

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7104/Del./2017
Assessment Year 2013-2014

Shri Devinder Kumar, House No.A-38, Near Gurudwara, Mohan Garden, Uttam Nagar, New Delhi 110059. PAN AGQPK7909Q	vs.	The Income Tax Officer, Ward-68(2), Room No.211, D-Block, Civic Centre, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Manoj Kumar Anand, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	04.07.2018
Date of Pronouncement :	06.07.2018

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-21, New Delhi, dated 14.09.2017, for the A.Y. 2013-2014, challenging the addition of Rs.7 lakhs on account of income from other sources.

2. Briefly, the facts of the case are that during the year under consideration, the assessee sold a house property located

at Mohan Garden, Uttam Nagar, New Delhi for Rs. 70,10,000/- and purchased a residential house at Dwarka for Rs.73,83,100/- which included an amount of Rs.4,14,000/- as stamp duty. The assessee claimed the entire amount of LTCG as exempt u/s 54 of IT act. The AO found that the sale consideration of the property at Mohan Garden included an amount of Rs 10,00,000/- towards sale of furniture available in the house at the time of sale of property. The assessee has executed an agreement for sale of furniture. To ascertain the genuineness of the sale consideration of furniture, the AO conducted necessary enquiries and summons were issued to Shri Rajkumar Maini and Smt. Pooja Maini with whom agreement of sale of furniture has been executed. Summons was also issued to Shri Rakesh Ahuja from whose accounts the payments were made for the alleged sale of furniture. All these three persons admitted that exchange of some furniture was involved but the cost involved was around Rs.3 to 3.5 lakhs. These persons also admitted that main purpose of agreement was to reduce the stamp duty involved in the transaction.

Considering these facts, the transaction of sale of furniture were determined at Rs.3 lakhs and accordingly, sale consideration of long term capital gains were determined at Rs.60,10,000/- and the amount of Rs.7 lakhs was treated as unexplained cash credit under section 68 of the I.T. Act, 1961.

3. The assessee challenged the addition before the Ld. CIT(A). It was contended before the Ld. CIT(A) that amount was received through cheque against the registered sale deed as also that the sale of furniture and household items for Rs.10,00,000/- and the agreement was notarized on 19.10.2012. It was also contended that even if the contention of the A.O. is accepted the assessee is entitled for long term capital gain on Rs.7 lakhs also as the assessee has invested total amount of Rs. 73.83 lakhs. The assessee also contended that he has proved the identity, creditworthiness and genuineness of the transaction, so no addition under section 68 was to be made. Another contention of the assessee was that Rs.10,00,000/- was received against sale of personal effects under section 2(14)(ii) which are not liable to tax. The Ld. CIT(A)

noted that there is no dispute on the fact that the assessee has received Rs.10,00,000/- on account of sale of furniture as also that the value of furniture was inflated and shown excessively to evade stamp duty as also to evade proper payment of long term capital gain. Prima facie the real value of the sale of furniture was Rs.3 lakhs as disclosed by the concerned persons related to the transaction of sale of furniture. The Ld. CIT(A), however, noted that long term capital gain has already been determined and benefit under section 54 have already been given to the assessee. Therefore, no further benefit can be given. It is also noted that value of the house hold articles was Rs.3 lakhs only, therefore Rs.7 lakhs shall have to be added as income from other sources, therefore, the appeal of assessee has been dismissed.

4. I have heard the Learned Representatives of both the parties and perused the material on record.

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to agreement to sale dated 19.10.2012 (PB-27). Reply filed before A.O.

PB-25 and 29. He has submitted that claim of assessee has not been disputed by the A.O.

6. On the other hand, Ld. D.R. relied upon the orders of the authorities below.

7. After considering the rival submissions, I do not find any merit in the appeal of the assessee. It is not in dispute that assessee received Rs.10 lakhs towards sale of furniture in the house at the time of sale of the property. The assessee stated to have executed agreement to sale the furniture etc., vide Agreement dated 19.10.2012, copy of which is filed in the paper book. The A.O. in order to ascertain the genuineness of the sale consideration of the furniture etc., made necessary enquiry and summoned the purchasers Shri Rajkumar Maini and Smt. Pooja Maini with whom agreement to sale of furniture etc., has been executed. Summons were also issued to Shri Rakesh Ahuja from whose account the payments were made for the alleged sale of furniture. All these three persons admitted before A.O. that exchange of some furniture was involved but the cost involved

was around Rs.3 to 3.5 lakhs. The main purpose of the agreement was to reduce the stamp duty involved in the transaction to evade stamp duty on the sale deed. These facts have not been disputed by the Learned Counsel for the Assessee during the course of assessment proceedings through any evidence or material on record. These facts clearly prove the case of the A.O. that the genuineness of the claim of the assessee for receipt of Rs.10 lakhs as sale consideration on furniture has not been proved. The assessee did not dispute the statement of these persons with whom the agreement to sale was executed. It may also be noted here that the purchasers Shri Rajkumar Maini and Smt. Pooja Maini have not given any sale consideration to the assessee but Shri Rakesh Ahuja has given the payment on their behalf. This itself also casts a doubt on the explanation of assessee. The authorities below have, therefore, correctly determined the value of sale consideration of furniture etc., at Rs.3 lakhs. It may also be noted here that list of items for sale of furniture etc., are given in the agreement to sale where even number of items have not been mentioned.

The list would also support the findings of the A.O. that the value of old furniture etc., would not have exceeded the amount of Rs.3 lakhs. No evidence has been produced by the assessee to explain that value of the items under sale are more than Rs.3 lakhs. Therefore, totality of the facts and circumstances of the case clearly prove that the furniture etc., sold by assessee was for Rs.3 lakhs only, against which, assessee has received cheque of Rs.10 lakhs. Therefore, the authorities below were justified in considering the addition of Rs.7 lakhs in the hands of the assessee. Since the agreement to sale was executed to inflate the value of the furniture so as to evade the stamp duty and also to evade proper payment of long term capital gains, therefore, authorities below rightly rejected the explanation of assessee. Learned Counsel for the Assessee contended that since it is a sale of personal effects, therefore, no addition could be made. The contention of Learned Counsel for the Assessee is not acceptable because the personal effects would not be included in the capital asset under section 2(14)(ii) of the I.T. Act. Therefore, it shall have to be considered under the

residuary clause "Income from other sources". The Ld. CIT(A) noted that since the value of the house hold items i.e., Sofa etc., which were genuinely found to be at Rs.3 lakhs only as against the inflated amount of Rs.10 lakhs, therefore, Rs.7 lakhs shall have to be considered as income from other sources. Learned Counsel for the Assessee contended that no opportunity was given to explain that it is not a case of income from other sources. However, no arguments have been made in this behalf before the Tribunal. Since the transaction of sale of furniture etc., was sham and to inflate the value of the furniture etc., to evade stamp duty and evade long term capital gains, therefore, no benefit could be given to assessee on such agreement to sale. The assessee is not able to explain as to for what consideration Rs.7 lakhs have been received by assessee, therefore, it was correctly treated as income from other sources. Considering the totality of the facts and circumstances of the case, I am of the view that no interference is called for in the matter. I confirm the addition and dismiss the appeal of the assessee.

8. In the result, appeal of the Assessee is dismissed.

Order pronounced in the open Court.

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

Delhi, Dt. 06th July, 2018.

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 //

Assistant Registrar : ITAT Delhi Benches :
Delhi.