Representatives of both the parties and perused the material on record. Earlier appeal was dismissed for default which was restored by allowing Miscellaneous Application of the assessee.

3. The appeal is time barred by 50 days. The assessee has filed application for condonation of delay explaining therein that impugned order was received on 11.03.2015. The husband of the assessee Shri Vikas Shukla was suffering from mouth cancer and required continuous attention and treatment and was admitted in hospital on 20.04.2014, thereafter, many times he was admitted to hospital later on the Chartered Accountant who was pre-occupied could only be attended on 17.03.2015. Again in the last week of March, 2015 assessee's husband fell ill due to the above ailment and his health started deteriorating and ultimately his condition got worsened. The husband of the assessee was later on admitted to hospital on 29.05.2015 to 31.05.2015 undergo Chemotherapy. The husband of the assessee again underwent further Chemotherapy sessions on 08.06.2015 to 15.06.2015 and ultimately husband of the assessee due to the long illness expired in October, 2015. Assessee, therefore, prayed that the delay in filing the appeal was due to serious illness of the husband and, therefore, delay may be condoned. Application for condonation of delay is supported by medical certificates.

4. After considering the rival submissions, we are of the view that assessee was prevented by sufficient cause in not filing the

appeal before the Tribunal within the period of limitation. Therefore, normal delay in filing the appeal is condoned.

5. Briefly the facts of the case are that assessee filed return of income of Rs. 4,34,060/- on 31.03.2010 under the head "Income from other sources". The AO considered the issue of long term capital gains and short term capital gains and passed the order u/s 143(3) making the following additions:

- i. Long Term Capital Gains Rs. 9,90,000/-
- ii. Short Term Capital Gains Rs. 10,00,000/-

5.1 As regards additions on account of capital gains, the AO observed that the assessee sold land and claimed to have received only Rs. 2,50,000/- as consideration. However, as per registered deed dated 23.07.2008, the value adopted for the purpose of payment of stamp duty by the State Government, in respect of the said transfer was Rs. 10 lakhs. The AO applied provisions of section 50C of the I.T. Act and made an addition of Rs. 9,90,000/- on this issue. In addition, the AO formed that the assessee had also sold factory building on the said land which was not appearing in the registered sale deed. Since, the assessee had transferred land and building together, the AO held that short term capital gain accrued to the assessee on account of transfer of the building was Rs. 10 lakhs which was also added to the income of the assessee.

6. The assessee challenged both the additions before Ld. CIT(A).

The written submission of the assessee is reproduced as under:

“Sir, the Ld. AO had erred on facts while making an addition of Rs. 9,90,000/- as Long Term Capital Gains on account of sale of plot. He has completely ignored the fact that the appellant was not the owner of the said land but merely a holder of registered GPA. The said land was sold on 30.11.1996 at a consideration of Rs. 2,50,000/- by Sh. Umed Singh to Shri Vikas Shukla (Husband of the assessee). At the time of sale, the same could not be registered in the name of Shri Vikas Shukla as there was a restriction on the registry by the Sub Registrar, Gurgaon. Sh. Umed Singh was an Officer with the Indian Army who due to his postings in different parts could not be present in Gurgaon at all times. Hence, to smoothen the process, and to gain control on the title of the property, it was mutually decided that the appellant Mrs. Umpa Shukla (Wife of Shri Vikas Shukla) would act as a registered GPA and an authorized legal agent who would have the authority to sign any document relating to the Land of Sh. Umed Singh. This arrangement was made so that future inconveniences could be removed as the sale could not be registered at that point of time. Further, the sale deed was registered on the 23.07.2008 between Vikas Shukla and Mrs. Upma Shukla in her capacity as the registered GPA holder of Sh. Umed Singh. It is evident that the right to property was already given to Vikas Shukla by Sh. Umed Singh and only the documents were registered after a gap of 12 years.

At no point of time did the appellant become the owner of the plot and was merely a representative of Sh. Umed Singh for the registry of the plot. Hence, to tax the same in her hands as LTCG is harsh ignoring the facts and genuinity of the case. The sale was in fact effected between Sh. Umed Singh (original owner and seller of the plot) and Sh. Vikas Shukla (Buyer).

Further, the appellant in the relevant AY had routed an entry through the Capital Account of Rs. 2,50,000/- for the

sale of land and building. Sir, in this respect I would like to submit that the same is only a book entry between the appellant and the Vikas Shukla (husband of the appellant). Further, this is merely a notional entry and there was no actual transaction. This entry was an error on our part but there was no intention to evade any taxes. The Ld. AO has taxed Rs. 10,00,000/- as short term capital gains in the hand of the appellant stating that the land in question was a vacant land and that the factory and building was constructed on it by the appellant. It being a depreciable asset, STCG was computed by the Ld. AO at Rs. 10,00,000/-.

Sir, in this respect I would like to state that here the land in question is the same one in respect of which the appellant was the holder of the registered GPA. Thus, this land as already substantiated above was not the property of the appellant. Hence, as there was no question of transfer/sale of building by the appellant, the ground for taxing the STCG also stands nullified.”

7. The Ld. CIT(A) called for the remand report of the AO which is also reproduced in the appellate order. The same reads as under:

“That as per the facts available on record the assessee had filed GPA of Sh. Umed Singh in her favour and copy of sale deed between the assessee as GPA and her husband Sh. Vikas Shukla during the assessment proceedings. Now the assessee has filed an ‘IkrarNama’ (Agreement to sale) dated 03.11.1995 between Sh. Umed Singh and Sh. Vikas Shukla, husband of the assessee to prove the ownership of the property. The assessee also filed a receipt of Rs. 2,50,000/- dated 07.11.1996 vide which her husband Sh. Vikas Shukla had paid this amount to Sh. Umed Singh for the same land. Since the assessee had been provided sufficient opportunity to produce the evidence during the assessment proceedings, any such evidence at the appellate stage may kindly not be admitted. Moreover, the Ikrar Nama is not a registered

document, therefore, its authenticity is doubtful. Further, in the capital account of the assessee an addition of Rs. 2,50,000/- has been shown on account of sale and land & building. It also shows that property in question belongs to assessee.”

8. It may also be noted here that the assessee at the appellate stage made a request for admission of additional evidences which Ld. CIT(A) has allowed and admitted the additional evidences.

9. Ld. CIT(A) considering the explanation of the assessee and material on record did not accept contention of the assessee. The Ld. CIT(A) noted that *Ikrar Nama* is not registered document, therefore, it is doubtful. The Ld. CIT(A) also noted that assessee had disclosed an amount of Rs. 2,50,000/- in her capital amount on account of sale of land and capital building during the year under consideration. Therefore, contention of assessee was rejected. The Ld. CIT(A) also noted that in this case, since the total value of consideration for the purpose of stamp duty was fixed at Rs. 10 lakhs, the AO has rightly invoked the provisions of section 50C of the Act. The Ld. CIT(A), therefore, confirmed the addition on account of long term capital gain. The addition on short term capital gain was however, reduced to 50% of Rs. 5 lakhs.

10. Ld. Counsel for assessee referred to copy of '*Ikrar Nama*' dated 03.11.1995, copy of Registered General Power of Attorney in favour of the assessee, affidavit of Shri Umed Singh and receipt issued by him as well as sale deed in question dated 23.07.2008.

Ld. Counsel for assessee submitted that assessee acted as General Power of Attorney holder to act on behalf of original owner of the property Shri Umed Singh. Therefore, there is no transfer in the case of the assessee and, as such, no long term capital gain or short term capital gain would arise in the case of the assessee. He has relied upon the judgment of Madras High Court in the case of CIT vs. C. Sugumaran dated 03.11.2014 in Tax Appeal No. 840/2014 and order of ITAT, Jaipur Bench in the case of Gyan Chand Agarwal vs. Addl. CIT dated 10.07.2017 ITA No. 266/JP/2017 in which transaction conducted through General Power Attorney holder was not considered as transfer of property so as to attract capital gains.

11. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that assessee has shown the amount in question in her capital amount which was received through registered sale deed. Therefore, both the additions are justified.

12. We have considered the rival submissions. The assessee filed copy of the '*Ikrar Nama*' dated 03.11.1995 which is executed by Shri Umed Singh owner of the property in question in favour of Shri Vikas Shukla for a sum of Rs. 2,50,000/-. It is signed by both the parties as well as witnesses. Shri Umed Singh has also executed affidavit in favour of Shri Vikas Shukla confirming that he has sold the property in question to assessee and executed General Power of Attorney in favour of the assessee. The receipt is

also executed by Shri Umed Singh in favour of Shri Vikas Shukla for sale of the above property for a sum of Rs. 2,50,000/-. Shri Umed Singh has also executed Registered General Power of Attorney in favour of assessee and given all the powers as a General Attorney to look into the property or to execute Registry or to purchase stamps or claim any refund etc. This General Power of Attorney is not subjected to any consideration. No amount has been paid by the assessee to Shri Umed Singh through this Registered General Power of Attorney. Therefore, General Power of Attorney executed by Shri Umed Singh owner of the property was without any consideration. The assessee later on as General Power of Attorney holder of owner of the property Shri Umed Singh executed sale deed in question in favour of her husband i.e. Shri Vikas Shukla in which it is specifically mentioned that sale consideration is earlier paid of Rs. 2,50,000/-, it means Shri Vikas Shukla has paid to Shri Umed Singh. It is also mentioned in the registered sale deed that amount of consideration of Rs. 2,50,000/- has already been received. It would mean that at the time of execution of the registered sale deed no consideration of Rs. 2,50,000/- passed on from Shri Vikas Shukla to the assessee. It would further mean that the sale consideration of property of Rs. 2,50,000/- has already been received by Shri Umed Singh being original owner of the property. These facts and material on record clearly suggest that the assessee acted as a General Power of Attorney Holder of the property in question on behalf of Shri Umed Singh original owner of the property. The right of assessee

as a General Power of Attorney holder was not greater to that of the owner of the property i.e. earlier right in favour of Shri Umed Singh and later on right transferred in favour of her husband Shri Vikas Shukla. There was no justification for Ld. CIT(A) to doubt the *Ikrar Nama* executed between Sh. Umed Singh and Sh. Vikas Shukla because it is supported by the affidavit of Sh. Umed Singh and the receipt. If Ld. CIT(A) was having doubt over the same, he could have examined the marginal witnesses who have signed the agreement and the receipt in question. Further, when in the registered power of attorney no consideration has passed on from assessee to Sh. Umed Singh, there was no question of any transfer of property in favour of the assessee. Therefore, there is no question of her transferring the same property in favour of her husband for consideration. It is well settled law that entries in the books or capital account are not determinative of earning of income. It depends upon facts of the case. The real income only could be taxed as per law. Considering the totality of the facts and circumstances and the documents on record, it is clearly proved that Sh. Umed Singh has entered into an agreement to sale with Sh. Vikas Shukla for sale of property for a sum of Rs. 2,50,000/- which Sh. Vikas Shukla paid to Sh. Umed Singh. Documents to that effect were executed. The General Power of Attorney was executed in favour of the assessee so that assessee could registered the sale deed at appropriate time on behalf of Sh. Umed Singh in favour of her husband. Therefore, there is no transfer of capital asset from the side of the assessee, so as to attract

provisions of long term capital gains and short term capital gains. The decisions relied upon by the Ld. Counsel for assessee squarely apply to the facts and circumstances of the case. There was no justification for authorities below to made addition in the hands of assessee on account of long term capital gains and short term capital gains. In this view of the matter, we set aside the orders of the authorities below and delete both the additions.

13. In the result, the appeal is allowed.

Order pronounced in the open Court.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 14/10/2019

*Kavita Arora

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.10.2019
Date on which the typed draft is placed before the dictating Member	11.10.2019/ 14.10.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	14/10/19
Date on which the fair order is placed before the Dictating Member for pronouncement	14/10/19
Date on which the fair order comes back to the Sr. PS/PS	14/10/19
Date on which the final order is uploaded on the website of ITAT	14/10/19
Date on which the file goes to the Bench Clerk	14/10/19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	