



ITA No.197/Mum/2018
Shri Gaurav Ashok Bhatia
Assessment Year-2013-14

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

माननीय श्री संदीप गोसाई, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No. 197/Mum/2018

(निर्धारणवर्ष / Assessment Year: 2013-14)

| | | |
|---|---------------------|--|
| Income Tax Officer-30(1)(4) C-13, 5 th Floor, Room No.501 Pratyakshkar Bhavan, BKC Bandra (E), Mumbai-400 051. | बनाम/ Vs. | Shri Gaurav Ashok Bhatia A-1/43. Amar Jyoti, Marve Road Malad(W) Mumbai-400 064. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ANDPB-8130-E | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

| | | |
|--------------------|---|-----------------------------------|
| Revenue by | : | Chaudhary Arun Kumar Singh- Ld.DR |
| Assessee by | : | Shri Rakesh Joshi- Ld. AR |

| | | |
|---|---|------------|
| सुनवाईकीतारीख/ Date of Hearing | : | 11/07/2019 |
| घोषणाकीतारीख / Date of Pronouncement | : | 16/07/2019 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by Revenue for Assessment Year [in short referred to as 'AY'] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-41, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.*



CIT(A)—41/IT/454/2015-16 dated 31/10/2017 on following grounds of appeal: -

- (i) On the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in accepting the Long Term Capital Gain offered by the assessee amounting to Rs.8,14,323/- plus the cost of acquisition on the alleged plea that the assessee has transferred capital assets during the year under consideration without considering the facts and circumstances of the case.
- (ii) On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in treating the receipt of Rs.1,95,00,000/- on account of transfer of right or interest in property as Long Term Capital Gain, without considering the facts and circumstances of the case and allowing deduction u/s 54 of the IT Act 1961.
- (iii) On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in not appreciating the fact that the assessee was not the owner of the land and hence question of transferring of right doesn't arise.”

2. The Ld. Authorized Representative for Assessee [AR], Shri Rakesh Joshi, at the outset, submitted that the matter stood squared by the decision of this Tribunal in co-owner's case Shri Prem Ashok Bhatia, ITA No.179/Mum/2018 order dated 30/04/2019. A copy of the same has been placed on record. Although Ld. DR placed reliance on the stand of Ld. AO, however, failed to rebut the fact that a view has already been taken by the Tribunal in the case of co-owner.

3.1 Facts on record would reveal that the assessee being resident individual was assessed u/s 143(3) on 14/03/2016 at Rs.202.33 Lacs as against returned income of Rs.15.47 Lacs e-filed by the assessee on 27/07/2013. The assessee, in its return of income, reflected Long-Term Capital Gain of Rs.8.14 Lacs against sale of certain land. It was observed that the assessee along with his mother and brother inherited part of land which was earlier jointly held by his father Late Shri Ashok Bhatia and one



ITA No.197/Mum/2018
Shri Gaurav Ashok Bhatia
Assessment Year-2013-14

Shri Kishore B. Dalal, both having 50% undivided share, interest, right and title in the land. After the death of the father, the plot of land was jointly held by the assessee with Kavita Bhatia (mother) and Prem Bhatia (brother) as co-owners and successor in interest in equal proportion in one part and Shri Kishore B. Dalal in the other part. It was also observed that Shri Kishore B. Dalal sold his undivided share in the land for which the assessee and his mother and brother gave 'no objection certificate' (NOC) and received aggregate consideration of Rs.585 Lacs for giving such NOC. Accordingly, the assessee's share therein being to the extent of 1/3rd i.e. Rs.195 Lacs was offered as Long-Term Capital Gain, against which deduction u/s 54F was claimed.

3.2 However, Ld. AO upon perusal of relevant documents, came to a conclusion that the said consideration was received for issuance of NOC in the capacity of confirming party as consideration of sale of right, title and interest in the land which was owned by Kishore B. Dalal and therefore the income was to be assessed under the head *Income from other Sources* as against under the head *Capital Gains* as offered by the assessee. Though the assessee, *inter-alia*, contended that consideration was received for transfer of possessory right and therefore, the gains were rightly offered as capital gain, however, not convinced, the sale proceeds of Rs.195 Lacs was assessed by Ld. AO under the head *Income from other sources*. Consequently, the benefit of indexation as well as deduction u/s 54F as claimed by the assessee, was denied to him.



ITA No.197/Mum/2018
Shri Gaurav Ashok Bhatia
Assessment Year-2013-14

4. Aggrieved, the assessee agitated the same, by way of elaborate written submissions, before Ld.CIT(A) vide impugned order dated 31/10/2017 wherein Ld. CIT(A), *inter-alia*, relying upon the decision of Hon'ble Delhi High Court in **J.K. Kashyap vs. ACIT (302 ITR 255)** allowed assessee's appeal. Aggrieved, the revenue is in further appeal before us.
5. Upon perusal of cited order of Tribunal in the case of co-owner i.e. Prem Ashok Bhatia, we find that Tribunal, on similar factual matrix, has confirmed the stand of Ld. first appellate authority by observing as under: -

12. Admittedly, the assessee i.e. Sh. Prem Ashok Bhatia along with Smt. Kavita Ashok Bhatia (mother of the assessee) and Sh. Gaurav Bhatia (brother of the assessee) had in equal shares received an amount aggregating to Rs. 5,85,00,000/- in terms of Clause 19 of the registered conveyance deed dated 07.09.2012. As is discernible from a perusal of the registered conveyance deed, the purchasers had after considering the fact that the physical and actual use, occupation and possession of the plot of land remained vested with the assessee and the other two legal heirs viz. Smt. Kavita Ashok Bhatia and Sh. Gaurav Bhatia, had thus agreed with the consent of the vendor i.e. Sh. Kishore B Dalal to pay a consideration aggregating to Rs. 5,85,00,000/- to them. The legal heirs of Late Sh. Ashok Bhatia viz. the assessee i.e. Sh. Prem Ashok Bhatia, Smt. Kavita Ashok Bhatia (widow) and Sh. Gaurav Bhatia (son), had in lieu of the aforesaid consideration of Rs. 5,85,00,000/- handed over the actual and physical possession of the plot of land therein described in the "third schedule" forming part of the registered conveyance deed to the aforementioned purchasers. Apart there from, the vendor i.e. Sh. Kishore B Dalal had agreed with the legal heirs of late Sh. Ashok Bhatia and the purchasers of the property that the aforesaid factual aspect would not be disputed by him. In fact, as is further discernible from the registered conveyance deed the legal heirs of late Sh. Ashok Bhatia only pursuant to the aforesaid arrangement had agreed to join hands as a party to the aforesaid registered deed of conveyance.

13. Insofar the reliance placed by the A.O on certain documents in his attempt to dislodge the claim of the assessee that the possession of the property under consideration had remained with Sh. Ashok Bhatia during his lifetime and thereafter with his legal heirs is concerned, we find substantial force in the contention advanced by the Ld. A.R that as the said respective documents were unregistered documents to which the assessee was not a party, therefore, the same would not have any superseding or overriding effect over the contents of the registered conveyance deed. In sum and substance, the contents of the aforementioned unregistered documents will have to give way to the contents of the registered conveyance deed. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Charanjit Singh



ITA No.197/Mum/2018
Shri Gaurav Ashok Bhatia
Assessment Year-2013-14

Atwal (SLP No. 1565 of 2016), wherein it has been held that after amendment of Registration Act, 2001 an unregistered document will have no evidentiary value. On a similar footing the validity of the general POA's dated 29.03.2008, 01.04.2010 and 07.04.2010 and the contents thereof in context of the purported transfer that was sought to be effected can also safely be gathered in the backdrop of the judgment of the Hon'ble Supreme Court in the case of Suraj Lamp and Industries P. Ltd. Vs. State of Haryana [SLP(C) No. 13917 of 2009, dated 11.10.2017]. In the aforesaid judgment the Hon'ble Apex Court has held that no transfer of a property can be validly carried out on the basis of general power of attorneys.

14. Apart there from, we are also persuaded to be in agreement with the contention advanced by the Ld. A.R that as the assessee was neither a party to the MOU dated 29.03.2008 or the general power of attorneys dated 29.03.2008, 01.04.2010 and 07.04.2010 entered into and drawn by Sh. Kishore B Dalal in favour Sh. Abrar, which as observed hereinabove were executed not to his knowledge, therefore, the contents of the said documents could not be pressed into service for drawing of adverse inferences and dislodging the claim of the assessee that Sh. Ashok Bhatia and thereafter his legal heirs had remained in exclusive possession of the property under consideration. Insofar the confirmation dated 14.05.2009 between Sh. Kishore B Dalal and Sh. Abrar stating that Sh. Kishore B Dalal was having the possession of the property under consideration is concerned, we find that as the said facts are also borne out from an unregistered document to which the assessee was not a party, thus in the backdrop of our aforesaid reasoning in context of validity of unregistered documents executed at the back of the assessee, the same too will have to give way to the contents of the registered conveyance deed. As regards the extract of the land records as per the land revenue records and the title search report of Mr. M.S Rodrigues, Advocate, we are of the considered view that as the said documents only affirm the undisputed fact of co-ownership of the property by Sh. Kishore B Dalal and Sh. Ashok Bhatia/his legal heirs, therefore, the same would in no way assist for either supporting or dislodging the claim of the assessee that the actual physical possession of the property under consideration had remained with Sh. Ashok Bhatia and thereafter with his legal heirs.

15. As observed by us hereinabove, the Clause 19 of the registered conveyance deed categorically evidences the fact that the assessee along with the other two legal heirs of late Sh. Ashok Bhatia viz. Smt. Kavita Bhatia (mother of the assessee) and Sh. Gaurav Bhatia (brother of the assessee) had in equal shares received an amount aggregating to Rs. 5,85,00,000/- in lieu of handing over the actual and physical possession of the property under consideration to the purchasers who had agreed to pay the said amount to the legal heirs after obtaining the consent of the vendor i.e. Sh. Kishore B Dalal. In our considered view, it would be relevant to cull out Clause 19 of the registered conveyance deed which contemplates the reason for making of the payment of Rs. 5,85,00,000/- by the purchasers of the property to the legal heirs of late Sh. Ashok Bhatia, as under :-

"19. Taking into consideration the actual and physical possession of the said plot and since the date of purchase it was initially with the deceased Ashok Bhatia and thereafter it is with the heirs of the deceased Ashok Bhatia, and with an intend to avoid the litigation by and between the Vendor and the Purchasers on the one hand and the First Confirming Party on the other hand, it



ITA No.197/Mum/2018
Shri Gaurav Ashok Bhatia
Assessment Year-2013-14

has been mutually agreed that considering the factual aspect of physical and actual use, occupation and possession of the plot of land the purchasers have agreed with the consent of the Vendor to pay more consideration to the First Confirming Party i.e. the sum of Rs. 5,85,00,000/- (Rupees Five Crores Eighty Five Lakhs only), in lieu thereof the First Confirming party has handed over the actual and physical possession of the plot of land more particularly described in the Third Schedule hereunder written, a sum of Rs. 1,26,00,000/- (Rupees One Crore Twenty Six Lacs Only) to the second Confirming Party and sum of RS. 89,00,000/- (Rupees Eighty Nine Lakhs Only) to the Vendor towards transfer of his right, title and interest in the described in the Third Schedule hereunder written plot of land. The Vendor has agreed with the First Confirming Party and the Purchasers not to dispute this factual aspect. On the assurances and the representations of the Vendor and the Purchaser having accepted the factual aspect of occupation and possession of the First Confirming Party and there upon the purchasers having agreed to pay more consideration to the First Confirming Party, the First Confirming Party have agreed to join their hands to the Deed of Conveyance."

We thus in the backdrop of our aforesaid observations are of the considered view that the CIT(A) had rightly observed that as was discernible from the registered conveyance deed, assessee who as acknowledged by all the concerned parties held a possessory right in the property under consideration had received the amount of Rs. 1,95,00,000/- on account of transfer of such rights or interest in the property under consideration, therefore, the same was rightly offered for tax by him under the head "Capital Gains". In the backdrop of our aforesaid observations, we thus not finding any infirmity in the order passed by the CIT(A) who had rightly arrived at the aforesaid conclusion after deliberating on the facts of the case and distinguishing the judicial pronouncements relied upon by the A.O, uphold the same.

16. The appeal of the revenue is dismissed in terms of our aforesaid observations.

The revenue is unable to controvert the fact that said ruling was squarely applicable to the fact of the present case also. Therefore, nothing would warrant us to take a different view in the matter. Accordingly, we confirm the stand of Ld. first appellate authority.

6. In result, the appeal stands dismissed.

Order pronounced in the open court on 16th July, 2019.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/07/2019
Sr.PS:-Jaisy Varghese



ITA No.197/Mum/2018
Shri Gaurav Ashok Bhatia
Assessment Year-2013-14

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**