

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ ITA No. 417/JP/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

|  |             |                                      |
|--|-------------|--------------------------------------|
| Kanta Devi,<br>Village- Thada, Post- Sheethal,<br>Tehsil, Tijara, district- Alwar. | बनाम<br>Vs. | Income Tax Officer,<br>Ward- Bhiwadi |
| स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: BDWPD 9059 G                             |             |                                      |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent              |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2017  
उदघोषणा की तारीख / Date of Pronouncement : 13/10/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A), Alwar dated 09/03/2017 for the A.Y. 2011-12, wherein the assessee has sole effective ground, which is as under:

- "1. The Id. CIT(A) has erred on facts and in law in confirming the action of A.O. in holding that assessee has made investment of Rs. 61,68,910/- on purchase of land at village- Thada, Tehsil, Tijara, out of the undisclosed sources ignoring that the assessee received the said land as gift from her father in law Sh. Deepchand but instead of gift deed, sale deed was executed and further that assessee has not source of income."

2. The brief facts of the case are that the Assessing Officer received information that the assessee has purchased an immovable property for a sale consideration of Rs. 58,80,000/- on 25/02/2011 and also paid registration charges of Rs. 2,88,910/-. The assessee was asked to give explanation on this issue. The assessee submitted that there is no sale/purchase of property during the year. However, copy of transfer of the property as a gift was filed alongwith affidavit. The Assessing Officer observed that a Vasiyatnama (Will) dated 25/10/2004 was in favour of Shri Rambir Singh, who is son of brother of the executant of the Will Shri Deep Chand. It was observed that this Will was executed in respect of the property located at Nandrampurbas, Tehsil- Rewari and it was not related to the property, which was registered in the name of assessee. The Assessing Officer held that the property was purchased by Smt. Kanta Devi, W/o- Shri Rambir Singh. The Assessing Officer did not accept the assessee's explanation that this was a gift of immovable property to the assessee by brother of father in law. It was also submitted that there was no sale consideration paid for this property. It was a gift and due to mistake it was registered as sale deed.

3. The Id. CIT(A) has also confirmed the action of by the Assessing Officer by holding as under:

*“5.5.2 I have considered the above mentioned facts and the contents of remand report and the cross reply. It is an obvious fact that the land in question was transferred to the appellant. It is also an undeniable fact that the transfer of the land is effected through a registered deed where the apparent consideration is mentioned and the stamp duty was also paid by the appellant. Therefore, on the basis of available facts and evidences, there is scope of only one conclusion that the land in question has been transferred to the appellant on a consideration of Rs. 58,80,000/- and stamp duty of Rs. 2,88,910/- was also incurred by the appellant. A subsequent affidavit on behalf of the seller Sh. Deepchand filed during the appellate proceedings is also of no consequence as the same was not filed during assessment proceedings and now when Sh. Deepchand is no more alive, no cross verification of the claim is possible. Therefore, in my considered view, the A.O is justified in treating the amount of Rs. 61,68,910/- as undisclosed investment in the hand of the appellant and the same is sustained. Accordingly, the appellant’s ground of appeal on this issue is dismissed.”*

4. Now the assessee is in appeal before the ITAT. While pleading on behalf of the assessee, the Id AR has submitted that the assessee is an uneducated lady, residing at village Thada, Tehsil, Tijara, Alwar. She was not having any source of income. Her husband Shri Rambir Singh is working in Central Reserve Police Force (CRPF) as Head Constable. The brother of the assessee’s father in law Shri Deep Chand was unmarried and not having any child. He has given all his movable and immovable

property located anywhere in India to Shri Rambir Singh, son of his brother Sheoram and to his wife. Shri Rambir Singh and Kanta Devi were taking care of Shri Deep Chand as he was an aged person. Shri Deep Chand was decided to transfer his legal title of agricultural land owned by him in favour of Shri Rambir Singh and his wife Smt. Kanta Devi. At the time of registration, due to mistake, instead of gift deed, sale deed was mentioned and due to ignorance the deed writer mentioned the sale consideration calculated as per DLC rates. There was completely a mistake in executing the document for gift to transfer agricultural land in favour of the assessee. The Id AR also submitted a written reply, the contents of which is reproduced below:

1. *From the facts stated above, the only issue in the present case is whether in the facts and circumstances of the present case, it can be inferred that the assessee has paid consideration to Sh. Deepchand as mentioned in the sale deed dt. 25.02.2011 through which the legal title of the agricultural land owned by him is transferred to the assessee. The fact that no consideration is paid by the assessee to Sh. Deepchand as mentioned in the sale deed can reasonably be inferred from the following circumstances:-*
  - (a) *It is a fact on record that Sh. Deepchand has no child and he was residing with the assessee and her husband. The ration card (PB 6-7) also proves this fact.*
  - (b) *Sh. Deepchand in his Will dt. 25.10.2004 (PB 10-13) has stated that Sh. Rambir, husband of the assessee has been residing with him from childhood and was looking after him in his old age.*

*Therefore, in the will, he apart from specifically mentioning about his immovable property at Village Nandrapurbas has also stated that all his movable and immovable properties and deposit in bank/post office anywhere in India after his death would devolve on Sh. Rambir. Therefore, the objection of the AO that land at Village Thada has no role to play in the will is incorrect appreciation of facts.*

- (c) *In course of assessment proceedings, to prove that instead of the gift deed, sale deed was wrongly executed, an affidavit of Sh. Deepchand dt. 03.09.2014 (PB 17) was prepared which is duly notarised by the Notary and entered in his register. However, Sh. Deepchand in the meantime expired on 21.09.2014 (PB 5). Thereafter, this affidavit was filed to the AO vide letter dt. 07.10.2014 (PB 1). After filing the affidavit, no further query was raised by the AO and the assessment was completed on 16.03.2015. Therefore, the observation of Ld. CIT(A) that the affidavit of Sh. Deepchand was not filed during assessment proceedings is incorrect.*
- (d) *In support of the fact that no consideration passed on the execution of sale deed, the affidavit of the two witnesses to the sale deed namely Sh. Hemant and Sh. Deshraj is enclosed. In the affidavit they have also confirmed that no consideration was passed on execution of sale deed as instead of gift deed, sale deed was wrongly executed.*
- (e) *It is also submitted that this matter was also investigated by the Investigation Wing of the department somewhere in the month of August, 2014. The investigating officer at that time recorded the statement of the assessee and her husband Sh. Rambir. Sh.*

*Deepchand was also produced at that time but his statement was not recorded. In these statements also, the facts stated above were stated. This fact can also be verified by calling the records from the office of the Investigation Wing. In these statement, Sh. Rambir explained that the expenditure of Rs.2,88,910/- was paid by him out of his savings from salary and agricultural income.*

*From the above facts it is reasonably inferable that assessee has not purchased this property rather she has received the same in gift and thus, no investment was made by her.*

2. *It is a fact on record that the assessee has no source of income. Even the lower authorities have not found any other source of income in the hands of the assessee. Hence, it cannot be presumed that assessee has any undisclosed income which is invested in purchase of land. Strict rule of evidence do not apply to the income tax proceedings. Human conduct and preponderance of the probabilities needs to be considered before making any addition u/s 69 in as much as the section uses the word 'may' and not 'shall'. In these circumstances, even if the source of investment in land is not found to be satisfactory explained, no addition can be made in the peculiar facts of the case. The Supreme Court in case of Sumati Dayal Vs. CIT (1995) 214 ITR 0801 has held that surrounding circumstances and the test of human probabilities should be considered/ applied in assessing the income. This principal is again approved by the Supreme Court in case of CIT vs. Smt. P.K. Noorjahan (1999) 237 ITR 0570. In this case, assessee was a Muslim lady aged 20 years. She made certain investments in land. The explanation of assessee regarding the source of the purchase money for these investments was that the same were financed from out of the savings from the income of the properties which were left by her mother's first*

*husband. The said explanation offered by the assessee was rejected and addition was made u/s 69. The Tribunal, however, held that even though the explanation about the nature and sources of the purchase money was not satisfactory but in the facts and circumstances of the case it was not possible for the assessee to earn the amount invested in the properties and that by no stretch of imagination could the assessee be credited with having earned this income in the course of the assessment year or was even in a position to earn it for a decade or more. The Tribunal took the view that although the explanation of the assessee was liable to be rejected, s. 69 of the Act conferred only a discretion on the ITO to deal with the investment as income of the assessee and that it did not make it mandatory on his part to deal with the investment as income of the assessee as soon as the latter's explanation happened to be rejected. According to the High Court, the Tribunal had not committed any error in taking into account the complete absence of resources of the assessee and also the fact that having regard to her age and the circumstances in which she was placed she could not be credited with having made any income of her own and in these circumstances the Tribunal was right in refusing to make an addition of the value of the investments to the income of the assessee. Ld. counsel appearing for the Revenue, has urged that the Tribunal as well as the High Court were in error in their interpretation of s. 69 of the Act. It was held by Hon'ble Supreme Court as under:-*

*"We are unable to agree. As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word "shall" had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word "may". This clearly indicates that the intention of Parliament in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the*

*income of the assessee and the ITO is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under s. 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under s. 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the ITO and the AAC in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. We also do not find any error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. ”*

*In view of above, considering the overall facts and circumstances of the case, it cannot be presumed that assessee has made any investment in the purchase of land and therefore, the addition confirmed by Ld. CIT(A) be directed to be deleted.*

5. On the other hand, the Id Sr. DR has relied on the orders of the authorities below.

6. We have heard both the sides on this issue. The following facts are undisputed:

The assessee was an uneducated lady, residing at village Thada, Tehsil, Tijara, Alwar.

Assessee's husband Shri Rambir Singh was working in Central Reserve Police Force (CRPF) as Head Constable.

Shri Deep Chand was brother of assessee's father in law. Deep Chand was unmarried and having no child. Shri Deep Chand has made a registered Will where entire movable and immovable properties located in India were to be given to Shri Rambir Singh. Shri Rambir Singh is husband of the assessee. Shri Rambir Singh and Smt. Kanta Devi were taking care of Shri Deep Chand since long, who was an old person. Shri Deep Chand, son of Shri Tejram, who is shown as seller of the property to the assessee, has filed an affidavit stating that he is an old man and uneducated person. He was unmarried. He was not having any successor. Rambir Singh and his wife Kanta Devi (assessee) were taking care of him. He had gifted all his property in the name of Rambir Singh and Kanta Devi (assessee). It is pertinent to note that Shri Deep Chand has categorically clearly stated that the land was given as a gift to the assessee. As per the registered Will, all properties i.e. movable and immovable located in India are to devolve in favour of Shri Rambir Singh husband of the assessee. The Id. CIT(A) has not asked report of A.O. on the veracity of content of the affidavit submitted by Shri Deep Chand. No inquiries were made with regard to sale deed executed instead of gift deed in favour of the assessee whether it was due to bonafide mistake whether the sale consideration mentioned therein was genuine mentioned. In view of these facts, we are of the view that to decide the

issue in right perspective, further inquiries with regard to the claim of assessee that property was received as gift and no consideration was paid are required. Hence, the matter is restored back to the file of Assessing Officer to be decided afresh in the light of above observations.

7. In the result, the appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 13/10/2017.

Sd/-  
(कुल भारत)  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(भागचंद)  
(BHAGCHAND)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 13<sup>th</sup> October, 2017

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Kanta Devi, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Bhiwadi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 417/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar