

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA,
"SMC" BENCH, RANHI

Before Shri Sanjay Garg, Judicial Member

आयकर अपील सं.य/ ITA No. 188/Ran/19 Assessment Year:2014-15

Shri Ashutosh Jha(HUF, 6-9, Road No.1, Ashok Nagar, Ranchi-834002. PAN: AANHA0943B	बनाम/ V/s.	I.T.O., Ward 2(5), Ranchi-834001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Smt. Chinmaya Aurangabadkar, JCIT, Sr.DR
सुनवाई की तारीख/Date of Hearing	23-03-2021
घोषणा की तारीख/Date of Pronouncement	30-04-2021

आदेश /ORDER

The present appeal has been preferred by the assessee against the order dated 30-10-2018 of the Commissioner of Income-tax (Appeals), Ranchi [hereinafter referred to as 'CIT(A)'].

2. None has put in appearance on behalf of the assessee despite service of notice, therefore, I proceed to decide the appeal *ex parte qua the assessee* after hearing the Ld. DR.

3. The assessee in this appeal has taken the following grounds of appeal :-

1. *On the facts and circumstances of the case the order passed by the Commissioner of Income Tax (Appeals) has been made not as per the law and is bad both in the eyes of law and facts.*

2. *The Assessing Officer in the Order in original dated 16.12.2016 added Rs. 10,53,240/- in the income of the assessee for the A.Y 2014-15 on the grounds of stamp duty value is more than the sale consideration of property. This addition is confirmed by the Learned CIT Appeals, Ranchi.*

The Assessing Officer contended that the value of property will be stamp duty value of the property on the date of registry, i.e on 28.05.2013 as per the provision of section 56(2)(vv) of the I.T. Act, 1961, since the date of payment was after the date of agreement . Whereas the agreement was made on 19.07.2012 and a cheque was given dated 20.07.2012 which is also mentioned in the agreement itself. Since as on that date the above section was not applicable on this transaction, the assessee did not consider the difference of only 1 day between agreement and payment.

3. The Agreement of sale was made of 19.07.2012 i.e. during the Financial Year 2012-13 relevant to A.Y 2013-14. Section 56(2)(vii)(b) of the Income Tax Act, 1961 applicable for A.Y 2013-14 reads as under:-

Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009.

(a).....

(b)any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property.

The amendment in this sub section was made by the Finance Act, 2013 w.e.f 01.04.2014 and after this amendment the sub section reads as follows:

(b)any immovable property,-

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

***Provided** that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:*

***Provided** further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;*

It is very clear from the above that before the amendment there was no proviso for the date of payment of the consideration for any property. Since there was no any law in respect of the payment for an immovable property at the time of making agreement for the property, the appellant did not pay attention towards the date of payment which was just 1 day after the agreement and very insignificant. Therefore it is unjustified to not consider the agreement for sale.

4. In the order of CIT Appeals at page no. 6 point no. (vii)(b) “The part consideration ought to have been paid prior to date of agreement. In this case the said agreement is dated 19.07.2012 and the post dated cheque

was dated 20.07.2012. The actual debit in the account of the Appellant would be on a much later date.” This statement of the Learned CIT Appeals is based on the assumption that the clearance of the cheque would be on a much later date. Whereas, the actual date of debit from the account of payers is 23.07.2012 i.e only 3 days after the cheque date. Further, we would like to bring to your notice that 22.07.2012 was Sunday and it is normal in banking to take 2 to 3 working days in clearance of any cheque. Therefore, there is no abnormal delay in actual debit in the account of payers as mentioned in the order.

5. In the order of CIT Appeals at page no. 5 it is mentioned that Agreement for sale dated 19.07.2012 is not registered, which ought to have been registered as per law. Whereas, the proviso of section 56(2)(vii)(b) reads as follows:

***Provided** that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the **agreement** may be taken for the purposes of this sub-clause.”*

In this proviso it is mentioned that there should be an agreement only. There is nowhere mentioned in the said proviso that agreement should be registered agreement. However, the Learned CIT Appeals straightway made remarks that “As the agreement is not registered, the agreement dated 19.07.2012 cannot be stated to be a valid legal agreement.” Therefore taking the ground that agreement is not registered and adding the income on this ground is unjustified.

6. The Appellant craves leave to add, to alter, to amend the above Grounds of Appeal at the time of hearing.

4. A perusal of the above grounds of appeal shows that the sole issue taken by the assessee in this appeal is regarding value adopted by the Learned Assessing Officer (in short, the ‘Ld. AO’) of the property purchased by the assessee. The claim of the assessee has been that the assessee had purchased the property at a lower rate as per the value mentioned in the agreement to purchase dated 19-07-2012. However, the Ld. AO has adopted the stamp duty value as on date of sale i.e. 28-05-2013. The Ld.AO rejected the contention of the assessee that part payment was made at the time of execution of the agreement to purchase i.e. 19-07-2012 through banking channel on the ground that the said cheque was issued on 20-07-2012 whereas, the date of agreement was 19-07-2012. He noted that as per section 56(2)(vii)(b) of the Income-tax Act, 1961 (in short, referred to as the ‘Act’) as applicable for the A.Y under consideration, the value of the consideration mentioned in the agreement to

purchase can be relevant only if, the amount of the consideration referred to in the agreement or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property. Therefore, the Ld. AO held that since the consideration was paid after the date of execution of the agreement, the proviso to section 56(2)(vii)(b) of the Act was not applicable. He, therefore, treated the value of the property purchased by the assessee as per the Stamp Duty value and difference of the amount was taken by him as income from unexplained sources and added the same into the income of the assessee. The Ld. CIT(A) has confirmed the addition so made by the Ld.AO. The assessee, thus, has come up in appeal before this Tribunal.

5. I have heard the Learned Departmental Representative (in short, the Ld. DR) and gone through the records. A perusal of the grounds of appeal as adduced /mentioned above in the shape of arguments of the assessee, it reveals that the assessee has explained that the Agreement to Purchase/Sale was executed on 19-07-2012 and the payment through cheque was made. However, the date of cheque was mentioned of the next day i.e 20-07-2012. The fact itself shows that the part payment was made through cheque as per terms of the agreement. Copy of the bank account has been placed on record, which shows that said cheque that dated 20-07-2012 was cleared on 23/07/2012 and the amount was transferred to the account of the seller of the immovable property. Further, as per relevant provision of section 56(2)(vii)(b) of the Act as applicable for the assessment year under consideration is reproduced as under:-

“Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009.

(a).....

(b)any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property:”

6. Since, at the time of execution of agreement to purchase, there was no provision in the Act for taking stamp duty as the value of the property for determination of capital gains, in case the consideration is paid less than the stamp duty value, therefore, the

assessee did not apprehend any such action by the assessing officer. The assessee made part payment through cheque as per the terms of the agreement. In my view, mere mentioning of the date of the very next day on the cheque did not make any difference. Further, the provisions were amended in section 56(vii)(2)(b) of the Act by the Finance Act, 2013 w.e.f 01.04.2014 and after this amendment the said sub-section reads as follows:-

(b) any immovable property,-

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

7. Thereby a provision was made to take the value of consideration as stamp duty value if the consideration paid is less than the stamp duty value. However, saving clause by second proviso has been made applicable stating that, if the consideration has been paid as per value mentioned in the agreement to purchase, then the amount mentioned in the agreement can be taken the amount of consideration if the consideration referred to in the agreement or a part thereof, is paid on or before the date of agreement. This provision did not exist at the time of entering into the agreement to purchase in question. The case of the assessee is self-explanatory. The registry was done on 28-05-2013. However, the part payment was made by cheque on the next day of execution of agreement i.e. on 20.07.2012, which in my view, was towards the fulfillment of the terms of the contract. Therefore, the Ld. AO is not justified in taking a hyper technical view, whereas, the facts of the case show that there is no malafide or false claim on the part of the assessee.

8. Moreover, the provisions of section 56 of the Act are for the purpose of the assessment of capital gains. Such deeming provisions do not suggest that the assessee had actually paid the consideration more than that was mentioned in the agreement or sale deed. The impugned addition made by the Ld. AO on the basis of deeming provisions and taking the difference as unaccounted income of the assessee is not sustainable in the eyes of law. Accordingly, the same is ordered to be deleted.

In view of the above, the appeal of the assessee stands allowed.

Order pronounced..... on 30th April, 2021

Sd/-
(Sanjay Garg)
Judicial Member

दिनांक:- 30.04.2021 कोलकाता/Kolkata

**PP/Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant/Assessee: Shri Ashutosh Jha(HUF, 6-9, Road No.1, Ashok Nagar, Ranchi-834002.
2. प्रत्यर्थी/Respondent- Income Tax Officer, Ward-2(5), Ranchi-834001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

For, Senior Private Secretary