

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 667/JP/2017
निर्धारण वर्ष/Assessment Year :2011-12

Shri Subhash Chand Tomar, 123, Cosmos Green, Block-14, Bhiwadi, Alwar	बनाम Vs.	The Joint Commissioner of Income Tax, Range- 2, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAQPT5193F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Shri K. C. Meena (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 25/09/2018
उदघोषणा की तारीख/Date of Pronouncement: 20/12/2018

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-22, Alwar dated 05.05.2017 for A.Y. 2011-12 wherein the effective ground of appeal relates to addition of Rs. 20,50,000/- made by the AO u/s 69A of the Act.

2. Briefly stated, the facts of the case are that the during the year under consideration, the assessee has sold his residential property situated at D-111, Bhagat Singh Colony, Tehsil-Tijara, Distt- Alwar on 08.07.2010 for consideration of Rs. 30,000,00/- which was stated to have

been deposited in assessee's bank account maintained with HDFC Bank, Bhiwadi. On perusal of the assessee's bank account, the Assessing Officer observed that there are certain cash deposits on various dates totalling to Rs. 30,60,000/-. The assessee submitted that Rs. 9,50,000 was received in advance for sale of the house property which was deposited on 03.05.2010 and 06.05.2010 in assessee's bank account. It was further submitted that the balance sale consideration of Rs. 20,50,000/- was deposited on 08.07.2010. The AO, on perusal of the bank statement, noted another cheque deposit of Rs. 20,00,000/- on 13.08.2010 and in respect of the same, the explanation of the assessee was that the said payment has been received by cheque from buyer of the property and the amount has been withdrawn and given back vide two cheques on the same date by the assessee to the buyer of the property.

3. In order to verify the assessee's explanation, the AO issued notice u/s 133(6) to the purchaser of the property and in his response, he submitted that Rs. 10,00,000/- was paid in cash to the assessee and Rs. 20,00,000/- was paid through cheque. Noting the discrepancy in terms of explanation submitted by the assessee in respect of amount of Rs. 20,50,000/- found deposited in cash on 08.07.2010 which was stated to be received from the purchaser of the property and the reply of the purchaser where he says that he has made cheque payment of Rs 20,00,000, the AO issued a show-cause to the assessee.

4. In response, the assessee submitted that sale transaction was concluding by signing the sale deed which was registered on 08.07.2010 and the actual position, therefore, is that total consideration is paid in cash on or before the date of the registry i.e. 08.07.2010 and later on, a

cheque of Rs. 20,00,000/- was issued by the purchaser on 10.08.2010 and the assessee has returned the cash earlier received from the purchaser by withdrawing the cash from his bank account and in support, affidavit of the assessee was also submitted.

5. The submission filed by the assessee was however not found acceptable by the Assessing officer and his findings are as under:-

"1. The assessee has argued that he has received the full amount of sale consideration i.e. Rs. 30,00,000/- in cash before the registry and later on a cheque of Rs. 20,00,000/- was issued by the purchaser to seller. The argument of the assessee is not acceptable because, if the assessee had received all the amount of sale consideration in cash before the registry. What was the need to take a cheque of Rs. 20,00,000/- from the purchaser.

2. The purchaser has clearly stated that house situated at D-111, Bhagat Singh Colony, Bhiwadi was purchased for Rs. 30,00,000/- and Rs. 10,00,000/- was paid in cash and the amount of Rs. 20,00,000/- was paid through bank. The entry of cheque given is also reflecting in the account of the purchaser as well as in the account of assessee.

3. The assessee has accepted the fact that a cheque of Rs. 20,00,000/- was received from the purchaser Shri Gulzari Lal Sharma. If this cheque was not against the consideration of sale, then what was the purpose of this receipt in the account of the assessee.

4. The Two withdrawals of Rs. 9.5 lacs on 13.08.2010 from the bank account have been made in cash. The assessee can not establish that these were handed over to purchaser.

5. The arguments given by the assessee not supported by any documentary evidence and the assessee has failed to establish any thing.

6. *The assessee has failed to explain the source of Rs. 20,50,000/- deposited in cash on 08.07.2010 in his account."*

6. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the said addition and his findings are contained at para 5.5.2 which is reproduced as under:-

"5.5.2 I have considered the above mentioned facts. I have taken note of the fact that the purchaser has admitted that he has made payment of Rs. 30 lakhs towards purchase consideration of the property by making cheque payment amounting to Rs. 20 lakhs and cash payment of Rs. 10 lakhs. Therefore, the purchaser has denied making any payment of Rs. 20,50,000/- found deposited in cash in the bank accounts of the appellant on 08.07.2010. In view of this fact, the AO is justified in concluding that the source of Rs. 20,50,000/- found deposited in cash in the bank account of the appellant remain unexplained. Accordingly, the addition of Rs. 20,50,000/- is confirmed and the appellant's ground of appeal on this issue is dismissed."

7. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to source of cash amounting to Rs 20.50 lacs found deposited in assessee's savings bank account on 8.7.2010 maintained with HFDC Bank. The assessee's contention is that the said amount has been received towards the balance sale consideration towards sale of his house property. The Revenue's contention is that based on information received u/s 133(6) from the purchaser of the said property, he has issued a cheque for Rs 20 lacs towards the balance sale consideration which was found deposited on

13.8.2010 and therefore, the assessee's contention was not found acceptable.

8. To our mind, the better way of resolving the present controversy by the Revenue would have been to call for personal appearance of the buyer of the property and to allow the assessee's to cross-examine the buyer. The same would have given a greater clarity on the factual position on the sale transaction and mode of discharge of sale consideration. Given that the matter is more than 8 years old, we are not inclined to remand the matter and allow the parties a fresh lease of life and in the process, burden the parties to spend additional time and cost.

9. Having said that, given the evidences which have been gathered and presented by both the parties and which we have examined, we find that the assessee deserves to succeed in the present appeal. The first critical piece of evidence is the sale deed for transfer of house property which was executed and registered with the Sub-Registrar, Bhiwadi on 8.7.2010 wherein it has been stated clearly that the sale consideration agreed at Rs 30 lacs has been received on or before the date of registry and the possession of the property has been handed over on the date of the registry i.e. 8.7.2010. The sale deed is however silent as far as mode of discharge of the sale consideration – whether fully in cash, or part cash and part cheque payment. As per information obtained by the AO from the buyer of the property, a cheque for Rs 20 lacs dated 10.8.2010 was issued in favour of the assessee by the buyer of the property and the same was found credited in assessee's bank account on 13.8.2010 and the said fact was also confirmed by the assessee's bank. However, we find it highly improbable that the assessee will transfer his property and hand

over the physical possession on 8.7.2010, a clear one month in advance of receiving the remaining two-third of the sale consideration on 10.8.2010. It is equally highly improbable that as on the date of execution of the sale deed and handing over the possession of the property, the assessee agrees to receive a post dated cheque and live with the consequences of dishonor of such cheque in absence of any recovery mechanism so agreed with the buyer of the property. Having said that, the fact remains that there is a sale deed duly registered which states clearly that the sale consideration has been received by the assessee on or before the date of execution of the sale deed i.e, 8.7.2010, there is deposit of cash in bank account of the assessee on 8.7.2010, and there is also evidence of issuance of cheque dated 10.8.2010 by the buyer of the property in favour of the assessee and which has been credited in the assessee's bank account on 13.8.2010. In such a scenario, only probable scenario which exists is that the assessee has initially received cash of Rs 20 lacs from the buyer of the property which was deposited in the assessee's bank account on 8.7.2010 which has resulted in closure of the sale transaction as evidenced by the sale deed executed on 8.7.2010. Subsequently, for reasons best known to the two parties, the buyer of the property issued a cheque of equivalent amount on 10.8.2010 which was deposited in assessee's bank account on 13.8.2010 and simultaneously, cash of equivalent amount was withdrawn by the assessee and returned to the buyer of the property.

10. In light of above discussions and in light of peculiar facts and circumstances of the case, we agree with the assessee's explanation that the source of cash deposit of Rs 20.5 lacs on 8.7.2010 is the balance sale consideration received from the buyer of the property and which has been

duly offered to tax by the assessee in his return of income. In the result, ground of appeal is allowed.

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

Pronounced in the Open Court on 20/12/2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/12/2018.

*Ganesh.

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

1. अपीलार्थी / The Appellant- Shri Subhash Chand Tomar, Alwar
2. प्रत्यर्थी / The Respondent- JCIT, Range-2, Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 667/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar