

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "C": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2963/Del./2019  
Assessment Year 2015-2016

Shri Govind Kumar Khemka, Delhi-110006 PAN AAIPK5123A C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi-110049.	vs.,	The ACIT, Circle-47(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta, And Shri Somil Aggarwal, Advocates
For Revenue :	Shri Anil Kumar Misra, CIT-D.R.

Date of Hearing :	20.08.2019
Date of Pronouncement :	16.09.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-16, New Delhi, Dated 20.03.2019, for the A.Y. 2015-2016, challenging the addition of Rs.28,65,00,000/- under section 56(2)(vii)(b) of

the Income Tax Act, 1961 and in the alternate, under section 69B of the Income Tax Act on Ground Nos.3 to 5.

2. Learned Counsel for the Assessee did not press Ground Nos. 1 and 2 of the appeal. These are dismissed as not pressed.

3. Briefly the facts of the case are that in this case assessee filed return of income on 31.08.2015 declaring total income of Rs.1,27,70,740/-. The assessee during the year, earned income from salary, F & O income and income from other sources. The A.O. on perusal of the Memorandum of Family Settlement (MFS) noted that assessee has acquired the Bungalow at C-29, Friends Colony, New Delhi, due to relinquishment of rights in the said property by three brothers of the assessee for Rs.NIL. But it is a fact that the assessee made sanctioned a bank loan of Rs.15 crores and disbursement was made by the bank of Rs 12 crore, Rs.4 crore to each of three brothers. It means the brothers were paid a sum against relinquishment of their rights in the property. Once payment is made for such relinquishment, it can no more be said that such

transfer was out of “love and affection”, as applicable in case of a relative. A transaction between relatives can be either out of pure “love and affection” without any consideration or it could be a normal transaction of transfer of property for a consideration in which case it should be as per market condition and at market rate. In this case since amount of Rs.4 crore is paid to each of three brothers in lieu of their relinquishing 1/3<sup>rd</sup> ownership in above bungalow, hence this transfer is for “consideration” and not out of “love and affection”. The A.O. noted that in the Memorandum of Family Settlement it is not clear about the actual price of the bungalow. Even if the price stated by the assessee in his submission is taken into consideration that it has been purchased by assessee from brothers for Rs.12 crores, there is difference Rs.28 crore as the stamp value determined by the Registrar for this property is Rs.40.65 crores. It is also seen that the assessee has not objected to such valuation of Registrar and paid stamp duty. The A.O, therefore, noted that provisions of Section 56(2)(vii)(b) of the I.T. Act, 1961 are attracted and the exclusion provided in proviso to

Section regarding “relatives” does not apply in this case. The A.O. accordingly, made addition of Rs.28.65 crores under section 56(2)(vii)(b) of the I.T. Act, 1961.

4. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that provisions of Section 56(2)(vii)(b) of the I.T. Act is not applicable among the relatives as provided in the Section. In the case of assessee, there is a Family Settlement which could not be treated as ‘transfer’ so as to make the above addition. He has submitted that according to proviso to Section 56(2)(vii)(b), this provision would not apply in the case of relative. Since transfer was conducted, through Family Settlement Deed between the brothers of the assessee who are the relatives as per the above provision, therefore, the case of assessee would fall in exception to the Rule. The findings of the A.O. is not correct that assessee paid a sum of Rs.12 crores for purchase of property. The assessee has executed Settlement Deed between his three brothers including the assessee got 1/4<sup>th</sup> share each in

subject property, thus, there was no larger portion acquired by assessee as is sought to be alleged by the A.O. In any case, even if unequal distribution among family members who relinquished their share, cannot be said to have transferred any asset in such a situation. All the family members were having pre-existing legal right in different properties and on distribution/relinquishment, there is no transfer involved and as such, the transaction is not taxable.

5. The Ld. CIT(A) examined the Family Settlement Deed Dated 12.12.2014 and noted that it is not registered, therefore, it has no evidentiary value. It is also noted that in order to get the ownership of property in question, the assessee relinquished his shares in other properties. The Ld. CIT(A) also noted that assessee has attempted to escape tax liability by camouflaging this commercial transaction as a family settlement and apportioning of property out of love and affection. The Ld. CIT(A) held it to be a colourable device used by the assessee to escape tax liability. The Ld. CIT(A) also noted that Rs.12 crores have been distributed to

brothers of the assessee to relinquish their rights in the property in question. The Ld. CIT(A) also noted that since it is a commercial transaction, therefore, it is not out of love and affection. The Ld. CIT(A), therefore, confirmed the finding of fact recorded by the A.O. and confirmed the addition under section 56(2)(vii)(b) of the I.T. Act, 1961.

5.1. The Ld. CIT(A) in alternate also noted that assessee was bound to explain the source of investment in the property and will fall within the mischief of investment not fully disclosed in the books of account as per Section 69B of the I.T. Act, 1961. So, difference in the circle rate and investment of Rs.12 crores shown by the assessee would still be taxable in his hand. The Ld. CIT(A), accordingly, dismissed the appeal of assessee.

6. We have heard the Learned Representative of both the parties and perused the material available on record.

7. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has

submitted that assessee has entered into Family Settlement Deed Dated 12.12.2014 PB-52 to show that assessee has 1/4<sup>th</sup> share only and no larger portion was acquired by the assessee. This Settlement Deed was executed between the assessee and three brothers. Rs.12 crores was not paid by way of consideration to the brothers which is evident by this fact that the said amount of Rs.12 crores was raised from the Bank after the Relinquishment of the Deed. Copy of the Release Deed Dated 18.12.2014 is filed at Page-10 of the PB in favour of the assessee showing that his three brothers have released and relinquished their rights from the said property and also have not received any monetary consideration from the assessee. copy of the ESCROW Agreement Dated 31.12.2014 between the assessee and the Bank showing loan of Rs.12 crores was disbursed in this Account, out of which, three Demand Drafts of Rs.4 crores each have been issued in favour of the brother of the assessee is filed at Page-19 of the PB. PB-44 to 48 are copies of the bank statements. PB-27 is Home Loan Agreement. In fact there was a Settlement Deed and the

subject land was received by assessee as a result of Family Settlement, hence, nothing was chargeable to tax. He has relied upon Judgment of Hon'ble Karnataka High court in the case of CIT vs. R. Nagaraja Rao [2013] 352 ITR 565 (Kar.), Order of ITAT, Bangalore Bench in the case of Smt. T. Gayatri vs. ITO 150 ITD 48, Judgment of Hon'ble Gauhati High Court in the case of Ziauddin Ahmed vs. Commissioner of Gift Tax 102 ITR 253 (Gau.), Judgment of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ashwani Chopra [2013] 352 ITR 620 (P&H) and Judgment of Hon'ble Bombay High Court in the case of B.A. Mahata Textile Traders Pvt. Ltd., vs. DCIT 397 ITR 616 (P&H). Learned Counsel for the Assessee submitted that findings of the Ld. CIT(A) that Family Settlement Deed is not registered and has no evidentiary value is of no consequence as the fact of the matter remains that assessee has received property in question from his brothers on account of Family Settlement and since the brothers fall in the definition of "Relatives" as per Section 56(2) of the I.T. Act, therefore, said provisions are not applicable to the case of assessee. It is not case of

the authorities below that Family Settlement Deed has not been acted upon. Learned Counsel for the Assessee further submitted that Settlement Deed has been entered into by the family members in order to maintain peace and bring harmony in the family, therefore, it is not a commercial transaction. All the brothers divided family properties, therefore, there is no question of escapement of liability. The Release Deed did not mention if any consideration have been paid by assessee. Family Settlement was made for adjustment of rights and distribution of properties in such a manner that peace and harmony is maintained in the family and the assessee received the property in question on account of Family Settlement. He has submitted that Bank loan of Rs.12 crores is part of total amount of Rs.20 crores which is mentioned in the Settlement Deed, therefore, the Ld. CIT(A) was not justified in giving adverse findings. As per the Settlement Deed, various properties after division have been allotted to assessee and his brothers and in exchange of these properties, each brother has received different properties. Therefore, none of the above provisions

are applicable in the case of the assessee. It is not a colourable device at all. He has further submitted that Rs.12 crores was taken as loan from the Bank which was given to three brothers, therefore, it would not be taxable under section 69B of the I.T. Act. He has further submitted that it is settled Law that Ld. CIT(A) cannot be bring to tax a new source of income which is not a case of the A.O, therefore, it was beyond the powers of the Ld. CIT(A) to reject the claim of assessee in alternate findings in the guise of apply Section 69B of the I.T. Act. In support of his contention, he has relied upon Judgment of Hon'ble Delhi High Court in the case of Sardari Lal & Co. 251 ITR 864 (Del.). Learned Counsel for the Assessee, therefore, submitted that entire addition is liable to be deleted.

8. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

9. We have considered the rival submissions. Before proceeding further, we would like to reproduce the relevant provisions of Section 56(2)(vii)(b) of the I.T. Act as under :

**“Income from other sources.**

**56. (1)** *Income of every kind which is not to be excluded from the total income under this Act, shall be chargeable to income-tax under the head “Income from other sources”, if not chargeable to income-tax under any of the heads specified in section 14, items A to E.*

**(2)** *In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*

**(vii)** *Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,-*

*(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*

*[(b) any immovable property,—*

- (i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*
- (ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*

***Provided*** that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

***Provided further*** that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date

*of the agreement for the transfer of such immovable property;*

*(c) any property, other than immovable property,—*

*(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*

*(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :*

**Provided** *that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of [section 50C](#), the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of [section 50C](#) and sub-section (15) of [section 155](#) shall, as far as may be, apply in relation to the stamp duty*

*value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :*

**Provided further** *that this clause shall not apply to any sum of money or any property received—*

- (a) from any relative; or*
- (b) on the occasion of the marriage of the individual; or*
- (c) under a will or by way of inheritance; or*
- (d) in contemplation of death of the payer or donor, as the case may be; or*
- (e) from any local authority as defined in the Explanation to clause (20) of [section 10](#); or*
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of [section 10](#); or*
- (g) from any trust or institution registered under [section 12AA](#); or*

*Following clause (h) shall be inserted after clause (g) of second proviso to clause (vii) of sub-section (2) of section 56 by the Finance Act, 2016, w.e.f. 1-4-2017.*

*(h) by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of [section 47](#).*

*Explanation.—For the purposes of this clause,—*

*(a) "assessable" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of [section 50C](#);*

*(b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;*

*(c) "jewellery" shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of [section 2](#);*

*(d) "property" means the following capital asset of the assessee, namely:—*

(i) *immovable property being land or building  
or both;*

(ii) *shares and securities;*

(iii) *jewellery;*

(iv) *archaeological collections;*

(v) *drawings;*

(vi) *paintings;*

(vii) *sculptures;*

(viii) *any work of art; [or]*

(ix) *bullion;*

(e) *“relative” means, -*

(i) *in case of an individual—*

(A) *spouse of the individual;*

(B) *brother or sister of the individual;*

(C) *brother or sister of the spouse of the  
individual;*

(D) *brother or sister of either of the parents  
of the individual;*

*(E) any lineal ascendant or descendant of  
the individual;*

*(F) any lineal ascendant or descendant of  
the spouse of the individual;*

*(G) spouse of the person referred to in items  
(B) to (F); and*

*(ii) in case of a Hindu undivided family, any  
member thereof;]*

*(f) "stamp duty value" means the value  
adopted or assessed or assessable by any  
authority of the Central Government or a  
State Government for the purpose of  
payment of stamp duty in respect of an  
immovable property;*

9.1. The above provision provides where an individual receives in any previous year, from any person or persons on or after 01.10.2009 any immovable property; (i) without consideration, the stamp duty value of which exceeds 50,000 rupees, stamp duty value of such property; (ii) for consideration which is less than the stamp value of the

property by an amount exceeding 50,000 rupees, the stamp duty value of such property as exceeds such consideration shall be chargeable to Income Tax Act under the Head “Income from Other Sources”. However, the Second Proviso provides that this clause was not applied to any sum of money or any property received from (a) from any “relative.” The definition of “Relative” have been provided in Explanation-(e) to the aforesaid provisions means brother or sister of the individual. Thus, in case of the transaction carried out by the individual in respect of immovable property as explained above is received from the relative who is brother or sister of the individual, such provisions under section 56(2)(vii)(b) would not apply. Admittedly in the case of assessee the entire transaction in respect of the property in question have been conducted with three brothers of the assessee. Thus, the transaction would fall in the proviso to aforesaid section and these provisions would not apply to the case of the assessee. Further in the case of assessee, the assessee entered into Family Settlement Deed with these brothers through which different properties have

been distributed among the four brothers. All the four brothers were having 1/4<sup>th</sup> share only in many properties and on distribution amongst four brothers, different properties come to the share of each brother. In respect of the property in question, other three brothers relinquished their rights in the said property which came to the share of the assessee. In pursuance of the Family Settlement Deed, Release Deed was also executed, copy of which is filed in the paper book in which it is nowhere recorded if assessee paid any consideration to his other three brothers. The loan as considered by the authorities below of Rs.12 crores received by assessee has been received after the execution of the aforesaid Release Deed on 18.12.2014. Thus, there was no question of parting with any consideration for execution of the Release Deed. The authorities below did not doubt the execution of the Family Settlement Deed and it is not the case of the authorities below that assessee and his brothers have not acted upon the Family Settlement Deed. It is well settled law that Partition or Family Settlement is not a transfer. We rely upon Judgment of Hon'ble Karnataka High

Court in the case of CIT vs. R. Nagaraja Rao (supra) in which it was held as under :

*“Partition or family settlement is not transfer. When there is no transfer there is no capital gain and consequently no tax on capital gain is liable to be paid.”*

9.2. The Hon’ble Punjab & Haryana High Court in the case of CIT vs. Ashwani Chopra (supra), held as under :

*“In view of the aforesaid principles of law, it was found that the payment of Rs.24 crores to Group A was to equalize the inequalities in partition of the assets of M/s Hind Samachar Ltd. The amount so paid was immovable property. It was held that if such amount was to be treated as income liable to tax, the inequalities would set in as the share of the recipient will diminish to the extent of tax. Since the amount paid during the course of partition was to settle the inequalities in partition, therefore deemed to be immovable property. Such amount was not an income liable to tax.”*

9.3. In this case, since there was a Family Settlement between the assessee and three brothers and they have acted upon Family Settlement Deed and distributed various properties among themselves and necessary rights and title are transferred in favour of each brother would show that parties have entered into genuine transaction. As per the Family Settlement Deed, it was agreed that property in question with superstructure shall be taken by the assessee and that as per the Settlement Deed, the assessee has to contribute a sum of Rs.20 crores from his own resources/capital or through the borrowed funds as part of the Family Settlement to balance the settlement between brothers. Therefore, no commercial transaction have been entered into between the assessee and his brothers and there is no colourable device. We may also note that admittedly settlement was executed for distribution of different properties between the assessee and his brothers which was having no commercial purpose. It may also be noted here that authorities below rejected the claim of assessee because the transaction was not executed out of natural

love and affection. The word 'natural love and affection' have not been specified in Section 56(2)(vii)(b) of the I.T. Act. Therefore, this term has no consequence to the above provisions in which the A.O. made the addition. Since the amount of Rs.12 crores have been taken by assessee as loan from the Bank through the respective agreements referred to above, therefore, it could not be treated as undisclosed income of the assessee. The assessee has explained source of Rs.12 crores through the loan taken from the Bank. Therefore, provisions of Section 69B of the I.T. Act, would not apply to the case of the assessee. Further, it was not the case of the A.O. that provisions of Section 69B are attracted in the case of assessee. Therefore, the Ld. CIT(A), could not have bring to tax the aforesaid amount through new source of income. Considering the above discussion in the light of above decisions, it is clear that provisions of Section 56(2)(vii)(b) and Section 69B of the I.T. Act are not applicable in this case. In this view of the matter, there was no justification for the authorities below to make the addition of Rs.28.65 crores against the assessee under the

above provisions of Law. We, accordingly, set aside the Orders of the authorities below and delete the entire addition. Ground Nos. 3 to 5 of the appeal of Assessee are allowed.

10. In the result, appeal of Assessee partly allowed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 16<sup>th</sup> September, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "C" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :  
Delhi.