

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4217/Del./2015
Assessment Year 2009-2010

Smt. Upma Shukla L.R. of Shri Vikas Shukla, Proprietor UVSS Engineers, House No.731, Sector-9A, Gurgaon. PAN ACXPS5225Q	vs.,	The Income Tax Officer, Ward-2(2), HSIIDC Building, Vanijaya Nikunj, 5 th Floor, Udyog Vihar, Phase-V, Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Kanishk Rana, Advocate
For Revenue :	Shri Pradeep Singh Gautam, Sr. D.R.

Date of Hearing :	13.11.2019
Date of Pronouncement :	14.11.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 10.02.2015, for the A.Y. 2009-2010 on the following grounds :

- 1. That the order passed by the Ld. CIT(A) is bad in law to the extent it confirms the additions made by the Assessing Officer on account of unexplained investment.*

2. That the Ld. CIT(A) erred on facts and in law in partially confirming the addition of Rs. 17,50,000/- made by the Assessing officer holding the same to be unexplained investment in land and building taxable under Section 69 of the Act.
- 2.1. That the Ld. CIT (A) erred in law and on facts to hold the Ms. Upma Shukla i.e. wife of the assessee is the owner of the land and building during the assessment year 2009-2010.
- 2.2. That the Ld. CIT(A) erred in law and on facts in holding that there was transfer of land and/or building in term of Section 2(47) of the Income Tax Act, 1961 by Ms. Upma Shukla i.e. wife of the assessee to the assessee during the assessment year 2009-2010.

Without prejudice, even if it is assumed that there was transfer of land by the assessee, the Ld. CIT(A) failed to appreciate that transfer of land does not result in transfer of superstructure/building.

2.3. *That the Ld. CIT(A) erred on facts and in law in holding that investment of Rs. 7,50,000/-(10,00,000 minus 2,50,000) has been made by the assessee in the land during the assessment year 2009-2010 despite applying Section 50C of the Act to determine full value of consideration.*

2.4. *That the Ld. CIT(A) erred on facts and in law in holding that investment of Rs. 500,000/- has been made by the assessee in the building during the assessment year 2009-2010 merely on the basis of conjectures and surmise.*

2.5. *That the Ld. CIT (A) erred in law in relying upon the incorrect entry made by the assessee in the books of accounts.”*

2. The A.O. passed the Order in the name of Shri Vikas Shukla who is expired during the course of appellate proceedings, therefore, L.R. of the deceased-assessee moved M.A. for bringing the L.R. on record. Smt. Upma Shukla is, therefore, substituted as L.R. of the deceased-assessee.

3. Briefly the facts of the case are that from the copy of the balance-sheet furnished by the assessee during the course of assessment proceedings, it has been observed that assessee has purchased land and building for Rs.3,20,000/- during the year under consideration. From the copy of the Title Deed it has been observed that assessee has purchased this land and building from his wife Smt. Upma Shukla. It has been observed by the Sub-Registrar upon valuation that the land in question at circle rate and in terms of Section 50C at Rs.10,00,000/-. The value of the building constructed thereon which has not been declared before the Sub-Registrar is estimated at Rs.10,00,000/-. Thus, the fair market value of the land and building comes to Rs.20 lakhs as against Rs.2,50,000/- declared in the Title Deed. Since the assessee has failed to give any explanation in this regard, therefore, Rs.17,50,000/- was considered as unexplained investment and addition of the same was accordingly made.

4. The assessee submitted before the Ld. CIT(A) that land on which investment was made by assessee was sold to

him on 30.11.1996 by one Mr. Umed Singh who is an Army Officer. But, the Deed could not be registered as there was a restriction on the registry by the Sub-Registrar, Gurgaon for control of the Title of the Property. However, buyers and sellers had mutually decided to create GPA in favour of purchaser's wife i.e., Smt. Upma Shukla (Wife of the Assessee), was to act as the registered GPA on behalf of Shri Umed Singh. The said land was later registered in assessee's name on 23.07.2008 after gap of 12 years, whereas, in actual facts, the land was in the custody of the assessee Shri Vikas Shukla right from the year 1996 without transfer took place. Further, the same was being utilised by the assessee for his business purposes right from that time and incurring expenses for improvement of the property for suitable working condition to carry-out his business activities. It was, therefore, submitted that assessee is owner of the said property since 1996 and hence, no addition could be made. The A.O. submitted remand report and assessee also commented on the same. The Ld. CIT(A) noted that he has decided the appeal of

assessee's wife and held that his wife was chargeable to long term capital gains which is to be calculated by deducting from the amount of Rs.10 lakhs in indexed cost of acquisition of Rs.2,50,000/- since 1996 in the year of acquisition. It is also noted that he has held that assessee's wife is chargeable to short term capital gain of Rs.5 lakhs on account of sale of factory building. The Ld. CIT(A) following the detailed reasoning given in the case of wife of assessee, granted part relief to the assessee.

5. I have heard the Learned Representative of both the parties. According to the Office, the appeal is time barred by 50 days.

6. Learned Counsel for the Assessee submitted that ITAT C-Bench in the case of Shri Upma Shukla in ITA.No.4218/Del./2015 for A.Y. 2009-2010 vide Order Dated 14.10.2019 condoned the delay of 50 days as well as allowed the appeal of assessee. The Order is reproduced as under :

*“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: ‘C’ NEW DELHI*

*BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER*

*ITA No. 4218/Del/2015
Assessment Year: 2009-10*

<i>Upma Shukla Proprietor Troubleshooters, Upma Shukla, House No. 731, Sector-9A, Gurgaon. PAN No. ADZPS1670E</i>	<i>vs.,</i>	<i>ITO, Ward-2(2), HSIIDC Building, Vanijaya Nikunj, 5th Floor, Udyog Vihar, Phase-V, Gurgaon.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>Assessee by</i>	<i>Shri Kanishk Rana, Adv.</i>
<i>Revenue by</i>	<i>Ms. Rakhi Vimal, Sr. DR</i>

<i>Date of Hearing</i>	<i>09.10.2019</i>
<i>Date of Pronouncement</i>	<i>14.10.2019</i>

ORDER

PER SHRI BHAVNESH SAINI, J.M.

*This appeal by the assessee has been directed
against the order of Ld. CIT(Appeals)-1, Gurgaon dated
10.02.2015 for AY 2009-10, challenging the additions
of Rs. 9,90,000/- on account of long term capital gains*

arising from transfer of land and addition of Rs. 10 lakhs on account of short term capital gains arising from transfer of building.

2. *We have heard Ld. Representatives of both the parties and perused the material on record. Earlier appeal was dismissed for default which was restored by allowing Miscellaneous Application of the assessee.*

3. *The appeal is time barred by 50 days. The assessee has filed application for condonation of delay explaining therein that impugned order was received on 11.03.2015. The husband of the assessee Shri Vikas Shukla was suffering from mouth cancer and required continuous attention and treatment and was admitted in hospital on 20.04.2014, thereafter, many times he was admitted to hospital later on the Chartered Accountant who was pre-occupied could only be attended on 17.03.2015. Again in the last week of March, 2015 assessee's husband fell ill due to the above ailment and his health started deteriorating and*

ultimately his condition got worsened. The husband of the assessee was later on admitted to hospital on 29.05.2015 to 31.05.2015 undergo Chemotherapy. The husband of the assessee again underwent further Chemotherapy sessions on 08.06.2015 to 15.06.2015 and ultimately husband of the assessee due to the long illness expired in October, 2015. Assessee, therefore, prayed that the delay in filing the appeal was due to serious illness of the husband and, therefore, delay may be condoned. Application for condonation of delay is supported by medical certificates.

4. *After considering the rival submissions, we are of the view that assessee was prevented by sufficient cause in not filing the appeal before the Tribunal within the period of limitation. Therefore, normal delay in filing the appeal is condoned.*

5. *Briefly the facts of the case are that assessee filed return of income of Rs. 4,34,060/- on 31.03.2010 under the head "Income from other sources". The AO*

considered the issue of long term capital gains and short term capital gains and passed the order u/s 143(3) making the following additions:

- i. Long Term Capital Gains Rs. 9,90,000/-*
- ii. Short Term Capital Gains Rs. 10,00,000/-*

5.1 As regards additions on account of capital gains, the AO observed that the assessee sold land and claimed to have received only Rs. 2,50,000/- as consideration. However, as per registered deed dated 23.07.2008, the value adopted for the purpose of payment of stamp duty by the State Government, in respect of the said transfer was Rs. 10 lakhs. The AO applied provisions of section 50C of the I.T. Act and made an addition of Rs. 9,90,000/- on this issue. In addition, the AO formed that the assessee had also sold factory building on the said land which was not appearing in the registered sale deed. Since, the assessee had transferred land and building together, the AO held that short term capital gain accrued to the

assessee on account of transfer of the building was Rs. 10 lakhs which was also added to the income of the assessee.

6. *The assessee challenged both the additions before Ld. CIT(A). The written submission of the assessee is reproduced as under:*

“Sir, the Ld. AO had erred on facts while making an addition of Rs. 9,90,000/- as Long Term Capital Gains on account of sale of plot. He has completely ignored the fact that the appellant was not the owner of the said land but merely a holder of registered GPA. The said land was sold on 30.11.1996 at a consideration of Rs. 2,50,000/- by Sh. Umed Singh to Shri Vikas Shukla (Husband of the assessee). At the time of sale, the same could not be registered in the name of Shri Vikas Shukla as there was a restriction on the registry by the Sub Registrar, Gurgaon. Sh.

Umed Singh was an Officer with the Indian Army who due to his postings in different parts could not be present in Gurgaon at all times. Hence, to smoothen the process, and to gain control on the title of the property, it was mutually decided that the appellant Mrs. Umpa Shukla (Wife of Shri Vikas Shukla) would act as a registered GPA and an authorized legal agent who would have the authority to sign any document relating to the Land of Sh.Umed Singh. This arrangement was made so that future inconveniences could be removed as the sale could not be registered at that point of time. Further, the sale deed was registered on the 23.07.2008 between Vikas Shukla and Mrs. Upma Shukla in her capacity as the registered GPA holder of Sh. Umed Singh. It is evident that the right to property was already given to Vikas Shukla

by Sh. Umed Singh and only the documents were registered after a gap of 12 years.

At no point of time did the appellant become the owner of the plot and was merely a representative of Sh. Umed Singh for the registry of the plot. Hence, to tax the same in her hands as LTCG is harsh ignoring the facts and genuinity of the case. The sale was in fact effected between Sh. Umed Singh (original owner and seller of the plot) and Sh. Vikas Shukla (Buyer).

Further, the appellant in the relevant AY had routed an entry through the Capital Account of Rs. 2,50,000/- for the sale of land and building. Sir, in this respect I would like to submit that the same is only a book entry between the appellant and the Vikas Shukla (husband of the appellant). Further, this is merely a notional entry and there was no

actual transaction. This entry was an error on our part but there was no intention to evade any taxes.

The Ld. AO has taxed Rs. 10,00,000/- as short term capital gains in the hand of the appellant stating that the land in question was a vacant land and that the factory and building was constructed on it by the appellant. It being a depreciable asset, STCG was computed by the Ld. AO at Rs. 10,00,000/-.

Sir, in this respect I would like to state that here the land in question is the same one in respect of which the appellant was the holder of the registered GPA. Thus, this land as already substantiated above was not the property of the appellant. Hence, as there was no question of transfer/sale of building by the

appellant, the ground for taxing the STCG also stands nullified.”

7. *The Ld. CIT(A) called for the remand report of the AO which is also reproduced in the appellate order. The same reads as under:*

“That as per the facts available on record the assessee had filed GPA of Sh. Umed Singh in her favour and copy of sale deed between the assessee as GPA and her husband Sh. Vikas Shukla during the assessment proceedings. Now the assessee has filed an ‘IkrarNama’ (Agreement to sale) dated 03.11.1995 between Sh. Umed Singh and Sh. Vikas Shukla, husband of the assessee to prove the ownership of the property. The assessee also filed a receipt of Rs. 2,50,000/- dated 07.11.1996 vide which her husband Sh. Vikas Shukla had paid this amount to Sh. Umed Singh for the same land. Since the

assessee had been provided sufficient opportunity to produce the evidence during the assessment proceedings, any such evidence at the appellate stage may kindly not be admitted. Moreover, the Ikrar Nama is not a registered document, therefore, its authenticity is doubtful. Further, in the capital account of the assessee an addition of Rs. 2,50,000/- has been shown on account of sale and land & building. It also shows that property in question belongs to assessee.”

8. *It may also be noted here that the assessee at the appellate stage made a request for admission of additional evidences which Ld. CIT(A) has allowed and admitted the additional evidences.*

9. *Ld. CIT(A) considering the explanation of the assessee and material on record did not accept contention of the assessee. The Ld. CIT(A) noted that Ikrar Nama is not registered document, therefore, it is*

doubtful. The Ld. CIT(A) also noted that assessee had disclosed an amount of Rs. 2,50,000/- in her capital amount on account of sale of land and capital building during the year under consideration. Therefore, contention of assessee was rejected. The Ld. CIT(A) also noted that in this case, since the total value of consideration for the purpose of stamp duty was fixed at Rs. 10 lakhs, the AO has rightly invoked the provisions of section 50C of the Act. The Ld. CIT(A), therefore, confirmed the addition on account of long term capital gain. The addition on short term capital gain was however, reduced to 50% of Rs. 5 lakhs.

10. Ld. Counsel for assessee referred to copy of 'Ikrar Nama' dated 03.11.1995, copy of Registered General Power of Attorney in favour of the assessee, affidavit of Shri Umed Singh and receipt issued by him as well as sale deed in question dated 23.07.2008. Ld. Counsel for assessee submitted that assessee acted as General Power of Attorney holder to act on behalf of original owner of the property Shri

Umed Singh. Therefore, there is no transfer in the case of the assessee and, as such, no long term capital gain or short term capital gain would arise in the case of the assessee. He has relied upon the judgment of Madras High Court in the case of CIT vs. C. Sugumaran dated 03.11.2014 in Tax Appeal No. 840/2014 and order of ITAT, Jaipur Bench in the case of Gyan Chand Agarwal vs. Addl. CIT dated 10.07.2017 ITA No. 266/JP/2017 in which transaction conducted through General Power Attorney holder was not considered as transfer of property so as to attract capital gains.

11. *On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that assessee has shown the amount in question in her capital amount which was received through registered sale deed. Therefore, both the additions are justified.*

12. *We have considered the rival submissions. The assessee filed copy of the 'Ikrar Nama' dated 03.11.1995 which is executed by Shri Umed Singh*

owner of the property in question in favour of Shri Vikas Shukla for a sum of Rs. 2,50,000/-. It is signed by both the parties as well as witnesses. Shri Umed Singh has also executed affidavit in favour of Shri Vikas Shukla confirming that he has sold the property in question to assessee and executed General Power of Attorney in favour of the assessee. The receipt is also executed by Shri Umed Singh in favour of Shri Vikas Shukla for sale of the above property for a sum of Rs.2,50,000/-. Shri Umed Singh has also executed Registered General Power of Attorney in favour of assessee and given all the powers as a General Attorney to look into the property or to execute Registry or to purchase stamps or claim any refund etc. This General Power of Attorney is not subjected to any consideration. No amount has been paid by the assessee to Shri Umed Singh through this Registered General Power of Attorney. Therefore, General Power of Attorney executed by Shri Umed Singh owner of the property was without any consideration. The assessee

later on as General Power of Attorney holder of owner of the property Shri Umed Singh executed sale deed in question in favour of her husband i.e. Shri Vikas Shukla in which it is specifically mentioned that sale consideration is earlier paid of Rs. 2,50,000/-, it means Shri Vikas Shukla has paid to Shri Umed Singh. It is also mentioned in the registered sale deed that amount of consideration of Rs. 2,50,000/- has already been received. It would mean that at the time of execution of the registered sale deed no consideration of Rs.2,50,000/- passed on from Shri Vikas Shukla to the assessee. It would further mean that the sale consideration of property of Rs. 2,50,000/- has already been received by Shri Umed Singh being original owner of the property. These facts and material on record clearly suggest that the assessee acted as a General Power of Attorney Holder of the property in question on behalf of Shri Umed Singh original owner of the property. The right of assessee as a General Power of Attorney holder was not greater to that of the owner of

the property i.e. earlier right in favour of Shri Umed Singh and later on right transferred in favour of her husband Shri Vikas Shukla. There was no justification for Ld. CIT(A) to doubt the Ikrar Nama executed between Sh. Umed Singh and Sh. Vikas Shukla because it is supported by the affidavit of Sh. Umed Singh and the receipt. If Ld. CIT(A) was having doubt over the same, he could have examined the marginal witnesses who have signed the agreement and the receipt in question. Further, when in the registered power of attorney no consideration has passed on from assessee to Sh. Umed Singh, there was no question of any transfer of property in favour of the assessee. Therefore, there is no question of her transferring the same property in favour of her husband for consideration. It is well settled law that entries in the books or capital account are not determinative of earning of income. It depends upon facts of the case. The real income only could be taxed as per law. Considering the totality of the facts and circumstances

and the documents on record, it is clearly proved that Sh. Umed Singh has entered into an agreement to sale with Sh. Vikas Shukla for sale of property for a sum of Rs. 2,50,000/- which Sh. Vikas Shukla paid to Sh. Umed Singh. Documents to that effect were executed. The General Power of Attorney was executed in favour of the assessee so that assessee could registered the sale deed at appropriate time on behalf of Sh. Umed Singh in favour of her husband. Therefore, there is no transfer of capital asset from the side of the assessee, so as to attract provisions of long term capital gains and short term capital gains. The decisions relied upon by the Ld. Counsel for assessee squarely apply to the facts and circumstances of the case. There was no justification for authorities below to made addition in the hands of assessee on account of long term capital gains and short term capital gains. In this view of the matter, we set aside the orders of the authorities below and delete both the additions.

13. *In the result, the appeal is allowed.”*

7. After considering the rival submissions, I am of the view that the matter requires reconsideration at the level of the A.O. In the case of Smt. Upma Shukla also on the same reasoning delay in filing of the appeal for 50 days was condoned because the assessee Shri Vikas Shukla was suffering from cancer. The same reasoning is given in the present appeal. Therefore, following the same reasoning in the case of Smt. Upma Shukla (supra), I condone the delay in filing the appeal. Since in the case of Smt. Upma Shukla she has acted as GPA holder of the original owner Shri Umed Singh, it was, therefore, held that no long term capital gains is liable to be taxed in her hands. However, in the case of the deceased assessee Shri Vikas Shukla, he has purchased the property through the documents in the year 1996. Therefore, the issue shall have to be re-examined in the light of the Order in the case of Smt. Upma Shukla (supra). The Ld. CIT(A) also decided this issue following the Order in the case of Smt. Upma Shukla (supra), which have now been settled by the Division Bench of ITAT, Delhi Bench. In this view of the matter, I set aside the Orders of

the authorities below and restore the matter in issue to the file of A.O. with a direction to re-decide the matter in issue as per Law, in the light of decision of the Tribunal in the case of Smt. Upma Shukla (supra) Dated 14.10.2019. Appeal of assessee allowed for statistical purposes.

8. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 14th November, 2019

VBP/-

Copy to

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

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.