

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.138/CTK/2017
Assessment Year : 2010-2011

Sri Basudev Panigrahi, Plot No.211/H, Sector-A, Zone-B, Mancheswar Industrial Estate, Rasulgarh, Bhubaneswar.	Vs.	ITO, Ward 3(1), Bhubaneswar.
PAN/GIR No.AFVPP 2291 N		
(Appellant)	..	(Respondent)

Assessee by : Shri D.Parida/C.Parida, AR
Revenue by : Shri D.K.Pradhan , DR

Date of Hearing : 01 /08/ 2017
Date of Pronouncement : 9/08/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 9.1.2017 for the assessment year 2010-2011.

2. The sole grievance of the assessee in this appeal is that the CIT(A) was not justified in confirming the order of the Assessing Officer making addition of Rs.34,14,400/-.

3. The brief facts of the case are that the Assessing Officer found that the assessee claimed to have made investment of Rs.79,05,000/- in the construction of a house on Plot No.321(P), G.A.Plot No.222, Chandrasekharpur, Bhubaneswar. Out of this, an amount of

Rs.54,00,000/- was said to be sale proceeds of land and building at Vani Vihar, Bhubaneswar. The Assessing Officer examined the registered sale deed dated 22.2.2010 for the Vanivihar Plot between the assessee and Braja Kishore Jena, the purchaser. He noted that in this agreement, the purchaser has given Rs.19,85,000/- to the assessee (Rs.10,00,000/- in cheque and Rs.9,85,600/- in cash) and not Rs.54,00,000/-. The Assessing Officer asked the assessee the reasons for the discrepancy. The assessee explained that even though the sale deed mentioned an amount of Rs.19,85,600/-, actually he has received Rs.54,00,000/- from Braj Kishore Jena. The assessee submitted that an amount of Rs.34,14,400/- has been received by him in cash from Braja Kishore Jena. In support of the same, the assessee submitted an agreement for sale dated 24.12.2009 between the assessee and Braja Kishore Jena in which an amount of Rs.54,00,000/- has been mentioned.

4. During the course of assessment proceedings, the Assessing Officer issued summons u/s.131 of the Act to Braja Kishore Jena, the purchaser of Vani vihar property. The Assessing Officer further observed that it was specifically asked to Braja Kishore Jena regarding purchase of above said property. In reply to specifically asked to Sri Braja kishore Jena regarding the purchase of the above said property. In reply to questions No.3 & 4 dtd. 15.1.2013 that he has paid Rs. 19,85,600/- for the purchase of land, the Assessing Officer observed that Shri Braja Kishore jena was required to explain by showing the copy of notarized agreement made on

24.12.2009 submitted by the assessee , wherein the assessee claimed to have received Rs.54,00,000/- vide the above referred agreement for the sale of said property. In reply to Question No. 6, whether he had signed the agreement dtd. 24.12.2009, Shri Braja Kishore Jena replied that the same was done under compulsion as Shri Panigrahi had warned him of selling the land to some other people if he doesn't adhere to his demand of signing the agreement. Sri Braja Kishore Jena denied to have made payment of Rs.34,14,400/- to the assessee.

5. This aspect was confronted to the assessee by the Assessing Officer vide show cause letter dated 6.2.2015, wherein, the assessee was asked for clarification regarding the statement recorded of Sri Braja Kishore jena, copy of the statement recorded u/s.131 was forwarded to the assessee. The assessee was asked to furnish the explanation with documentary evidence as Shri Jena has specifically denied to have made cash payment of Rs.34,14,400/- to the assessee. The Assessing Officer further observed that it was specifically asked to the assessee that purchaser of the property Shri Braja Kishore Jena has stated in the above referred statement recorded on 15.1.2013 that Shri Jena had paid only Rs.19,85,600/- for the purchase of the said property at Plot No.28, Vani Vihar, Bhubaneswar and not Rs.54,00,000/- as claimed by the assessee. The assessee was asked to submit details regarding the investment of the remaining amount of Rs.34,14,400/-.

6. In reply to above cause notice, the assessee submitted that Rs.34,10,000/- was paid upfront before the sale deed was registered and the purchaser might have used the non-tax paid income to acquire the aforesaid asset. The assessee being the honest citizen and tax payer offers the entire receipts both cash and cheque as consideration received from the sale of the property. It was further stated that as regard to the agreement price of Rs.54,00,000/- and sale deed price of Rs.19,85,600/-, there was an agreement made by the assessee with Sri Braja Kishore Jena for sale of property over Plot No.28, Laxmi Vihar, unit-13, Bhubaneswar for a consideration of Rs.54 lakhs on 24.12.2009. The agreement has been notarised in presence of witnesses making it valid and binding on both the parties. It was further submitted that before notarized, witnesses were present during registration, wherein, it was mentioned that said land was sold at Rs.19,85,600/-.

7. Before the CIT(A), the assessee reiterated the submissions made before the Assessing Officer. Ld CIT(A) after considering the submission of the assessee held that cash of Rs. 34,14,400/- has been received by him from Sri Braja Kishore Jena on sale of Vanivihar property and that there is an agreement of sale to prove this. However, Sri Braja Kishore Jena has out rightly denied the payment of cash of Rs. 34,14,400/-. Sri Braja Kishore Jena, is witness of the assessee, to prove his claim receipt of cash of Rs. 34,14,400/-. The witness, Sri Braja Kishore Jena, has denied to have paid this cash. Therefore, it was incumbent on the

assessee to come up with alternative evidence. Before the Assessing Officer, the assessee stated that witnesses were present when the sale was made with the purchaser and cash of Rs. 34,14,400/- was paid. The assessee could have produced the witnesses before the Assessing Officer to support his claim that the cash of Rs. 34,14,400/- was indeed given by Sri Braja Kishore Jena to him. This has not been done by the assessee. The onus to prove that the cash of Rs. 34,14,400/- has been received from Sri Braja Kishore Jena is on the assessee and the assessee has not discharged this onus. The CIT(A) further observed that in the appeal proceedings, the assessee has further stated that sale deeds are prepared on a benchmark price for the payment of stamp duty and that payment of 'on money' over and above reported in sale deeds is a reality. The assessee has relied upon the decision of Hon'ble Allahabad High Court in the case of CIT vs Intezar Ali (All) and decision of Hon'ble Kerala High Court in the case of CIT vs P.M. Abu Bakr (2014) 45 Taxman.com 172(Kerala), wherein, it was observed that these cases are general in nature, mentioning that there may be 'on money' in real estate transactions. In the case of the assessee, the purchaser has denied having paid cash of Rs. 34,14,400'-. The assessee has not been able to put forward any further evidence in this regard. He observed that the agreement dated 24.12.2009 itself is not sacrosanct. When the purchaser stated that he was forced to sign on the agreement and he has not paid Rs.34,14,400/-, the assessee was required to bring additional evidence before the Assessing Officer. This was not done by the assessee. This

view is supported by the decision in the case of Chand Prakash Vij vs CIT, 315 ITR 251 (P&H). hence, he confirmed the action of the Assessing Officer.

8. Before me, Id A.R. reiterated the submission made before the lower authorities. Ld A.R. also produced before me a copy of valuation report dated 22.6.2011 which was made by Er. A.K.Samantray, in respect of Plot No.47/628 situated at Laxmivihar, PS: Sahid Nagar, Bhubaneswar, Dist: Khurda belonging to Shri Sadhu Charan Biswal, wherein, the registered valuer has opined the value of the land was Rs.1600/- per sq.ft. He claimed that the above valuation was also accepted by Punjab National Bank, Chandrasekharpur Branch, Bhubaneswar. He claimed that the said plot of land was situated in the same locality. The plot of land sold by the assessee was measuring Ac. 0.080 dcms equivalent to 3478 sq.ft and the value of the same as per the said valuation report comes to Rs.55,64,800/-.

9. Id D.R. supported the orders of lower authorities.

10. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the assessee constructed a house property at Plot No.321, (P) G.A.Plot No.222, Chandrasekharpur, Bhubaneswar and made investment of Rs.79,05,000/-. On being required to explain the

source of investment, the assessee stated that it had sold a land and building at Vanivihar, Bhubaneswar and received Rs.54 lakhs. The Assessing Officer from the registered sale deed dated 22.2.2010 between the assessee and the purchaser Shri Braja Kishore Jena observed that the sale consideration mentioned in the said deed is Rs.19,85,600/- comprised of Rs.10 lakhs in cheque and Rs.9,85,600/- in cash. When required to explain, the assessee submitted that the said plot of land was actually sold to Shri Braja Kishore jena for a consideration of Rs.54 lakhs . In support of this, the assessee submitted that he had entered into a sale agreement dated 24.12.2009 with Shri Braja Kishore Jena, wherein, the amount of sale consideration was stated to Rs.54 lakhs. It was pointed out that the said agreement to sale was signed by Shri Braja Kishroe Jena and the same was notarised and was also signed by the witnesses. The Assessing Officer recorded the statement of Shri Braja Kishore Jena u/s.131 of the Act on 15.1.2013, wherein he denied of having paid Rs.34,14,400/- in cash to the assessee. On further questioned by the Assessing Officer as to why he signed the agreement, which shows sale consideration of Rs.54 lakhs, the explanation of Shri Jena was that he was forced to sign this agreement as the assessee threatened to sell the said property to some other persons. In the circumstances, the Assessing officer disbelieved the explanation of the assessee and made an addition of Rs.34,14,400/- under the head unexplained investment in house property.

11. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

12. I find that in the instant case, it is not in dispute that the assessee has sold its plot of land being Plot No.321(P), G.A.Plot No.222, situated at Chandrasekharapur, Bhubaneswar to Shri Braja Kishore Jena vide registered deed of sale dated 22.2.2010. The only dispute is regarding amount of consideration which was received by the assessee against the above sale. According to the assessee, the sale consideration was Rs.54 lakhs and his contention was supported by a Notorised agreement of sale dated 24.12.2009 whereas as per the revenue, the consideration was Rs.19,85,600/-, which was supported by registered sale deed. The assessee explained the reason of difference in the amount of consideration mentioned in the agreement of sale and sale deed as the total agreed consideration as per agreement of sale was received by him before execution of sale deed and the purchaser insisted of mentioning of lesser amount of consideration in the sale deed to avoid payment of the stamp duty which was to be paid by the purchaser. The assessee also produced before me a copy of valuation report dated 22.6.2011 which was made by Er. A.K.Samantray, in respect of Plot No.47/628 situated at Laxmivihar, PS: Sahid Nagar, Bhubaneswar, Dist: Khurda belonging to Shri Sadhu Charan Biswal, wherein, the registered valuer has opined the value of the land was Rs.1600/- per sq.ft. He claimed that the above valuation was also accepted by Punjab National Bank, Chandrasekharapur Branch, Bhubaneswar. He claimed that the said plot of land was situated in the same locality. The plot of land sold by the assessee was measuring

Ac. 0.080 dcms equivalent to 3478 sq.ft and the value of the same as per the said valuation report comes to Rs.55,64,800/-.

13. On the other hand, the Assessing Officer recorded a statement of purchaser of the plot of land namely Shri Braja Kishore Jena who stated in his deposition that he actually paid Rs.19,85,000/-. He explained that he signed this agreement of sale on 24.12.2009 for Rs.54 lakhs as because if he would not sign that agreement, then the assessee could have sold the land to some other persons.

14. I find that the Assessing Officer treated the statement of Shri Braja Kishore Jena as sacrosanct without any verification. I find that Sri Braja Kishore Jena has categorically admitted of signing the agreement to sale on 24.12.2009, wherein consideration was stated Rs.54 lakhs. I find no reason why a person who agreed to purchase a plot of land at Rs.19,85,600/- will sign an agreement at a prior date, wherein, more amount is shown as the amount of consideration. The reason given by the purchaser is not at all convincing when I take into consideration the valuation report on 22.6.2011 mentioned above. In the above circumstances, I find force in the submission of the assessee that the plot of land was actually sold at the price stipulated in the notorised agreement of sale. I, therefore, set aside the orders of lower authorities and delete the addition of Rs.34,14,400/- and allow the ground of appeal of the assessee.

15. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 9 /08/2017.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 9 /08/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant : Sri Basudev Panigrahi, Plot No.211/H, Sector-A, Zone-B, Mancheswar Industrial Estate, Rasulgarh, Bhubaneswar.
2. The Respondent. ITO Ward 3(1), Bhubaneswar
3. The CIT(A) -2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack