

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 5317/Del/2013
Assessment Year: 2009-10**

Sh. Ajay Kumar Seth, G66, Nizamuddin West, New Delhi. PAN-ABBPS0020N (Appellant)	vs.	Income-tax Officer, Ward 37(3), New Delhi (Respondent)
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**ITA No. 5318/Del/2013
Assessment Year: 2009-10**

Sh. Pramod Kumar Seth, B-36, Jangpura Extn. (F.F.), New Delhi. PAN-AWEPS8844C (Appellant)	vs.	Income-tax Officer, Ward 37(3), New Delhi (Respondent)
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Appellants by	Sh. Abhishek Mathur, Advocate
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	25.02.2019
Date of Pronouncement	23.04.2019

ORDER

Per L.P. Sahu, A.M.:

These two appeals have been filed by different assessees against the orders passed by the Id. CIT(A)-28, New Delhi dated 19.07.2013 for the assessment year 2009-10. Since the issue involved in both these appeals are common in the identical facts, hence, both the appeals are being decided by this consolidated order. For the sake of convenience, we first take up the appeal of the assessee Shri

Ajay Kumar Seth. The assessee has raised following concise grounds in this appeal :

1). *That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in sustaining the findings of the learned Assessing Officer in respect of:-*

i) Treating 1/4th share in the impugned property (on which capital gain have been determined by the learned Assessing Officer) in the hands of the appellant inspite of provened assessment records of the Income Tax as well as of Wealth Tax of the previous year's assessment of M/s Raj Nath Seth (HUF) where the impugned property in past had consistently been assessed in the status of Hindu Undivided Family (HUF).

2). *That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in not appreciating that although on the sale deed of the impugned property was signed by the appellant along with his two brothers as Vendors of the Vendee but in fact since all the three coparceners of the said HUF had signed the sale deed as "Confirming Parties" to the sale since they all are not the owners of the impugned property but they were coparceners of the HUF and the property was owned by M/s Raj Nath Seth (HUF). These facts were neither believed by the learned Assessing Officer nor by the Hon'ble Commissioner of Income Tax (Appeals) and these are arbitrarily rejected by both of them without giving any reasons and without any tangible materials on record to controvert the submissions of the appellant.*

3). *That the Hon'ble Commissioner of Income Tax (Appeals) has failed to appreciate the evidence on record and has erred in holding the appellant's claim of the property being HUF is not supported by evidence and it is an afterthought for the purpose of which evidence has been concocted. There is sufficient evidence reflected in various Income Tax and Wealth Tax returns to the effect that the impugned property belonged to HUF.*

She has not appreciated that the return of Income & Wealth Tax were signed by Sh. Ajay Kumar Seth only on behalf of M/s Raj Nath Seth (HUF) as coparcener and the assessment orders against these returns were also passed only in the status of HUF and not in the individual status of the signatory of the returns.

4) The Hon'ble Commissioner of Income Tax (Appeals) did not appreciate that once the property is being assessed in the status of Hindu Divided Family (HUF), it cannot be assessed in the status of individual unless and until the valid partition u/sec. 171 of the Income Tax Act, 1961 is not been recorded in the records of the Income Tax Department. In the absence of any order u/sec. 171 of the Act, the property at no stretch of imagination can be assessed as property of the individuals. This aspect was totally ignored by the Hon'ble Commissioner of Income Tax (Appeals) which is bad in law. Neither the learned Assessing Officer nor the Hon'ble Commissioner of Income Tax (Appeals) provided any opportunity to the appellant for this intention to change the established status of HUF to Individuals, therefore, the assessment made in the status of individuals are void ab initio.

5) That the Hon'ble Commissioner of Income Tax (Appeals) further erred in law in not deciding the appeal of the Appellant (ground-wise). She has passed the order in a mixed format without dealing each ground individually. This has resulted to the fact that Ground No. 6 remained unadjudicate. It has erroneously been merged with the Ground Nos. 7 & 8 which relates to the penalty u/sec. 271(1)(c) of the Income Tax Act, 1961.

2. The brief facts of the case are that the assessee filed return of income on 26.03.2010 declaring income of Rs.3,24,170/-. The case was selected for scrutiny. The assessee declared income from business and profession of Rs.3,29,213/- and interest income of Rs.961/- out of which the assessee claimed deduction u/s. 80C of the IT Act of Rs.6006/-. In the assessment proceedings, it was noticed that the assessee had sold a property No. 2689 to 2693, Baradari, Sher Afgan, Ballimaran, Delhi for consideration of Rs. 12,00,000/-. Information was received through AIR. The assessee was asked to file complete details of the property purchased and

sold and if any capital gain accrued to him. The assessee filed a letter dated 12.10.2011 enclosing copy of sale deed dated 22.07.2008. On perusal of the sale deed, the Assessing Officer noticed that there were three other vendors, namely, Sh. Pramod Kumar Seth, Sh. Vivek Seth and Smt. Sarala Seth. It was also noticed by the Assessing Officer that circle rate of property was determined at Rs.48,66,500/- for the purpose of stamp duty.

2.1. The AR of the assessee submitted before the Assessing Officer vide letter dated 12.10.2011 that the property was sold by M/s. Rajnath Seth (HUF), PAN-AAAHR5908Q for sale consideration of Rs.12,00,000/-. Further, the assessee was asked to prove with documentary evidence that the property in question belonged to Rajnath & Sons (HUF). In response, the assessee filed copy of assessment orders, W.T. returns in support of his claim. The Assessing Officer noticed that none of the documents clearly shows that the property belongs to HUF. Further, the sale deed also shows the name of the assessee and three other co-owners. Therefore, he concluded that the property directly belongs to the assessee as well as co-owners. Further, the purchaser of the land Shri Mohd. Imran S/o Sh. Mohd. Ahsan filed an affidavit stating that the property had been sold by four individuals. Out of four, one is the assessee. In the sale deed, there was not definite share of co-owners mentioned. Therefore, the Assessing Officer concluded that there was 1/4th share of each of the co-owners. Further, the Assessing Officer noticed that the assessee had declared less sale consideration compared to circle rate mentioned in the sale deed. Therefore, the matter was referred to the valuation officer who has estimated value of property at Rs.29,51,900/-. The assessee was given opportunity to explain as to why the

entire sale consideration of property should not be taken at Rs.29,51,900/- as determined by the Valuation Officer. In this regard, the assessee filed reply vide letter dated 30.11.2012 which was considered by the Assessing Officer including the circle rate and valuation officer's report and considered the sale value of property at Rs.29,51,900/-. Since the property was purchased in the year 1945-46 and the valuation of property as on 01.04.1981 was not available before the Assessing Officer, therefore, he estimated the value of property at Rs.20,000/- as on 01.04.1981 and accordingly, calculated the capital gain as under :

Sale consideration		Rs.29,51,900/-
Value on 01.04.1981	Rs.20,000/-	
Index cost of acquisition		
Rs.20,000 x 582/100	Rs.1,16,400	<u>Rs.1,16,400/-</u>
Long term Capital gain		Rs.28,35,500/-
Assessee's share	Rs.28,35,500/4	Rs.7,08,875/-

The Assessing Officer accordingly added 1/4th share of Rs.7,08,875/- to the income of the assessee. In appeal before the Id. CIT(A), the assessee filed detailed written submissions and relied on many case laws. The Id. CIT(A), after considering the submissions of the assessee and order of assessment, dismissed the appeal. Aggrieved, the assessee is in appeal before the Tribunal.

3. The Id. AR of the assessee reiterated the submissions made before the Id. CIT(A) and submitted that the income from above property was assessed in the hands of M/s. Rajnath Seth HUF. He also referred to the assessment orders framed by the Assessing Officer in which the income from said property has been considered as income of the said HUF. Therefore, the property should also be

considered in the ownership of the HUF. The sale consideration received is also income from the said property. Therefore, this income is also the part of the income of the HUF. The Assessing Officer has, therefore, wrongly calculated the capital gain in the hands of the assessee. The AR of the assessee also filed a paper book containing 122 pages.

4. On the other hand, the Id. DR relied on the orders of the authorities below and submitted that the assessee was unable to prove with cogent material that the ownership of the property in question was vested in the name of HUF. Merely because the income is considered in the hands of HUF, would not go to transfer the ownership of the property. The sale deed nowhere shows the HUF as owner of the property, but the impugned property has been shown to have been sold by four co-owners thereof including the assessee.

5. After hearing both the parties and perusing the entire material available on record we find that the Id. CIT(A) has done good reasoned order which reads as under :

“4.1. I have carefully considered the assessment order and the submissions thereof. The facts of the case as per the assessment order are that the assessee had sold a property for a consideration of Rs. 12,00,000/-, information about which was received through AIR. The document filed by the assessee as evidence showed that the property had been sold by the assessee alongwith three other vendors for Rs. 12,00,000/-. As per the circle rate the value of the property was Rs. 48,66,500/-. This value was adopted for computation of stamp duty. The Assessing Officer raised a query in regard to non declaration of the sale proceeds by the assessee. The assessee claimed that the property

belonged to the HUF and the property had been duly reflected in the income tax and wealth tax records. The Assessing Officer on the basis of following arguments, held that the property was individual property of the co-owners.

- *The income tax and wealth tax record did not contain evidence that the property belonged to the HUF.*
- *As per the sale deed the assessee was shown as a co-vendor.*
- *No evidence was filed to show that the property belonged to the HUF.*
- *An affidavit was filed by the purchaser saying that the property was sold by the assessee and the other three as individuals.*

The Assessing Officer issued a show cause to the assessee to invoke provisions of section 50C, however, on the plea of the assessee that the value as per stamp duty was higher than the actual value, he referred the property for valuation, to the valuation officer, who determined the value of property at Rs. 29,51,900/-. The difference was thus brought to tax by the Assessing Officer.

4.2 During appellate proceedings the appellant has reiterated its submissions made before the Assessing Officer that the property belonged to the HUF and had been reflected as such in the assessment records of the HUF. It was explained that the karta of the HUF, that is the father of the appellant, died in 1964, and the mother died in February 1999. There was no partition of the HUF and no order under section 171 was passed. The appellant claimed that the sale deed of the property was signed by all the three co-parceners as vendee and not as coowners.

Besides the appellant also raised objection to the valuation of the property at Rs. 29,51,900/- as determined by the DVO on the basis of land and building method. The appellant objected that the fair market value of the property has not been determined and the fact that the property was on rent has not been considered.

4.3 The perusal of the facts as brought out by the Assessing Officer and by the appellant, as well as the documents filed by the appellant reveals the following :

- *The sale deed has been signed by two brothers (s/o of Sh. R.N. Seth) and the son and widow of the third brother, as individuals.*

- *There is no reference in the sale deed that the property was HUF property or that the signatories were acting on behalf of the HUF.*
- *The sale proceeds of the property have been deposited by the individuals in their separate individual bank accounts.*
- *The appellant has not filed the return of Sh. Rajnath Seth FIUF showing sale/ capital gains from the alleged property*
- *The appellant has filed copies of wealth tax record of Sh. Rajnath Seth HUF for assessment year 1978-79, 79-80, 80-81, 81-82, 82-83. These wealth tax returns have been signed by Sh. A.K Seth, though the returns are in the name of Sh. Rajnath Seth (HUF). It is important that Sh. Rajnath expired in 1964 and in the present proceedings Sh. Pramod Kumar Seth has been claimed as karta. However there is no return which has been signed/ verified by Sh. Pramod Kumar Seth.*
- *As per these returns the HUF owns residential house at Khatrana Mohalla, Shikohabad, agricultural land at village Shikohabad and a house - Mohd. Basadari. The address of the property which has been sold is the BSradari Sher Afghan, Ballimaran, Chandni Chowk Delhi.*
- *The appellant has filed copies of income tax record of Sh. Rajnath Seth HUF for assessment year 1978-79, 79-80, 80-81, 81-82, 82-83. These income tax returns have also been signed by Sh. A.K Seth, though the returns are in the name of Sh. Rajnath Seth (HUF).*
- *In all these income tax returns the property income has been declared from residential house 12/1, Khatrana Shikohabad. Even as per the assessment orders for these years there is only reference to income from property at Shikohabad. There is no reference to any rental income from Delhi.*
- *The appellant has also filed copies of income return of Sh. Rajnath Seth HUF for assessment year 2004-05, 05-06, 06-07 and 07-08. All these are signed by Sh. A.K Seth and only reflect rental income from residential house at 15/1 Khetri Street, Shikohabad. However for Assessment Year 2008-09 there is a return of the HUF which has been signed by both Sh. Pramod Kr. Seth and Sh. AK Seth, this return showing rental income from a Delhi house has been filed. The scanned copies of computation of income of the HUF for Asst. Year 2007-08 and 2008-09 as enclosed by the appellant are reproduced, as a thorough,*

detailed and comprehensive comparison of the two returns is indispensable to understand the true facts of the case.

NAME OF THE ASSESSEE	SHRI RAJ NATH SETH(HUF)	A.Y.2007-08
OFFICE ADDRESS	G-66, Nizamuddin (West) NEW DELHI-110013	F.Y. 2006-07 D.O.I.
STATUS	HUF	
WARD	32(1)	
NAME OF BANK	PUNJAB NATIONAL BANK	
MICR CODE	110024072	
ADDRESS	A-38, NIZAMUDDIN EAST, NEW DELHI	
ACCOUNT NO.	0160000100157801	
RETURN	ORIGINAL	

COMPUTATION OF TOTAL INCOME

<u>Income from house property</u>		15325
<u>LET OUT</u>		
<u>ADDRESS: 15/1, Khatlri Street, Shikohabad</u>		
ANNUAL VALUE		219035
LESS: Standard deduction under section 24(a)		<u>-65710</u>
TAXABLE INCOME FROM HOUSE PROPERTY		<u>153325</u>
		<u>105</u>
<u>INCOME FROM OTHER SOURCE</u>		<u>105</u>
Interest Bank S.B. Account		<u>105</u>
Taxable income from other sources		<u> </u>
GROSS TOTAL INCOME		153430
<u>Less deduction under chapter-VIA</u>		
80C DEDUCTION	<u>500</u>	
TOTAL DEDUCTION	<u>500</u>	
TOTAL INCOME		152930
TOTAL INCOME ROUNDED OFF UNDER SECTION 288A		
152930		
TAX ON Rs.152930	<u>5586</u>	
	<u>5586</u>	
ADD EDUCATION CESS @2%	<u>112</u>	

_____ 5698

LESS SELF ASSESSMENT TAX UNDER SECTION 140A

Reserve Bank of India -6930003 - 04014 - 6700 6700

24.03.2008

REFUNDABLE _____ (1002)

TAX ROUNDED OFF UNDER SECTION 288B (1000)

DETAIL OF DEDUCTION UNDER SECTION 80C

PPF = 500

Total = 500

Sd/-
A.K. Seth.....HUF

NAME OF THE ASSESSEE	SHRI RAJ NATH SETH(HUF)	A.Y.2008-09
OFFICE ADDRESS	G-66, Nizamuddin (West) NEW DELHI-110013	F.Y. 2007-08 D.O.I.
STATUS	HUF	
WARD	32(1)	
NAME OF BANK	PUNJAB NATIONAL BANK	
MICR CODE	110024072	
ADDRESS	A-38, NIZAMUDDIN EAST, NEW DELHI	
ACCOUNT NO.	0160000100157801	
RETURN	ORIGINAL	

COMPUTATION OF TOTAL INCOME

Income from house property 157528

LET OUT

ADDRESS: 15/1, Khatlri Street, Shikohabad

ANNUAL Rent	221515
Less: House Tax	<u>-11034</u>
ANNUAL VALUE	<u>210481</u>
ANNUAL VALUE	<u>210481</u>
LESS: Standard deduction under section 24(a)	<u>-63144</u>
TAXABLE INCOME FROM HOUSE PROPERTY	<u>147337</u>

LET OUT

ADDRESS: DELHI HOUSE DELHI, DELHI

ANNUAL Rent	14558
LESS: Standard deduction under section 24(a)	<u>-4367</u>
TAXABLE INCOME FROM HOUSE PROPERTY	<u>10191</u>
GROSS TOTAL INCOME	157528

Less deduction under chapter-VIA

80C DEDUCTION	<u>500</u>	
TOTAL DEDUCTION		<u>500</u>

TOTAL INCOME		157028
TOTAL INCOME ROUNDED OFF UNDER SECTION 288A		
157030		

COMPUTATION OF TOTAL INCOME

<u>INCOME FROM HOUSE PROPERTY</u>	157528	
TAX ON Rs.110000	Nil	
TAX ON RS.4000(150000-110000) @ 10%	4000	
TAX ON RS.7030(157300-150000) @20%	<u>1406</u>	
TAX ON Rs.157030		<u>5406</u>
		5406
ADD EDUCATION CESS @ 2%		<u>108</u>
		5414
ADD SECONDARY & HIGHER EDU.CESS @ 1%		<u>54</u>
		5568
<u>ADD INTEREST PAYABLE</u>		
INTEREST UNDER SECTION 234A	440	
INTEREST UNDER SECTION 234B	660	
INTEREST UNDER SECTION 234C	<u>202</u>	<u>1302</u>
		6870

LESS SELF ASSESSMENT TAX UNDER SECTION 140A

Reserve Bank of India -6930003 - 05032 -	<u>6870</u>	<u>6870</u>
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TAX PAYABLE

nil

Sd/-

Sd/-

Pramod Kr. Seth,.....HUF

A.K. Seth.....HUF

- *In reference to the objection raised against valuation of the property, the appellant has claimed that the property was on rent and in occupation the tenants for the last 20 years. Clearly no rent from this property is appearing in the income tax returns of Sh. Rajnath Seth HUF prior to 2008-Qp. Thus the claim of the appellant that this property is HUF property is not supported by evidence. The appellant's claim of the property being HUF property thus clearly is an afterthought for the purpose of which evidence has been concocted*

There is thus enough material to raise a very strong suspicion, to question the authenticity of the claim of the appellant and reject the paper trail created by the appellant and require it to show that the transaction is really one which is above board which the appellant has failed to prove.

"Hon'ble Supreme Court in the case of Sumiti Dayal 214 ITR 801 has held that the genuineness of the transaction is to be considered on the basis of surrounding circumstances, human probabilities and the conduct of the connected parties. A transaction does not become genuine merely because a paper trail has been created/filed. The AO while exercising his power as an investigating officer has a right to go beyond what is apparent. The mere filing of affidavit, gift deed etc shall not make the gift genuine. Hon'ble Supreme Court in the case of Sumiti Dayal (Supra) signifies that what is apparent must be examined on the touchstone of surrounding circumstances, human probabilities.

Merely because a paper trail has been filed will not by itself make the transaction genuine. Hon'ble Delhi Court in the case of Ashok Mahendru & Sons (HUF) v CIT (2008) 9 DTR (Delhi) 222: (2008)173 TAXMAN 178 has held that even though the documentation may be in order, if there is enough material to raise a very strong suspicion that there is something not quite right with nature of transaction, the authority under the act may reject the document and require the assessee to show that the transaction is really one which is above board. Accordingly the explanation submitted by the assessee with regards to genuineness of the transactions is rejected.

Thus on the above basis it is absolutely clear that the claim of the appellant that the property belongs to Sh. Rajnath Seth HUF is an afterthought to free itself from the affects of the sale transaction being not reflected in the returns of the individuals. The rejection of the claim by the Assessing Officer is therefore, sustained and the Assessing Officers decision that the transaction belongs to the individual is upheld.

Further the appellant has raised objection in regard to the manner in which the property has been valued by the valuation officer. Perusal of the valuation report shows that the value has duly considered the fact that the property was let out and was under the occupation of the tenants while valuing the property. The grounds of appeal raised by the appellant are therefore dismissed.

{5} Grounds of appeal No. 6 to 8 are general in nature and directed against initiation of penalty under section 271(1)(c), being premature do not require any adjudication

{6} In the result, the appeal is dismissed.

5. Ground of appeal No.7 is directed against the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961.

4.1 I have carefully considered the assessment order and the submissions thereof. The facts of the case as per the penalty order are that the assessee ,

{5} In the result, the appeal is dismissed.

6. Apart from the above, it is obvious from the sale deed that the property in question was undisputedly transferred by four co-owners and not by any HUF or its Karta. Therefore, we do not find any justification to disregard the conclusion reached by the ld. authorities below that four co-owners of the property including the assessee had transferred their asset and therefore, the capital gain, whatsoever, earned of his share, shall be taxable in the hands of the assessee. No cogent evidence is placed on record to establish that the ownership of the impugned property vested with the said HUF. Once, there is complete lack of evidence of ownership of property in the name of HUF, there is no need to prove the partition of HUF as per section 171 of the IT Act and as such the plea of assessee in this regard does not hold good. The ld. AR of the assessee could not be able to discard the findings reached by the ld. CIT(A) in the impugned order. We,

therefore, are not inclined to interfere with the impugned order. Accordingly, the appeal of the assessee deserves to be dismissed.

7. As already mentioned, the facts and issue in appeal of other assessee Sh. Pramod Kumar Seth (ITA No. 5318/Del/2013) are identical, our above decision in appeal of Sh. Ajay Kumar Seth shall, therefore, apply *mutatis mutandis* in appeal of Sh. Pramod Kumar Seth too. Accordingly, this appeal also fails and is dismissed.

8. In the result, both the appeals are dismissed.

Order pronounced in the open court on 23.04.2019

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 23.04.2019

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Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*