

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
BEFORE: SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

ITA No.367/RPR/2014
(Assessment Year :2011-2012)

ITO-1, Bhilai(C.G.)	vs	Chowa Ram Baghel, 37CG, BN NCC, R.S.Stadium Durg (C.G)
PAN No. : AUXPB 2953 N		
(Appellant)	..	Respondent

Revenue by : Shri Sanjay Kumar, DR
Assessee by : Shri M.C.Jain, AR

Date of Hearing : 15/01/2018
Date of Pronouncement 17/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 09.09.2014 for the assessment year 2011-2012.

2. The Revenue has taken the following grounds of appeal :-

- a) *"Whether on the facts and circumstances of the case, the CIT(A) has erred in admitting additional evidence under Rule 46A in the form of gift deed of the father-in-law of the assessee without there being any reasonable cause for the assessee not to have produced them before the Assessing Officer?"*
- b) *"Whether in law and on facts and circumstances of the case, the Ld. CIT(A) has erred in directing the AO to recomputed the LTCG by taking full value of consideration received at Rs.45,80,000/-instead of Rs.75,80,000/- adopted by the AO on the basis of confessional statement of the assessee?"*
- c) *"Whether in law and on facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of claim of deduction u/s 54B of the I.T. Act, 1961 of Rs.9,90,300/- and Rs.8,62,600/- as the said plot of land were not purchased in his name.*
- d) *"The Order of the Ld. CIT(A) is erroneous both in law and on facts ?"*
- e) *Any other ground that may be adduced at the time of hearing ?"*

3. Brief facts of the case are that the AO observed that on going through the bank statement, it was found that a cash deposit of

Rs.30,30,500/- has been made by the assessee. In response to the enquiry of the AO, the assessee explained that the cash was received over and above the value mentioned in the registered deed against sale of land. The AO observed that it was stated that the assessee owned a land at Village Labhandi, Raipur measuring 1.14 acres. The land was sold out and the deal was finalised on 02.07.2010 between the assessee and Golden Bricks Infrastructure Pvt. Ltd. The AO further observed that the sale deed submitted by the assessee shows the fair market value of the property at Rs.45,80,000/-. The AO further noted that the assessee admitted that deal was finalised on an amount of Rs.76,00,500/- but the land was registered on an amount of Rs.45,80,000/- and the purchaser gave an amount of Rs.30,20,000/- in cash three days before the deal. On receipt of the said amount, the same was deposited in the bank.

4. The AO further observed that the assessee in his statement submitted that out of the sum received on land deal, he purchased an agricultural land at Tehsil Rajim, Raipur at Rs.5,52,000/- on 27.07.2011 in his name and two other agricultural properties at Village Labhandi, Raipur in the name of his wife costing at Rs.9,46,000/- and Rs.8,24,000/-. The said lands were registered on 01.08.2011. The remaining amount was spent for education of children and their marriage.

5. On the above facts, the AO opined that profit arising out of the sale of the aforesaid property is taxable as capital gain. The assessee had appropriated the entire sale proceeds in making some investments and on discharging his other liabilities. He further observed that since the cost of acquisition of the property in question was not known by the assessee,

guidelines with regard to the cost of property from the Sub-Registrar, Raipur have been obtained and placed on record. As per the guidelines, the cost of property in the year of acquisition stood at Rs.40,000/- per acre. Hence, he took the sale consideration at Rs.75,80,000/- and deducted the indexed cost of acquisition at Rs.3,24,216/- and arrived at long term capital gain of Rs.72,55,784/-. From this, he allowed deduction for purchase of land on 27.07.2011 at Rs.5,52,000/- plus stamp duty of Rs.37,500/- and deducted Rs.5,89,500/-. In this way, he determined the long term capital gain at Rs.66,66,284/- and added the same to the income of the assessee.

6. On appeal, the CIT(A) held as under :-

6. I have care fully gone through the assessment order and submissions of the appellant. It is seen that the appellant had sold his agricultural land at Lahbandhi. Raipur to M/s Golden Bricks Infrastructure Pvt. Ltd. through conveyance deed dated 02.07.2010. It seen that the actual consideration for which property was transferred by the appellant is Rs.45.80 lacs and the same is the value adopted for stamp duty purposes also. It is seen that the A.O, relying upon the statement of the appellant himself given during the assessment proceedings to the A.O, treated the cash deposit of Rs.30 lacs in the Bank Account of the appellant as part of the sales consideration against transfer of the aforesaid agricultural land representing receipt of on money' and thus, computed Long Term Capital Gain by taking full value of consideration received at Rs.75.80 lacs as against Rs.45.80 lacs mentioned in the Conveyance deed. During the course of appellate proceedings, the appellant contended that the property was transferred for an amount of Rs.45.80 lacs only and due to improper state of mind being brain tumor patient, ended up giving incorrect statement inadvertently, the appellant further contended that the sum of

Rs.30.00 lacs was deposited out of the cash gift received by the appellant from his father-in-law. With a view to verify the facts, particularly, when there was a apparent inconsistency between the statement of the appellant before the A.O, submissions during the appellate proceedings and facts emerging from the registered conveyance deed, notices u/s 133(6) dated 24.06.2014 were issued to the buyer namely Mis Golden Bricks Infrastructure Pvt. Ltd. and the donor namely Shri Sant Ram Chaturvedani, father-in-law of the appellant. The appellant was also asked to furnish the copy of gift deed to substantiate the claim of gift having been received by the appellant from his father-in-law to the tune of Rs.30,00,000/- during the year under consideration. The appellant was also asked to furnish the documentary evidences in support of his submissions regarding ill health and medical treatment for brain tumor. The written replies were received from the buyer namely M/s Golden Bricks Infrastructure Pvt. Ltd. and the donor. The buyer namely M/s Golden Bricks Infrastructure (P) Limited vide its written reply dated 09.07.2014 received on even date stated that the property was purchased by it for an amount of Rs.45,80,000/- only and no such amount of Rs.30,00,000/- was ever paid in cash to the appellant, the buyer also furnished the ledger of land at Labhandhi and schedule of fixed assets from its audited financial statements in support of its contention. The written reply was received also from the donor namely Shri Shri Sant Ram Chaturvedani, father-in-law wherein Shri Sant Ram Chaturvedani i.e. the donor affirmed having given gift of Rs.30,00,000/- in cash to the appellant. The donor also furnished the copy of gift deed and confirmed having signed the gift deed which is found to be notarized. The donor namely Shri Sant Ram Chaturvedani also explained the source of cash gift of Rs.30.00 lacs given by him and stated that he had received advance against sale of his property situated at Belbhautha, admeasuring approximately 7 acres. The donor also furnished the copy of sale agreement with Mr. Ganga Ram Sahu, resident of Dumer Talab, Amanaka, Raipur which is also found to be notarized. The donor also explained the purpose and reason behind making

cash gift of Rs.30,00,000/- to the appellant in as much as the appellant is suffering from brain tumor and was in need of funds for medical treatment as well as for marriage of his children and construction / repair of his house property. Cumulatively, considering the facts as emerging from the aforesaid enquiries and documentary evidences on record, I am inclined to accept the contention of the appellant that the property was transferred for an amount of Rs.45.80 lacs only as has been confirmed by the buyer and is also getting substantiated from the registered conveyance deed, particularly, when the value adopted for stamp duty purposes is also Rs.45.80 lacs. As regards sum of Rs.30,00,000/- deposited in cash by the appellant in his Bank account, it is seen that the appellant has furnished the name, address and PAN of the donor namely Shri Sant Ram Chaturvedani, father-in-law of the appellant and the transaction of gift has been confirmed by the said donor. Thus, in my considered view the appellant has established the identity of the donor and genuineness of the transaction of the gift, particularly, when the donor has also confirmed the transaction of gift by way of confirmatory letter. The only issue left to be examined was the credit worthiness of the donor, in this regard, it is seen that the donor has explained source of cash gift and stated that he had received advance against sale of land in cash from Mr. Ganga Ram Sahu, resident of Dumer Talab Amanaka, Raipur, PAN DWQPS9013G for sale of his property situated at Village Belbhautha and against the total consideration of Rs. 42 lacs, the donor has received advance of Rs.30,00,000/- from Mr. Mr. Ganga Ram Sahu.

7. It is seen that the transaction of receipt of advance of Rs.30,00,000/- in cash is getting substantiated from the sale agreement which is found to be notarized. With a view to ascertain the veracity of said Sale Agreement, the notice u/s 133(6) dated 19.08.2014 was issued to Shri Ganga Ram Sahu bearing No.194 wherein Shri Ganga Ram Sahu was required to confirm whether he had given any such amount of Rs.30.00,000/- in cash to said Shri Sant Ram Chaturvedani, father-in-law of the appellant and he was

further required to explain the purpose of advance and source from which Shri Ganga Ram Sahu paid the said amount. Shri Ganga Ram Sahu was also required to furnish the copy of ITR filed by him along with the copy of bank statement and cash book to prove the availability of cash of Rs.30,00,000/- for payment to Shri Sant Ram Chaturvedani, father-in-law of the appellant. Shri Ganga Ram Sahu, in his reply, confirmed having executed the sale agreement and stated that he had paid Rs.30,00,000/- to the appellant's father-in-law and that as his only source of income is agriculture, hence, no ITR was filed. he also stated that he had received compensation of Rs.62,87,177/- in the F.Y 2008-09 against compulsory acquisition of his agricultural land and advance of Rs.30,00,000/- was paid out of cash withdrawn from bank. Shri Ganga Ram Sahu did furnish the copy of his bank account statement in Dena Bank and from the perusal thereof it is noticed that Shri Ganga Ram Sahu had withdrawn following sums in cash from his said bank account:

Date	Amount of cash withdrawal from bank account by Shri Ganga Ram Sahu
20.3.2009	2,00,000/-
02.07.2009	4,00,000/-
31.08.2009	4,00,000/-
07.09.2009	3,50,000/-
09.11.2009	5,00,000/-
19.12.2009	2,00,000/-
09.01.2010	6,00,000/-
05.03.2010	6,00,000/-
28.05.2010	5,00,000/-
Total cash withdrawn till 28.05.2010	37,50,000/-

8. It is also noticed that Shri Ganga Ram Sahu had received Rs.62,87,177/- through Nanking channel which was verifiable with the TDS certificates i.e. Form 16A furnished by Shri Ganga Ram Sahu along with his confirmatory letter. In view of above findings, I am convinced that Shri Ganga Ram Sahu had sufficient cash in hand to make payment of Rs.30,00,000/- in cash to the appellant's father-in-law. For the reasons elaborately mentioned and findings

recorded, I am convinced with the credit worthiness of the donor and in the instant case, not only the source of credit has been explained by the appellant but also the source of source has been established inasmuch as the donor i.e. the appellant's father-in-law (source) has also explained the source (which in the instant case is source of source) from which he got the amount of Rs.30.00,000/-.

9. *Looking to the facts and circumstances of the case, I am convinced that the sum of Rs.30.00 lacs was received as cash gift by the appellant from his father-in-law and as it needs no reiteration that father-in-law very much falls in the list of "relatives" as defined u/s 56 from the point of view of the appellant and hence, it is not includible in the total income being a gift received from relative. Hence, the addition of Rs.30,00,000/- made by the A.O cannot be sustained.*

10. *As regards reinvestment of sale proceeds of agricultural land in purchase of agricultural lands in the name of spouse of the appellant and admissibility of exemption u/s 54B on such reinvestment, I find that the A.O. himself has allowed exemption u/s 54B in respect of reinvestment made by the appellant in his own name. Thus, it is not in dispute whether the land transferred was an agricultural land or that the same was being used for agricultural operations in the immediately preceding years. The fact of reinvestment in purchase of agricultural lands in the name of spouse of the appellant has been found recorded by the A.O in the assessment order, copy of purchase deeds dated 01.08.2011 wherein spouse of the appellant namely Smt. Lalita Bhagel is appearing as buyer has been carefully perused, I am convinced that the said lands purchased in the name of the spouse of the appellant are agricultural lands and that too double op lands. The judicial pronouncements relied upon by the appellant are certainly providing strength to the case of the appellant and Section 54B being a beneficial provision has to be construed liberally. therefore. I am convinced that the appellant cannot be debarred from claiming*

exemption when other conditions stipulated u/s 54B stands satisfied. It is seen that the appellant has purchased the agricultural lands in the name of his spouse for an amount of Rs.9,90,300/- (946000 + 44300) and Rs.8,62,600/- (824000 + 38600) (including stamp duty etc.) payments whereof were made by the appellant from his bank account on 01.08.2011, I have also considered the fact that the appellant had filed the return of income on 31.07.2011, whereas, reinvestments were made on 01.08.2011, it is seen that the reinvestments have been made well in-line with the stipulated period of two years from the date of transfer which in the present case is 02.07.2010. I am of the considered view that the exemption cannot be denied merely because the appellant did not deposit the sale proceeds in the capital gain account scheme i.e. in the separate bank account, inasmuch as, the property was registered on 01.08.2011 itself and taking a pragmatic view, it cannot be denied that the deliberations and negotiations for purchase of agricultural lands were in progress and the negotiations must have started much before 31.07.2011. Therefore, I am convinced that the appellant is entitled for exemption of Rs.9,90,300/- and Rs.8,62,600/- u/s 54B.

11. Alternate submission of the appellant has also been carefully examined wherein the appellant has claimed that if the full value of consideration received is adopted at Rs.75.80 lacs merely on the basis of statement of the appellant, then, the A.O should also accept the statement of the appellant that he had spent Rs.48,00,000/- for purchase of agricultural lands out of the sale proceeds received by him. As substantive relief has been allowed in para 6 to 10 supra, the said argument of the appellant becomes academic. However, even from academic point of view, I do find considerable force in the argument of the appellant for the reason that the A.O cannot discriminate between two statements given on the same date and time i.e. accepting Rs.75.80 lacs as sales consideration and disbelieving the statement regarding reinvestment of Rs.48.00 lacs. If the A.O was of the opinion that the

appellant has received on money he ought to have considered this fact of payment of on money by the appellant while reinvesting the sale proceeds for purchase of agricultural lands and thus, the A.O ought to have allow the exemption of Rs.48,00,000/- lacs u/s 54B instead of restricting the substantiative benefit only to the amount appearing in the conveyance deeds. Thus, the alternate arguments of the appellant is also upheld, however, as the relief has been allowed in para 6 to 10 supra, the AO is directed to recomputed the Long Term Capital Gain by taking full value of consideration received at Rs.45,80,000/- lacs and allow exemption u/s.54B for an amount of Rs.9,90,300/- and Rs.8,62,600/-.

The appellant gets relief of Rs.9,90,300/-, Rs.8,62,600/- and Rs.30,00,000/-.”

7. Being aggrieved by the said order of CIT(A), the Revenue is in appeal before us.

8. The DR argued that before the CIT(A) the assessee submitted that it has received gift of Rs.3 lakhs from his father-in-law and also filed an affidavit for the same. The CIT(A) accepted the said explanation and deleted the addition. The submission of the assessee before the AO was that it was the amount received by the assessee over and above the amount stated in the sale deed on sale of land. Therefore, the CIT(A) was not justified in deleting the addition by accepting some different explanation of the assessee. He further argued that the CIT(A) was also not justified in allowing deduction u/s.54B of the Act on purchase of land of Rs.9,90,300/- and Rs.8,62,600/- when they were registered in the name of assessee's wife. According to the DR deduction u/s.54B of the Act is allowable only in a case where the new asset was purchased by the assessee in his own name.

9. In the above back ground of the case, we find that the CIT(A) has accepted the explanation of the assessee with regard to Rs.30 lakhs deposited in the bank account after verifying the details. He verified from Form No.16A furnished by Shri Ganga Ram Sahu along with his confirmation letter that he had received Rs.62,87,177/- through banking channel. The CIT(A) was satisfied that Shri Ganga Ram Sahu had sufficient cash in hand to make payment of Rs.30 lakhs in cash to the assessee's father-in-law. This finding of CIT(A) has remained uncontroverted by the DR during the course of hearing. The CIT(A) also held that the father-in-law falls within the term "relatives" u/s.56 and, therefore, the amount was not includible in the total income of the assessee being a gift received from relative. Therefore, he held that addition of Rs.30 lakhs made by the AO cannot be sustained. Accordingly, we do not see any reason to interfere in the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

10. With regard to allowing of deduction u/s.54B of the Act of Rs.9,90,300/- and Rs.8,62,600/-, we find that the same was disallowed as the lands were registered in the name of wife of the assessee. We find that the Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Shri Dinesh Verma, ITA No.381 of 2014(O&M), order dated 06.07.2015, for availing exemption u/s.54B of the Act, has held that, 'the new agriculture land should be purchased in the name of tax payer himself and not in the name of any third party including the tax payer's wife, son, father etc. Respectfully, following the same, we hold that the CIT(A) was not justified in allowing the deduction u/s.54B for purchase of land of

Rs.9,90,300/- and Rs.8,62,600/- in the name of his wife. Hence, we set aside the order of CIT(A) and restore back the order of AO.

11. In the result, appeal filed by the Revenue is partly allowed.

Order pronounced in the Court on Wednesday, the 17th Day of January, 2018 at Raipur.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Raipur; दिनांक Dated 17/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur