IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
&
SHRI O.P. MEENA, ACCOUNTANT MEMBER

ITA No. 444/Del/2018
Assessment Year: 2014-15

Ram Bhaj Goswami A-888, Shastri Nagar, New Delhi.	vs	ITO Ward 35(3) New Delhi.
APPELLANT		**RESPONDENT**
PAN No. AFOPG0785M		

&

ITA No. 445/Del/2018
Assessment Year: 2014-15

Shri Ram Goswami A-879, Shastri Nagar, New Delhi.	vs	ITO Ward 35(3) New Delhi.
APPELLANT		**RESPONDENT**
PAN No. AAUPG7237R		

Assessee by	**Shri S.R. Wadhwa, Adv.**
Revenue by	**Shri Surender Pal, Sr. DR**

Date of Hearing	**14.11.2019**
Date of Pronouncement	**14.11.2019**

ORDER

PER SHRI O.P. MEENA, A.M.

The present appeals have been filed by the assessee against the orders of the ld. CIT(Appeals)-12, New Delhi dated 17.11.2017.

2. Since, the issues involved in both the appeals are common, they were heard together and are being disposed off by common order.

3. In ITA Nod. 444/Del/2018 & 445/Del/2018, following grounds have been raised by the assessee:

1. *"That the order of the Ld. CIT(A) dated 17.11.2017 upholding the addition of Rs. 84,45,000/- made by the Assessing Officer u/s 56(2)(vii)(b) of the Income-tax Act, 1961 (the Act) is bad in law and on facts.*
2. *That Ld. CIT(A) grossly erred in not admitting the additional evidence under Rule-46A of the Income-tax Rules, 1962 as the document namely, Agreement to sell dated 12.10.2012, sought to be filed by the appellant was crucial and went to the root of the case.*
3. *That the addition of Rs. 84,45,000/- being appellant's half share of difference between stamp duty value of the industrial plot at Narela at Rs. 2,98,90,000/- for FY 2013-14 (AY 2014-15) and purchase price at Rs. 1,30,00,000/- shown in the Agreement to Sell dated 12.10.2012, is legally untenable and deserves to be deleted.*
4. *That having entered into an Agreement to Sell dated 12.10.2012 and making part payment to the vendor by cross account payee cheques, the adoption of stamp duty value of Rs. 2,98,90,000/- for FY 2013-14 (AY 2014-15) on the ground that sale deed was registered on 23.04.2013 i.e. during FY 2013-14 is contrary to law and the addition made on this account needs to be deleted.*
5. *That on the date of Agreement to Sell on 12.10.2012, sub-clause (b) of clause (vii) of Section 56(2) of the Act substituted by the Finance Act – 2013 w.e.f. 01.04.2014, being not applicable, the*

stamp duty value for FY 2013-14 adopted by the Assessing Officer and confirmed by the Ld. CIT(A) is totally unjustified and uncalled for and hence the addition needs to be deleted.

6. *Without prejudice to grounds of appeal nos. 1 to 5 above, treating the excess of the amount of the sale of immovable property on the basis of its stamp duty valuation over the actual sale consideration as income, within the meaning of section 56(2)(vii)(b) of the Act and subjecting it to income-tax, is contrary to the principles of the taxation of real income and, is, therefore, illegal and unenforceable.*
7. *That the interest charged u/s 234A, 234B and 234C of the Act is illegal and deserves to be deleted as no direction in this regard was given in the assessment order passed by the Assessing Officer.*
8. *That the grounds of appeal are independent to each other.*
9. *The appellant craves leave to add, alter, amend or modify any of the grounds of appeal before or at the time of hearing of the appeal."*

4. We are discussing ITA No. 445/Del/2018 as a lead case of which finding would also applied in the case of Shri Ram Bhaj Goswami and the facts of the both cases are identical.

5. Briefly stated facts of the case are that the assessee had jointly purchased property with his brother Shri Ram Bhaj Goswami located at F-1493, Narela Industrial Area, Delhi. The perusal of registered sale deed reflected that Circle rate of property at Rs. 2,98,90,000/- and the stamp duty was amounting to Rs. 17,93,400/-. As per page no. 3 of the sale deed the actual amount of property was shown at Rs. 1,30,00,000/-. Thus, the property

was purchased below the circle rate by an amount of Rs. 1,68,90,000/-. The AO referred the provisions of section 56(2)(vii) according to which the difference in cost of property as per circle rate and the cost of purchase price would be assumed to be the income of the purchaser and would be chargeable to tax under the head "Income from other sources". It was submitted that the provisions of section 56(2)(viib) were not applicable as the part payment of the property was made in the year 2012-13 itself relevant to AY 2013-14 during which the said section was not applicable. However, the AO observed that as per first and second proviso of section 56(2)(viib) of the Act, if the date of registration and the stamp duty value on the agreement are not same then the stamp duty value on the agreement may be taken for the purpose of this section. The AO also observed that there was no subsisting agreement for sale except the present sale deed entered between the vendor and the vending in the impugned purchase of property. Accordingly, the AO made an addition of Rs. 84,45,000/- being one half share of the assessee in the purchase of property as per provisions of section 56(2)(viib) of the Act.

6. Being aggrieved, the assessee filed an appeal before Ld. CIT(A), wherein the assessee has filed an application under Rule 46A of the I.T. Rules, 1965 stating that following documents should be admitted as additional evidence:

1. Copy of agreement to sale dated 12.10.2012;
2. Copy of circle rate of the property as on 12.10.2012;
3. Copy of circle rate of the property as on 23.04.2013.

It was submitted that the above documents could not be filed at the time of assessment and these goes to the very root of the cases, therefore, these should be admitted as additional evidence. However, the CIT(A) observed that he does not find any reason as to why the said agreement claimed to have been entered into on 12.10.2012 was not filed before the AO. The AO has also pointed out clause (5) of the sale deed dated 23.04.2013 that there was no subsisting agreement for sale except the present sale deed entered between the vendor and the vendee in respect of the aforesaid properties. Accordingly, the claim of admission of additional evidence under Rule 46A was rejected and the appeal of the assessee was dismissed.

7. Being aggrieved, the assessee filed this appeal before this Tribunal.

8. Ld. Counsel for the assessee submitted that the AO made addition on the ground that prior to the execution of said sale deed dated 23.04.2013, there was no agreement to sell and no such agreement was produced during the course of assessment proceedings. It was contended that as per clause (5) of the sale deed the same refers to denial of any prior sale of any property has not been transferred in any manner whatsoever in favour of any other person or persons and the vendor has a good marketable title. This clause item is generally written in the sale deed to guard against any sale by way of legal assurance. It does not mean or imply that prior to the Registered Sale Deed, there was no

agreement to sell between the vendor and the vendee. Its existence is clearly proved, in unmistakable terms, from page 6 of the registered sale deed where the particulars of the payments by cross account payee cheques aggregating to Rs. 20 lakhs made through the agreement to sell dated 12.10.2012 have been clearly mentioned as under:

i) Rs. 5,00,000/- Ch. No. 153624 dated 11.10.2012
ii) Rs. 5,00,000/- Ch. No. 182173 dated 11.10.2012
iii) Rs. 5,00,000/- Ch. No. 153623 dated 12.10.2012
iv) Rs. 5,00,000/- Ch. No. 182174 dated 11.10.2012

9. The Ld. Counsel further submitted that the AO never asked for production of agreement to sell dated 12.10.2012 and, as such, the same was not produced before him during the assessment proceedings. However, during the appeal proceedings, the same was sought to be produced as additional evidence under Rule 46A of the Income-tax Rules, 1962 but the CIT(A) has declined to admit and consider the same while deciding the appeal on merits and agreed with the observation of the AO. It was submitted that the lower authorities have committed a grave error in invoking sub clause (b) of clause (vii) of sub section (2) of section 56 of the Income Tax Act substituted by the Finance Act – 2013 and made the same as applicable from AY 20014-15 onwards. In the present case, the assessee has agreed to purchase an industrial property for a consideration of Rs. 1.30 crores vide agreement to sell entered into on 12.10.2012, relevant to AY 2013-14. It has been held by various Courts that in respect of immovable property of value exceeding Rs. 100/-, the transfer can be said to be effected

on the date of execution of conveyance documents and not on the date on which a document was registered in the books of Registrar. The ld. Counsel has also placed reliance in support of his view in the following cases:

1. *Allapati Venkataramiah vs. CIT (1965) 57 ITR 185 (SC)*
2. *CIT vs. Poddr Cement P. Ltd. (1997) 226 ITR 625 (SC)*
3. *CIT vs. Vishnu Trading and Investment Company (2003) 259 ITR 724 (Raj.)*

10. Ld. Counsel further submitted that as per ground No. 6 of appeal, no opportunity was given by the Ld. AO in treating the excess of the stamp duty valuation over the actual sale consideration as deemed income allowing the appellant to show that the actual sale consideration was the real market price and that the stamp duty value was artificial and unreal. It was, therefore, requested that the additional evidence filed before Ld. CIT(A) under Rule 46A may be admitted and the matter may be restored back to the file of the AO for fresh consideration of the assessment as *denovo*. The Ld. Counsel further submitted that as per best of their knowledge and belief, in the case of seller Shri Rakesh Kukreja S/o Shri Shyam Das Kukreja of C-276, Prashant Vihar, Delhi – 110085 (PAN AAHPK9089N), the actual sale consideration as per the agreement to sell and sale deed has been accepted and no addition on account of capital gains u/s 50C (whose provisions are *perimateria* with those of section 56(2)(vii) of the Act) has been made. Therefore, it was requested that the assessment order in each of the two cases may be set aside to the file of the AO for giving an opportunity to the appellants to

produce the agreement to sell and other relevant evidence to show that the purchase consideration represents the real market price at which the purchase was made and no addition is required to be made. The AO should be directed to permit the appellants to raise relevant issues including the submissions that the provisions of section 56(2)(viib) of the Act are not applicable.

11. Per contra, the Ld. Sr. DR submitted that as per clause (5) of registered sale deed there is no subsisting agreement to sell the registered sale deed entered between the vendor and vendee. Therefore, agreement to sell dated 12.10.2012 which has been produced as additional evidence before Ld. CIT(A) have been rightly rejected. However, he has no objection, if the matter is set aside to the file of the AO with a direction to examine the authenticity and genuineness of the agreement to sell dated 12.10.2012 for purchase of the said property.

12. We have heard the rival submission and perused the relevant material on record. We have gone through the findings of the lower authorities and it appears that the AO has not asked production of agreement to sell dated 12.10.2012. Therefore, it appears that the same was not produced before him during the assessment proceedings. However, this agreement goes to the root of the matter, therefore, these are allowed to be admitted in the interest of justice. Such evidence made ultimately turn out to be benefit of either tax payer or Revenue. We find support from the judgment of Hon`ble Delhi High Court in the case of CIT v. Text

Hundred India (P)Ltd.[2011] 351 ITR 57 (Del): 197 Taxman 128(Del) : 51 DTR 241(Del) wherein it was observed as follows:

> ***"13.*** *The aforesaid case law clearly lays down a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motu action of the Tribunal. The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. It is well-settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect."*

13. In the light of above facts and circumstances and relying on aforesaid decision, we admit the additional evidence filed by the assessee and restored the issue to the file of AO to decide all the issue involved afresh. The AO is therefore, directed to decide the issue after examining additional evidence and examined their authenticity and genuineness of agreement to sell dated 12. 10. 2012 and any other evidence as may be filed by the assessee before him in support of his claim. The AO may decide the issue after making such enquiries as necessary as deem fit and submit further evidence as required in the interest of justice in accordance with law and facts of the case. Accordingly, entire assessment is set-

aside to the file of the AO for *denovo* consideration after affording proper opportunity of being heard. Nevertheless to say that the assessee will cooperate in the enquiry and assessment proceedings and furnish necessary evidences as the assessee would like and as required by the AO.

ITA No. 444/Del/2018 in the case of Shri Ram Bhaj Goswami AY 2014-15: -

14. Since the facts are identical in the case of Shri Ram Goswami, therefore, our findings given in ITA No. 445/Del/2018, will apply in the case of Shri Ram Bhaj Goswami for AY 2014-15. Accordingly, entire assessment is set-aside to the file of the AO for *denovo* consideration after affording proper opportunity of being heard. Nevertheless to say that the assessee will cooperate in the enquiry and assessment proceedings and furnish necessary evidences as the assessee would like and as required by the AO.

15. In the result, both the appeals of assessee are allowed for statistical purposes.

Order pronounced in the open Court on 14.11.2019

Sd/-	Sd/-
(SUCHITRA KAMBLE)	**(O.P. MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 14/11/2019
*Kavita Arora

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI