

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.7299/DEL/2018
[Assessment Year: 2015-16]

Smt. Mukti Bhatnagar
1, Ambedkar Bhawan, Subharti Puram
Delhi Haridwar Bye Pass Road, Meerut

Vs.

The D.C.I.T.
Central Circle
Meerut

PAN: ACCPB 4857 E

[Appellant]

[Respondent]

Date of Hearing : 23.04.2019
Date of Pronouncement : 26.04.2019

Assessee by : Shri Ramit Kakkar, Adv.

Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - IV, Kanpur dated 16.08.2018 pertaining to A.Y 2015-16.

2. The first grievance of the assessee relates to the addition of Rs. 1.16 lakhs made by the Assessing Officer u/s 69 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] and second grievance relates to the addition of Rs. 2.50 lakhs made by the Assessing Officer u/s 69 of the Act.

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer asked the assessee to submit the evidence of availability of cash deposits totalling to Rs. 1.16 lakhs.

4. In its reply, the assessee claimed that she has opening cash in hand of Rs. 2.94 lakhs and cash deposited in the bank account were out of this cash in hand. The assessee also submitted the assessment order for A.Y 2014-15 wherein she has furnished the balance sheet and copy of ledger account of cash in hand. These evidences were rubbished by the Assessing Officer holding that the assessment order of A.Y 2014-15 does not refer to any balance sheet or copy of ledger account. The Assessing Officer, accordingly, made an addition of Rs. 1.16 lakhs.

5. Proceeding further, the Assessing Officer found that the assessee has purchased a house for Rs. 50 lakhs. On perusal of the sale deed, the Assessing Officer noticed stamp duty of Rs. 2.50 lakhs. The assessee was asked to explain the source of payment of stamp duty. In her reply, the assessee stated that the stamp duty of Rs. 2.50 lakhs has been paid by the seller Smt. Suman Sharma and in support, letter from Smt. Suman Sharma was filed.

6. The contention of the assessee did not find any favour with the Assessing Officer who was of the opinion that the letter is not an authentic document. Further, since the amount of stamp duty exceeded Rs. 50,000/-, the Assessing Officer was of the opinion that payment of stamp duty by Smt. Suman Sharma amounts to gift to the assessee and falls u/s 56(2)(vii) of the Act.

7. The Assessing Officer further observed that since the assessee has understated the purchase consideration, provisions of section 56(2)(vii) of the Act are also applicable

and accordingly, added a sum of Rs. 2.50 lakhs u/s 69 of the Act.

8. The assessee carried the matter before the CIT(A) but without any success.

9. Before me, the ld. AR reiterated what has been stated before the lower authorities. The ld. AR drew my attention to the letter of Smt. Suman Sharma and once again pointed out that the seller has clearly mentioned that she has paid the stamp duty because the assessee was insisting on reducing the sale consideration and finally the seller agreed to pay the stamp duty.

10. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

11. I have given thoughtful consideration to the orders of the authorities below. The addition of Rs. 1.16 lakhs made u/s 69 of the Act does not hold any water. I have carefully considered the copy of ledger account of cash in hand for the F.Y. 2013-14 wherein the closing

balance has been shown at Rs. 2,94,617.72. This is exhibited at page 7 of the paper book. Exhibit 1 is the ledger account for the year under consideration and the opening balance has been shown at 294617.72. The deposits made in the bank account are reflected in this ledger account. The Assessing Officer has not accepted these documents because the assessment order for A.Y 2014-15 does not mention about these documents. This cannot be any reason for rejecting the direct evidences without examining the same. A perusal of the documents brought before me establish the sources of cash deposits in the bank account without any doubt. I therefore, direct the Assessing Officer to delete the addition of Rs. 1.16 lakhs. Ground No. 1 is allowed.

12. Coming to Ground No. 2, there is no dispute that Smt. Suman Sharma has certified that she has paid stamp duty of Rs. 2.50 lakhs. The Assessing Officer has simply rejected the letter given by Smt. Suman Sharma without making any further enquiry from her. Many a times the parties agree that the stamp duty shall be paid by the seller though it is customary that the stamp duty is invariably borne by the purchaser. As mentioned elsewhere, the Assessing Officer did not make any further enquiry though he was well aware of the full name and address of Smt. Suman Sharma. Though the Assessing Officer has

referred to provisions of section 56(2)(vii) and 56(2)(vii)(b) of the Act, but the addition has been made u/s 69 of the Act. In my considered opinion, the assessee has discharged the onus cast upon her by provisions of section 69 of the Act. I, therefore, direct the Assessing Officer to delete the impugned addition. Ground No. 2 is also allowed.

13. In the result, the appeal filed by the assessee in ITA No. 7299/DEL/2018 is allowed.

The order is pronounced in the open court on 26.04.2019.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th April, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr.PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |