

**IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1605/Ahd/2016

(निर्धारण वर्ष/Assessment Year : 2012-13)

The DCIT Circle 2(2) Ahmedabad	बनाम/ Vs.	Shri Vishnubhai Vithalbhai Patel (HUF) 101, Shanti Arcade Nr.Akash-III, 132 Ft Ring Road Naranpura, Ahmedabad-380 013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACHP 5059 A		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri L.P.Jain, Sr.DR
प्रत्यर्थी की ओर से/Respondent by:	Shri S.N. Divatia, AR

सुनवाई की तारीख/ Date of Hearing	06/03/2019
घोषणा की तारीख/Date of Pronouncement	23/05/2019

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-4, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-4/468/ACIT/Cir-2(2)/15-16 dated 13/04/2016 arising in the assessment order passed under s.143(3) r.w.s.147 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 29/01/2015 relevant to Assessment Year (AY) 2012-13.

2. The Revenue has raised the following grounds of appeal:-

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- 1. The Ld.CIT(A) has erred in law and on facts in deleting the disallowance made by the AO in respect of short term capital gain of Rs.1,23,57,940/-, without properly appreciating the facts of the case and the material brought on record;*
- 2. On the facts and in the circumstances of the case, the Ld.CIT(A) ought to have upheld the order of the Assessing Officer;*
- 3. It is, therefore, prayed that the order of the Ld.CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent;*
- 4. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

The issue raised by the Revenue is that the Ld. CIT (A) erred in deleting the addition made by the AO for a sum of Rs. 1,23,57,940/- under the head “capital gain.”

3. The facts of the case are that the assessee is a HUF and deriving its income from house property, capital gain, and other sources. The assessee in the year under consideration declared Short Term Capital Gain (in short STCG) amounting to Rs. 32,34,190/- in its return of income on the transfer of the agriculture land to Uttar Gujarat BarGam Kavda Patidar Samaj (for short UGBKPS) for a consideration of Rs. 44,75,000/- only.

The assessee further submitted that it had transferred the said agriculture land in two parts to the same party as mentioned above. First, part was transferred in A.Y. 2010-11, and another part was transferred in A.Y. 2012-13. The assessee transferred the said land through an irrevocable general power of attorney dated 21/07/2010 and 28/03/2012 for a

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consideration of Rs. 7,75,000/- and Rs. 37,00,000/- respectively. As the assessee transferred the said land by irrevocable power of attorney, therefore it treated the said transfer was made as per the provision of section 2(47)(vi) of the Income Tax Act. The amount of stamp duty on the registration of irrevocable power of attorney with sub-registrar was also paid.

The assessee further submitted that the said agriculture land bearing survey no. 934 admeasuring 2428 sq.mts situated at village unvarsad was purchased for a consideration of Rs. 10,00,000/- which was paid in two parts on 19/03/2010 & 20/03/2010 through cheques and cash respectively. After that, the conveyance deed was registered on 13/04/2010. The assessee incurred the total cost for the acquisition of the Agriculture Land amounting to Rs. 10,63,950/- including stamp duty, registration fees & other legal expenses.

The assessee accordingly recognizes the capital gain on sale of agriculture land in two assessment years. Firstly on the transfer of 1365 sq.mtrs in A.Y. 2010-11 and another secondly on the transfer of 1063 sq.mtrs in A.Y. 2012-13.

The workings of STCG in two assessment years are detailed as under:

<i>Particulars</i>	<i>A.Y. 2010-11</i>	<i>A.Y.2012-13</i>	<i>Total (Rs)</i>
<i>Sale Consideration</i>	<i>775000</i>	<i>3700000</i>	<i>44,75,000</i>
<i>Less: Cost of Acquisition</i>	<i>598140</i>	<i>465810</i>	<i>10,63,950</i>

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<i>Short Term Capital Gain</i>	<i>176860</i>	<i>3234190</i>	<i>34,11,050</i>
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The assessee also submitted that the said agriculture land was transferred in two parts as desired by the buyer as discussed above.

However, the AO after considering the submission of the assessee was of the view that power of attorney is not an instrument of transfer for right, title or interest in immovable property. As such the POA is a creation of agency where grantor authorizes to guarantee to do some acts on behalf of the grantor. Similarly, the irrevocable power of attorney is also subject to the same parameter. Therefore the AO held that POA is not a valid instrument to transfer the ownership. The AO regarding this placed reliance on the judgment of Hon'ble SC in the case Suraj Lamp Pvt Ltd v/s State of Haryana and Others reported in 14 taxmann.com 103.

In view of the above, the AO concluded that the transfer of immovable property could not take place through the irrevocable POA. As such the AO considered the transfer of such land by taking the date when the sale deed of the entire land was executed (i.e., 19/04/2012) and accordingly considered the jantri value as on the date sale deed. Therefore the AO accordingly by applying the provision of section 50C of the Act, considered the transaction value of the property of Rs. 1,66,56,080/- as provided in the jantri value submitted by the sub-registrar instead of Rs. 44,75,000/- as claimed by the assessee.

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The AO by applying the provision of section 50C of the Act has taken the transaction value/sale consideration of Rs. 1,66,56,080/- as the valuation made by the stamp valuation authority. Thus the AO re-computed the STCG on the whole of the agriculture land in A.Y.2012-13 by presuming that the land was transferred in A.Y.2012-13 which comes to Rs. 1,23,57,940/- and added to the total income of the assessee.

4. The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) besides the submission made before the AO, further submitted that it had rightly declared the STCG in two years as the transfer was considered within the meaning of the provision of section 2(47)(vi) of the Income Tax Act.

The assessee also claimed that the irrevocable power of attorney was executed along with the payment of consideration received so that the irrevocable right in the property was created in favor of the purchaser.

The assessee further submitted that the value adopted by the AO for sale consideration by applying the provision of section 50C was erroneous as the provision of section 50C of the Act will be applicable where the consideration is different from the valuation made by the stamp valuation authority. But in the case on hand, there was no such difference in valuation when a power of attorney was registered on the payment of stamp duty.

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The assessee also submitted that the valuation made by the stamp duty authority was in respect of agriculture land transferred to non-agriculturist.

However, Ld. CIT (A) was of the view that if the date of sale deed as recorded by the AO, i.e. 19-04-2012 is taken the date of transfer, then the STCG would be assessable by the AO in the A.Y. 2013-14 rather than in the A.Y. 2012-13. Therefore the Ld. CIT (A) given the above facts deleted the addition made by the AO in the A.Y. 2012-13.

However, Ld. CIT (A) in respect of the transfer of the land referred to the provision of section 2(47)(vi) observed that the transaction such as the agreement and/or arrangement by way of execution of an agreement of becoming a member or transferring enjoyment of the immovable property etc. is valid transfer. Accordingly, the income accrued to assessee on the transfer of the land on the execution of POA is a valid transfer. Thus the Ld. CIT (A) was of the view that the transfer of immovable property through power of attorney is also covered under the definition of section 2(47) of the Income Tax Act. Therefore the Ld. CIT (A) rejected the contention of the AO that irrevocable power of attorney are not a valid instrument to transfer the right in immovable property.

Aggrieved by the order of the Ld. CIT (A) Revenue is in appeal before us.

5. The Ld. DR before us submitted vehemently supported the order of the AO.

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6. On the other hand, the Ld. AR before us filed a paper book containing pages from 1 to 238 and reiterated the submission as made before the Id. CIT-A and vehemently supported his order.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates to the transfer of agriculture land by the assessee through an irrevocable general power of attorney. As per the assessee, the transfer of the land through the POA is a valid transfer. But the AO considered the sale deed as a transfer instrument which was executed on 19-04-2012. Thus the AO invoked the provision of section 50C and accordingly took the sale value as the valuation made by the valuation authority to compute the STCG. After that the AO made the addition to the total income of the assessee in the A.Y.2012-13. However the Ld. CIT (A) deleted the addition made by the AO by observing that the STCG should be assessable in the A.Y.2013-14 instead of 2012-13. The Ld. CIT (A) also held that the transfer of the property through irrevocable power of attorney as a valid instrument for transfer of immovable property in terms of the provision of section 2(47)(vi) of the Act.

From the preceding discussion, the issues that emerge for our adjudication is detailed as under:

- i. Whether the assessee transferred the impugned land on the date of sale deed, i.e. 19th April 2012 as held by the AO.

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- ii. Whether the transfer of the property is valid by way of executing irrevocable power of attorney

Whether the impugned land was transferred by the assessee on the date of sale deed, i.e. 19th April 2012 as held by the AO.

At the outset, we note that AO himself in his order has taken the of sale deed, i.e. 19th April 2012 as the date of transfer of the impugned land. Thus as per the AO capital gain on the transfer of such land is taxable in the financial year 2012-13 corresponding to the AY 2013-14. But the AO has computed the capital gain on the sale of such land in the year under consideration which goes against the finding of the AO. In our considered view, once the AO has taken the date of transfer as 19th April 2012, then the question of determining the capital gain for the year under consideration the not arise. The Id. DR has also not brought anything on record contrary to the finding of the Id. CIT-A. Hence we do not find any infirmity in the finding of the learned CIT (A) regarding the date of transfer of the land as discussed above.

Whether the transfer of the property is valid by way of executing irrevocable power of attorney

A power of attorney (POA) or letter of attorney is a written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter. The person authorizing the other to act is the principal, grantor, or donor (of the power). The one authorized to act is the [agent](#), attorney. Now the question arises whether a power of attorney executed by the assessee will amount to

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transfer under the provisions of section 2(47) of the Act. In this regard, we note that the Hon'ble Supreme Court in the case of Suraj Lamp Industries Pvt. Ltd. Vs State of Haryana reported in 14 taxmann.com 103 has held as under:

“A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein on behalf of grantor, which when executed will be binding on the grantor as if done by him. It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.”

From the above judgment, there remains no doubt that the transfer of property based on the POA is not a valid transfer.

Regarding the judgment as relied upon by the Id. CIT-A in the case of Pace Developers and Promoters Pvt. Ltd. reported in 215 taxmann.com 554; we note that the facts are not related to the issue in hand. The issue before the Hon'ble Delhi High Court was about the registration of a power of attorney executed by the party. In that context, the judgment was delivered by the Hon'ble Delhi High Court after referring to the judgment of Hon'ble Supreme Court in the case of Suraj Lamp Industries Pvt. Ltd. (*Supra*). As such there was no issue regarding the transfer of the property under the income tax Act for working out the tax liability under the head capital gain. Thus we are reluctant to place our reliance on the

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judgment of Hon'ble Delhi High Court in the given facts and circumstances.

At this juncture, we also find important to refer the relevant provisions (**bold letters**) of section 2(47)(vi) of the Act which reads as under:

47) ⁸⁸["transfer"⁸⁹, in relation to a capital asset, includes,—

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(vi) *any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.*

A plain reading of the above provision reveals that any agreement or arrangement enabling the transfer or enjoyment of the property will be treated as a transfer to compute the capital gain. Thus from the above provision, it appears that power of attorney shall also be treated as a transfer for working out the capital gain tax. However, we note that the judgment of the Hon'ble Supreme Court is directly on the issue as discussed above which stands covered against the assessee. Therefore respectfully following the judgment of the Hon'ble Supreme Court in the case of Suraj Lamp Industries Pvt. Ltd. (*Supra*), we hold that there was no transfer of the land upon the execution of power of attorney in favor of the party. Thus the transaction for the transfer of property has not been

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affected in the assessment years 2010-11 and 2012-13 as claimed by the assessee upon the execution of power of attorney. Accordingly, we decide the issue against the assessee.

Before parting, we hold that there was no transfer of the impugned property in the year under consideration as alleged by the AO. It is because the sale deed was registered as admitted by the AO on 19 April 2012 i.e. financial year 2012-13 corresponding to assessment year 2013-14. Hence there cannot be any addition to the total income of the assessee on account of capital gain for the year under consideration. The provision of section 45 of the Act requires to tax the income in the year of transfer of the property.

In view of the above, the capital gain income on the sale of the land cannot be taxed in the year under consideration. Accordingly, we reverse the order of the Id. CIT-A and direct the AO to delete the addition made him. Hence the ground of appeal of the Revenue is partly allowed.

8. In the result, the appeal of the Revenue is partly allowed.

This Order pronounced in Open Court on	23/05/2019
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad; Dated 23/05/2019
टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-4, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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