

आयकर अपीलीय अधिकरण, राँची न्यायपीठ, राँची

IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH, RANCHI

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष ।

**BEFORE SHRI CHANDRA MOHAN GARG, JM
AND**

SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.116/RAN/2018

(निर्धारण वर्ष / Assessment Year :2013-2014)

Sri Naresh Prasad, Lakhe, Korrah, Hazaribag-825301	Vs.	ITO, Ward-2(1), Hazaribag
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMAPP 8122 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri M.K.Verma, CA
राजस्व की ओर से /Revenue by	:	Shri P.K.Mondal, Addl.CIT(DR)

सुनवाई की तारीख / Date of Hearing	:	27/08/2019
घोषणा की तारीख/Date of Pronouncement	:	29/08/2019

आदेश / O R D E R

Per Bench:

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Hazaribagh, dated 13.02.2018 for the assessment year 2013-2014, on the following grounds :-

1. *Un disclosed investment in purchase of land - the assessing officer has added Rs.22,47,000.00 as un disclosed investment, at the time of hearing all related documents regarding investment were produced before AO, mother of assessee has sold her land and that sale consideration was employed in purchase of land and assessee and not being tax expert did not prepared gift deed when he receives notice from income tax department he prepares gift deed on current date and date does not matter main intention was to show that his mother has gifted money to her son, Sri Suresh Ram was prospective customer of land so he made payment by the customer to the assessee and this sum was also employed to purchase the land proof of payment was also placed before AO. Initially assessee has purchased a piece of land containing 32 decimal of land and thereafter he was in search of customer to sold it out so in that course of action Sri Suresh Ram came in to contact of assessee and show his willingness to purchase of land but unfortunately other persons files partition suit and assessee lost*

his case. Further assessee is also tax payer to purchase land , he also utilized own but AO denies all evidence and arguments and wrongly added in to income so delete the addition.

2. *Short term capital gain: - the assessing officer has made an addition for Rs 4,43,167.00 as short-term capital gain without quoting any section of income tax act. Assessee has purchased 32 decimal of land but it was only on paper deed he could not possess whole area of land and only 8 out of 32 decimal of land came into the possession of the assessee but he pays price for whole 32 decimal. He lost 24 decimal land in partition suit so cost of 32 decimal of land is equal to remaining 8 decimal of land. LD CIT(A) placed reliance on revenue record it is good but some time it may not present clear picture. The fact that by court order assessee has lost his 24 decimal of land was ignore by AO and LD CIT(A). Marley showing land in any one's land record does not make him suo moto owner of the land. In present case assessee has lost 24 decimal of land by the order of court but that land is also appearing in the land record of assessee and this is not fault of assessee. This is not responsibility of assessee to pursue the owner of 24 decimal land for mutation of land. In due course of time concern party may or may not apply for mutation this is their concern. The copy of partition suit is available with assessee and were also presented before the AO and LD CIT(A).Now, the case is opposite; instead of gain it there is short term capital loss but AO denies all documentary proof and made an addition. This is wrongly added so delete the addition*
3. *Other ground of appeal may be raised at the time of hearing*

2. Brief facts of the case are that the assessee filed return of income manually on 06.08.2014 showing total income of Rs NIL in form ITR-4. As per return of income, the assessee derives income from General Store Known as Laxmi General Store. The columns in Part A of ITR-4 in profit and loss account of the return of income is totally blank. The assessee has disclosed tax of Rs 7200/- in 'computation of Tax liability portion' of the return and has shown payment of tax Rs 7420/-. The return was submitted in the ASK Centre. The return was processed u/s.143(1) of the Act. The case was selected for Limited Scrutiny under CASS for the reason "sale consideration of the property in ITR is less than

consideration reported (CIB)". The notice u/s 143(2) of the Income Tax Act, 1961 was issued to the assessee on 28.08.2015, which was served to the assessee by Speed post. Thereafter statutory notices were also issued to the assessee from time to time but after issuing six times on various dates to the assessee for appearance, the assessee did not comply the same. However, on 18.03.2016 the assessee submitted reply along with copy of bank account of the assessee and sale & purchase deeds of land. Copy of sale and purchase deeds were obtained from the Deputy Registrar, Hazaribagh by the Assessing Officer. The details of transactions relating to purchase of land are as under :-

A. Transactions with respect to sale of land.

Deed No	Date	Stamp Value	Value land Received	Khata No./Plot No	Area of land sold
1273	08.02.2013	6,75,75000/-	6,75,000/-	33/827	6 Decimal
1613	16.02.2013	6,75,000/-	6,75,000/-	33/827	6 Decimal
1959	26.02.2013	8,95,667/-	8,95,667/-	10/677	8 Decimal
Total		22,45,667/-	22,45,667/-		20 Decimal

B. Transactions with respect to purchase of land.

Deed No.	Date	Stamp Value	Value Paid	Khata No./Plot No.	Area of land purchase
7556	14.08.2012	16,25,000/-+	16,25,000/- +	10/677	32 Decimal

		65000/-	65000/-		
7557	14.08.2012	5,12,000/- + 45,000/-	5,12,000/- + 45,000/-	10/920	11 Decimal
Total		22,47,000/-	22,47,000/-		43 Decimal

From the above chart, the Assessing Officer noticed that the assessee has purchased the land and sold it but he had not offered any capital gain in his return of income and the Assessing Officer has provided sufficient opportunities to the assessee. From the document available before the

Assessing Officer, the Assessing Officer observed and computed income of the assessee as under :-

4. Undisclosed investment in purchase of land:-

The assessee purchased land at Korrah, Hazaribagh on 14.08.2012 as per details given in Chart B of para 2 above. Total investment made by him in purchase of 43 decimals of land in khata number 10 plot numbers 677 and 920 is Rs 22,47,000/- including stamp value. As per purchase deed numbers 7556 & 7557, he paid Rs 16,25,000/- + Rs 5,12,000/- totaling to Rs 21,37,000/- as cost of the land and Rs 65,000/- + Rs 45,000/- totaling to Rs 1,10,000/- as stamp value of the land. Total cost born by the assessee for purchase of 43 decimals of land comes to Rs 22,47,000/- only. Vide this office letter dated 25.02.2016 the assessee was asked to explain the source of this investment. The date of compliance was fixed on 07.03.2016. There was no reply to this show cause notice. Verification of returns of income filed by the assessee shows that he has filed return of income for A. Y. 2012-13 showing total income of Rs 2,40,000/- only. For Assessment Years 2011-12, 2010-11 & 2009-10 the assessee has not filed his return of income. Thus as per records available with the department the assessee did not have fund for investment in land. As per written reply received on 18.03.2016 the source of investment in purchase of land has been shown as below:

Own Capital	Rs.9,00,000/-
Mother (Laxmi Devi)	Rs.6,00,000/-
Suresh Ram (08.12.2011)	Rs.3,00,000/-
(30.01.2012)	Rs.3,00,000/-
(06.06.2012)	Rs.3,00,000/-
Total	Rs.22,50,000/-

The assessee has not adduced any documentary evidence in support of his claim. In absence of the same the contentions of the assessee cannot be accepted. Thus the whole investment made by the assessee is unexplained investment in purchase of land. As per the provisions of section 69 of the income Tax Act 1961, this investment is to be treated as income of the assessee during the financial year 2012-13 relevant to A. Y. 2013-14. Rs 22,47,000/- is therefore added to the total income of the assessee as unexplained investment in purchase of land. Add Rs 22,47,000/-. Penalty proceedings u/s 271(l)(c) of the Income Tax Act 1961 is initiated for concealment of income as discussed above.

5. Short Term capital Gain Account:-

As per AIR information available with the department, the assessee sold land vide sale deed numbers 1273,1613 & 1959 on 08.02.2013, 16.02.2013 & 26.02.2013 respectively in Korrah, Hazaribagh. Verification of sale deeds received from the Deputy Registrar, Hazaribagh shows that sale of land made vide sale deed numbers 1273 & 1613 dated 08.02.2013 & 16.02.2013 respectively are on the strength of Power of Attorney given to the assessee by some other

persons. In these cases the assessee is not the owner of the land. However, sale deed number 1959 dated 26.02.2013 shows that total 24 decimals of land of Khata number 10 plot number 677 was sold vide this deed for Rs 26,87,000/-. The stamp value of this land was also Rs 26,87,000/-. Out of this 24 decimals of land sold, 8 decimals of land belonged to the assessee and sold by him. Rest 16 decimals of land belonged to some other persons, who jointly sold the property with the assessee. Thus share of the assessee in this sale transaction comes to Rs 8,95,667/-.

This plot number 677, khata number 10 measuring 32 decimals was purchased by the assessee in this financial year only for Rs 16,25,000/- and stamp duty Rs 65,000/- vide purchase deed number 7556 on 14.08.2012. This fact is evident from the chart B of para 2 above. Thus the assessee purchased 32 decimals of land for Rs 16,90,000/- on 14.08.2012 and sold 8 decimals out of it on 26.02.2013. Cost price of 8 decimals of land sold on 26.02.2013 comes to Rs 4,22,500/- only. Since the land was purchased and sold during the same financial year, the gain arising out of the transaction is chargeable to tax under the head short term capital gain. As per return reply of the assessee dated 18.03.2016, there is no short term capital gain out of this transaction. It is claimed that total cost of 15,90,000/- was paid for 32 decimals but actual position of land acquired by me is 8 decimals only. This all happen due to a partition suit filed by other share holders of this land. So the actual cost of 8 decimals is Rs. 16,90,000/- and hence there is no capital gain out of this transaction. The assessee has not adduced any documentary evidence in support of his claim. In absence of the same the contentions of the assessee cannot be accepted. Short term capital gain arising out of this transaction is therefore determined as below:-

(a) Sale price of 8 decimals of land.....	Rs 8,95,667/-
(b) Cost price of 8 decimals of land.....	Rs 4,22,500/-
(c) Short term Capital gain.....	Rs 4,73,167/-

Rs 4,73,167/- is therefore, added to the total income of the assessee as short term capital gain.

Penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961 is initiated for concealment of income as discussed above.

6. Determination of total income:-

Total income of the assessee is therefore determined as under :-

(i) Return income as discussed in para 1 above	Rs.2,72,000/-
(ii) Add: unexplained investment in purchase of land, para 4 above	Rs.22,47,000/-
(iii) Add: Short Term Capital Gain, para 5 above	Rs.4,73,167/-
Total	Rs.29,92,167/-
Rounded off	Rs.26,92,170/-

3. Feeling aggrieved from the assessment order, the assessee appealed before the CIT(A) and the CIT(A) after considering the

submissions of the assessee and findings of the Assessing Officer, dismissed the appeal of the assessee.

4. Further aggrieved from the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

5. Ld. AR before us reiterated the submissions made before the lower authorities and submitted that the assessee got only 8 decimal of the land out of total 32 decimal purchased from the landlord. At the time of purchase of land, the land was in dispute but it was not in knowledge of the assessee. Thereafter on the order of Sub-Judge, Hazaribagh, dated 23.09.2008, the assessee has returned back of 24 decimal. He further submitted that the assessee was engaged in the business of sale and purchase of land in addition to his regular business as stated above. This land was entered on oral agreement and he also submitted the written synopsis in the tabular form as well as paper book, which is placed on record. Therefore, Id. AR prayed that appeal of the assessee may be allowed.

6. On the other hand, Id. DR relied on the orders of authorities below.

7. After hearing both the sides and perusing the material available on record, we observe that the CIT(A) has dealt with the issue in detail and after calling for the remand report from the Assessing Officer, the CIT(A) has upheld the action of Assessing Officer after observing as under :-

*“7. **Ground No.(i):** - This ground of appeal is that the appellant went personally to the AO but the AO had denied to listen his point. The contention of the appellant in this regard is not supported with any documentary evidence whatsoever. However, on perusal of para 2 of the Assessment Order, it is seen that the AO has granted as many as six opportunities and the last opportunity was on 7/03/2016.*

Although, the appellant had not availed these opportunities, the appellant had at the fag end of the limitation date of completion of assessment on 18/03/2016, sent certain documents by posts, which were also duly considered by the A.O. Therefore, the contention of the appellant with respect to this ground of appeal is without any basis and therefore, this ground is **dismissed**.

8 **Ground No.(ii):** - As regards this ground of appeal, the AR contended that as per registered document, the appellant purchased 32 decimals of land whereas actually got only 8 decimals of land. The document duly registered as per Indian Registration Act, 1908 is to be relied upon in totality as per the provisions of Indian Evidence Act, 1872. If the appellant makes a statement contrary to the facts stated in the registered document, the burden of proof and onus is on the appellant to establish the same with the necessary documentary evidence by way of order of the competent authority/court, etc. During the appellate proceedings on 7/02/2018, the AR was asked to furnish copy of revenue records with respect to mutation of land for lesser land than stated in the registered document. In response, the AR filed a letter in dak on 9/02/2018 again seeking time. In mis regard, it is stated that as per this office letter dated 16/01/2018 to the appellant it was categorically stated that one last and final opportunity was being granted on 7/02/2018 and it was further stated that no further request for time would be entertained. Under these circumstances, it is held that no useful purpose would be served by again adjoining the case for further period of time. Moreover, the revenue records with respect to effecting mutation of land for the land purchased by the appellant is a basic document. When the appellant has already sold a part of the land, the appellant would have already effected mutation with respect to the purchase of the land and unless the mutation was affected, the prospective buyer would not have purchased the land from the appellant. So, therefore, it appears that the appellant is deliberately withholding to furnish the document with respect to mutation. These documents have not been furnished by the appellant in spite of the specific opportunity granted for the same. In view of these facts, I do not find any infirmity in the order of the A.O. with respect to the computation of short term capital gain of Rs.4,73,167/-. Therefore, this ground of appeal is **dismissed**.

9. **Ground No.(iii):** - The All has relied upon the following with respect to the source of purchase of land: Accumulated capital balance, gift from mother Laxmi Devi and receipt from Suresh Ram.

As regards the capital balance, the AR has stated that the appellant has filed the return of income for the AY 2001-02 and there is a capital balance of Rs.2,70,000/-. Further, the AR has estimated the combined capital from the AY 2002-03 to AY 2013-14 and thereafter, arrived at the capital balance for AY 2013-14. The appellant has not filed the return of income for all these years and therefore, the capital balance prepared by the AR is without any basis and not supported with any documentary evidence whatsoever and, therefore, is not reliable.

The AR has stated that mother of the appellant, Laxmi Devi had sold a property on 14/05/2013 by way of registered document and the sale consideration was Rs.6,75,000/-. The AR stated out of this, the appellant received a gift of Rs.6,00,000/-. In support, the AR submitted a gift deed dated 7/10/2017. The gift deed submitted by the appellant is not a contemporaneous evidence as if the alleged gift had taken place during the FY relevant to the AY 2013-14, the gift deed ought to have been made during the relevant year and not during the period when the appellate proceedings is going on and moreover there is no witness to the gift deed as well. As per law, the gift deed ought to have been contemporary and on a specific date at the relevant point of time and not at a much latter date during the appellate proceedings and the gift ought to have been accepted by the donee as well as on that specific date. Obviously, the mother of the appellant would be ready to furnish any affidavit to favour her son, who is the appellant in this case. Moreover, as per the sale deed dated 14/05/2013, the mother of the appellant has sold the property for certain urgent work and therefore, obviously the mother of the appellant would have used the funds for the said urgent work and for other household expenses, etc. Giving of gift is not an urgent work and moreover, there is no contemporary evidence with respect to giving gift. In view of these facts, this explanation of the appellant is not acceptable.

The AR stated that the appellant entered into an agreement for the sale of 12 decimals of land to one Suresh Ram and received Rs.7,50,000/-. This contention of the appellant is also not acceptable as the facts stated by the appellant is contrary as the appellant has stated categorically that the appellant is the owner of only 8 decimals of land with respect to ground no.(ii). Although, that contention was not accepted in this appeal, the appellant ought to be consistent and the appellant cannot state that he only has 8 decimals of land as per ground no.(ii) and states that he entered into an agreement with respect to sale of 12 decimals of land with respect to ground no.(iii). Moreover, any agreement with respect to sale of property ought to have been registered as per the provisions of Indian Registration Act, 1908 and the agreement furnished by the appellant is not a registered document and therefore, is not of any evidentiary value as per the provisions of Indian Evidence Act, 1872. Therefore, this contention of the appellant with respect to source of funds is also not acceptable. In view of these facts, this ground of appeal of the appellant is dismissed.

10. **Ground No.(iv):** - *As per this ground of appeal, the appellant has stated that best judgment Assessment Order cannot be passed without the rejection of books of accounts. In this regard, it is held that there is no legal requirement that the books of accounts ought to be rejected for passing the best judgment order. Therefore, this ground of appeal is dismissed.*

From the above observations of the CIT(A), we do not find any infirmity to interfere with the findings recorded by the CIT(A) in this regard. Accordingly, we uphold the same and dismiss the grounds of appeal of the assessee.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 29/08/2019.

**Sd/-
(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

राँची Ranchi; दिनांक Dated 29/08/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant- .
Sri Naresh Prasad,
Lakhe, Korrah,
Hazaribag-825301
2. प्रत्यर्थी / The Respondent-
ITO, Ward-2(1), Hazaribag
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राँची / DR, ITAT, Ranchi
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
ITAT Cuttack Bench, Cuttack
Camp at ITAT Ranchi Bench, Ranchi