

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.3272/Del./2017
Assessment Year 2010-2011

Shri Mohd. Afzal Village Bisokhar, Modinagar Dist. Ghaziabad (U.P.) PAN AAWPA7653D (Appellant)	vs.	The Income Tax Officer, Ward-1(5), CGO Complex, 1 st Hapur Chungi, Ghaziabad. (U.P.) 201 002. (Respondent)
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For Assessee :	Shri Anoop Sharma, Advocate & Shri Sanjay Parashar, Advocate
For Revenue :	Shri Koushlendra Tewari, Sr. DR

Date of Hearing :	02.11.2017
Date of Pronouncement :	03.11.2017

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A), Ghaziabad, dated 10th March, 2017, for the A.Y. 2010-2011.

2. Briefly the facts of the case are that assessee filed return of income on 11th February, 2011 declaring income of Rs.1,65,540. The assessee did not comply with the statutory notices. Therefore, ex-parte assessment order under section 144 was passed. The A.O. noted on the basis of the facts and material on record that during

assessment year under appeal, the assessee sold immovable property of Rs.44,28,000 jointly with his brother Shri Moinuddin on 1st April, 2009 to Shri Rajendra Kumar Sharma through Power of Attorney. The assessee's share in the property sold is 50% which works-out to Rs.22,14,000. The A.O. had taken cost of acquisition at NIL and made addition of Rs.22,14,000.

2.1. The assessee challenged the addition before Ld. CIT(A) and it was contended that assessee was only Power of Attorney holder of Shri Abdul Aziz along with his brother Shri Moinuddin for signing the sale deed. Copy of the Power of Attorney and Sale Deed shows that assessee was not owner of the property. A remand report from the A.O. was called for on the additional evidence. The A.O. in the remand report reiterated the ex-parte order passed. However, he did not dispute that assessee was only Power of Attorney holder of Shri Abdul Aziz along with his brother Shri Moinuddin for signing the Sale Deed. Further, it was stated that assessee failed to mention this fact at the assessment stage and that this fact is not mentioned in the Sale Deed. It is also stated that consideration has been received by the assessee and his brother. Therefore, prayer was made to dismiss the

appeal of assessee. The assessee in the rejoinder also submitted that the assessment order in the case of his brother Shri Moinuddin has been passed vide order dated 25th February, 2014 under section 147/143(3) for A.Y. 2010-2011 in which on the same issue the A.O. has allowed deduction under section 54F of the I.T. Act and no addition on account of capital gains have been made.

2.2. The Ld. CIT(A) noted that assessee has submitted copy of the Sale Deed in support of the contention that assessee was only Power of Attorney Holder of Shri Abdul Aziz. As per the remand report the sale deed specifically mentioned assessee and his brother Shri Moinuddin as seller. Shri Abdul Azia is father of the assessee. The assessee did not substantiate the fact that he did not receive part of the sale consideration. Further, the assessee did not substantiate the claim of benefit under section 54F of the I.T. Act. The Ld. CIT(A) however, giving benefit of cost of indexation partly allowed the appeal of assessee. However, the assessee's claim of deduction under section 54F was denied.

3. The assessee is in appeal challenging the addition on merit as well as challenging the denial of benefit under section 54F of the I.T. Act, 1961.

4. After considering the rival contentions, I am of the view that addition is wholly unjustified. The A.O. even though passed the ex-parte order has mentioned in the assessment order that assessee and his brother sold the property through Power of Attorney. PB-7 is assessment order in the case of brother of the assessee Shri Moinuddin for assessment year under appeal i.e., 2010-2011 dated 25th February, 2014 under section 147/143(3) in which the same facts have been considered for sale of property by assessee and his brother. The A.O. after verifying the fact of investment in the construction of residential property, allowed deduction under section 54F of the I.T. Act and did not make any addition against the assessee. PB-9 is the Registered Power of Attorney by Shri Abdul Aziz, father of the assessee in favour of Shri Moinuddin brother of assessee and assessee for doing certain acts on his behalf as a Power of Attorney holder. PB-15 is sale deed in question by assessee and his brother Shri Moinuddin as a Power of Attorney Holder of Shri Abdul

Aziz for making the sale on behalf of owner of the property Shri Abdul Aziz. These facts therefore, clearly prove that assessee was only a Power of Attorney holder of the owner of the property and has acted as a Power of Attorney only on behalf of the owner of capital asset. The assessee merely acted as a Power of Attorney holder and no evidence has been brought on record to prove if any consideration was paid by assessee to his father at the time of executing the Power of Attorney in favour of the assessee and his brother Shri Moinuddin. Therefore, Power of Attorney holder would not be treated as owner of the property. Therefore, there is no question of computing capital gains in the hands of the assessee. The Learned Counsel for the Assessee relied upon an un-reported decision of Hon'ble Madras High Court in the case of CIT vs. Shri C. Subumaran in Tax Appeal No.840 of 2014 dated 03.11.2014 in which the Tribunal on the same issue was of the view that assessee could not be treated as owner of the property on the basis of transfer through Power of Attorney and no capital gain would be computed in the hands of the assessee. The departmental appeal has been dismissed. It may also be noted here that on the same facts the Revenue Department in the case of brother

of the assessee Shri Moinuddin has allowed deduction under section 54F of the I.T. Act against the investment so made in construction of residential property along with his brother i.e., assessee Shri Mohd. Afzal. Therefore, by following the rule of consistency, the department should have allowed deduction under section 54F of the I.T. Act atleast in favour of the assessee. On considering the totality of the facts and circumstances of the case, I am of the view that the authorities below were wholly unjustified in making the addition of Rs.22,14,000 on account of capital gains in the hands of the assessee. I, accordingly, set aside the orders of the authorities below and delete the entire addition.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd November, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.