

IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH, RANCHI

(Before Shri S. S. Godara, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 197/Ran/18 : Asstt. Year : 2014-15

I.T.O Ward 2(1), Ranchi	Vs	Shri Nand Bihari Srivastava PAN:AFWPS9673N
(APPELLANT)		(RESPONDENT)

Appellant/revenue by : Shri Chandan Das, JCIT/ld.DR
Respondent/department by : None appeared

Date of Hearing : 11-01-2019	Date of Pronouncement: 05 -04-2019
------------------------------	------------------------------------

ORDER

PER BENCH:

The captioned appeal filed by the revenue, is directed against the order dated 28-03-2018, passed by the ld. Commissioner of Income-tax (Appeals), Ranchi, which in turn arises out of an order passed by the Assessing Officer u/s. 144 of the Income-Tax Act, 1961 (in short, the 'Act') dated 28-10-2016.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasions. The learned Departmental Representative (ld.DR) was present for the appellant revenue. In the absence of any appearance of the assessee, the appeal is being dispose of ex parte qua the assessee after hearing the ld. DR for the revenue on merits in terms of Rule 24 of ITAT Rules, 1963.

3. Grounds of appeal raised by the revenue in ITA No. 197/Ran/2018 for the A.Y 2014-15-16 are as follows:-

The assessee had filed its return of income at Rs. 2,56,133/-. The assessee had sold two property for Rs. 70,00,000/-. The Ld. CIT(A) has partly allowed the appeal of the assessee and given relief of Rs. 69,96,455/-. The appeal is being filed against the relief allowed by the Ld. CIT(A). The grounds of appeals are as under:-

1. The Ld. Commissioner of Income Tax(A) has erred in allowing relief of Rs. 69,96,455/- on account of capital gain, as he has ignored provisions of section 56(2)(vii) of the Income Tax Act, 1961.

2. The Ld. CIT(A) also ignored the law points involved in the case of difference of consideration value and value taken for stamp duty.

4. Ground no. 1 and 2 relate to relief of Rs. 69,96,455/- on account of capital gain ignoring the provisions of section 56(2)(vii) of the I.T Act, 1961.

5. Brief facts qua the issue are that the assessee is a retired bank employee. Since no notice could be served upon him, he was not able to adduce evidences on his behalf. The appellant stated before AO that the property at village Pandara consisting of a house and land appurtenant thereto was sold on 17.09.2013 for a sum of Rs.56,00,000/- (the stamp duty value of the property as evidenced from the registered deed was Rs.35,00,000/- The appellant purchased a property being a residential flat Bearing No.11047 Eleventh Floor, Crossings Republik at Dhanudhera, Ghaziabad (UP) for Rs.30,00,000/- and had also paid stamp Duty charges of Rs.2,45,000/- . The appellant stated the long term capital gains arising to him on the sale of the house, which is given below: -

1. Sale consideration -	Rs.56,00,000/-
(Less) Indexed cost of acquisition -	Rs.23,51,455/-
Long Term Capital Gains (LTCG)-	Rs.32,48,545/-

Against the same, the appellant had invested a sum of Rs.32,45,000/- in the purchase of a flat and had claimed benefit u/s.54 of the Act. However, AO computed short term capital gain of Rs.70,00,000/- and made addition of Rs. 70,00,000/-.

6. On appeal, Id. CIT(A) deleted the addition. The Id. CIT(A) called the remand report from AO. In her Remand Report, the Ld. Assessing Officer has verified the documents and has confirmed the LTCG at Rs.32,48,545/-. She, however, has stated that the consideration paid by the appellant for the property was only Rs.30,00,000/- while the stamp Duty valuation was Rs.35,00,000/-. Thus the balance was taxable u/s. 56(2)(vii)(b) of the Act. After taking into account, the remand report, the Id. CIT(A) held as follows:-

“ I have considered the submissions of the appellant and have perused the Remand Report. I have also perused the deeds of sale and purchase and the bank account as well as the sale deed for the property at village Pandara which was sold by the appellant leading to LTCG. The sale deed evidencing sale of land was executed on 31.03.1995 for Rs.20,750/-. For the cost of construction the appellant has filed copies of the loan of Central Bank of India dated 17.05.1995 of Rs.2.90,000/- and House Building Advance of Rs.1,39,299/- sanctioned by Central Bank dated 22.12.1997 and further loan of Rs.30,000/- by the same bank dated 20.02.1999 for 'repairs and renovation'. The appellant had also invested Rs.2,50,000/- out of his salary and that of his wife. Based on these documents, the Ld. Assessing Officer, in her Remand Report has calculated the indexed cost of acquisition at Rs. 23,51,455/-. The appellant, in his computation sheet attached to the ITR had taken the cost of acquisition at Rs.24,68,327/-. In view of the discrepancy the cost of

acquisition taken by the Ld. Assessing Officer is taken as correct leading to LTCG of Rs.32,48,545/-.

Against this the appellant has made an investment of Rs.32,45,000/- (Rs.30,00,000/- as cost of the flat and Rs.2,45,000/- for Stamp Duty paid by the appellant [paid by the purchaser]. The value of stamp duty paid can be seen at Page No.3 of sale Deed No.8979. Further total value of Non judicial stamp paper used in getting the sale Deed No.8979 printed also is worth Rs.2,45,000/-. The difference is Rs.3.545/- which is the L TCG which needs to be brought to tax.

In her Remand Report the Ld. Assessing Officer has not brought out the basis of the evidence of the appellant having sold two properties as stated in the assessment order. The Ld. Assessing Officer, in the assessment order too has not stated the basis of concluding that the appellant had sold two properties. Accordingly. ground of appeal is partly allowed”.

7. Aggrieved by the order of the ld. CIT(A), the revenue is in appeal before us. After hearing the ld. DR for the revenue, we note that there is no infirmity in the order passed by ld. CIT(A). The ld. CIT(A) has passed the order, after considering all the facts and circumstances of the assessee's case, therefore , we do not interfere in the order passed by ld. CIT(A). Hence, appeal of the Revenue is dismissed.

8. In the result, the revenue's appeal is dismissed.

Order Pronounced in the Open Court on 05 -04-2019

Sd/-
(S. S. Godara)
Judicial Member

Sd/-
(Dr. A.L.Saini)
Accountant Member

Dated: 05 -04-2019

*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The Appellant/Revenue: The I.T.O Ward-2(1), Ranchi, CR Building (Annexe), Main Road, Ranchi-834001.
2. The Respondent/Assessee: Shri Nand Bihari Shrivastava,1-G Angan DAV Public Schhol, Hehal, Ranchi-834005.M/s. Keshavji Chhaganlal Jewellers P.Ltd Keshavji Bhawan, Diagonal Road, Bistupur Bazar, JSR-831001.
3. The CIT-,
4. The CIT(A)-,
5. DR, Ranchi Benches, Ranchi

True Copy, By order,

Assistant Registrar /Senior P.S
ITAT, Ranchi Benches