

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI LALIET KUMAR, JM

आयकर अपील सं. / ITA No.2844/PUN/2016

निर्धारण वर्ष / Assessment Year : 2013-14

Hirabai Bhausahab Katore,
Nimgaon Korhale,
Taluka- Rahata,
Ahmednagar-423 109.
PAN : CSGPK1457F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri B. B. Mane
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 12.02.2020
घोषणा की तारीख / Date of Pronouncement : 13.02.2020

आदेश / ORDER

PER LALIET KUMAR, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-2, Pune dated 18.08.2016 for the assessment year 2013-14
as per the following grounds of appeal on record:

“1. The learned CIT(A) erred on facts and in law in upholding disallowance selling expenses incurred in respect of sale of land amounting to Rs.36,00,000/- paid to Mr. Kisan Kharat out of total expenses of Rs.61,00,000/- without appreciating the facts and evidences submitted before the learned AO as well as the Ld. CIT(A) in this behalf. The learned CIT(A) contended that there is no evidence to establish the nexus between amount paid and the capital gain whereas the said payment is made for withdrawal of legal suite in respect of the said land. The learned CIT(A) failed to appreciate the fact that the Hon’ble Jurisdictional Court’s order in this regard forms part of the sale agreement.

2. The learned CIT(A) erred on facts and in law in upholding disallowance selling expenses incurred in respect of sale of land amounting to Rs.25,00,000/- paid to Mr. Bharat Chaudhari out of total expenses of Rs.61,00,000/- without appreciating the facts and evidences submitted before the learned AO as well as the Ld. CIT(A) in this behalf. The Ld. CIT(A) contended that there is no evidence to establish the nexus between the amount paid and the capital gain whereas all the evidences are already on record.

3. Without prejudice to above, the cost of Rs.61,00,000/- is not part of cost of acquisition but the selling cost to be reduced from the sales consideration. The learned AO as well as the CIT(A) failed to appreciate the said fact and also failed to rectify the mistake.

4. The appellant craves to add, alter, delete or substitute all or any of the above grounds of appeal.”

2. The Ld. AR of the assessee submitted that the assessee is an individual and earned income from capital gain from sale of agricultural land situated at Gut No.74/19 at Nimgaon Korhale, Taluka-Rahata which was sold for consideration of Rs.1,46,00,000/-. The assessee has filed original return for assessment year 2013-14 on 01.08.2013 declaring total income at Rs.29,91,540/-. The Ld. AR of the assessee further submitted that the said income was short term capital gain and no other source of income, the assessee had during the concerned financial year and the assessee had paid tax of Rs.7,61,782/-.

2.1 The Ld. AR of the assessee also submitted that the Assessing Officer disallowed the cost of acquisition of Rs.36,00,000/- paid to Mr. Kisan Kharat who had instituted Special Civil Suit Case No.60/2012. The assessee had

paid Rs.25,00,000/- to Mr. Bharat Bhikari Choudhury and Mr. Raghunath Bhausahab Katore, son of the assessee who had helped the assessee to complete deal of transfer of agricultural land. The Assessing Officer did not deny the payments but not accepted the same as additional cost of acquisition of land and accordingly, the Assessing Officer disallowed the said payment of additional cost of acquisition of land.

2.2. The Ld. AR of the assessee further submitted that Mr. Kisan Kharat, had instituted civil suit for specific performance of agricultural land, and to get released from encumbrances' amount of Rs.36,00,000/- was paid, otherwise said land could not have been transferred and transaction would have been frustrated. Hence payment to Mr Kisan Kharta was absolutely essential and necessary payment to affect transfer; hence same is part and parcel of cost of acquisition. Therefore the assessee respectfully pleads that same should be allowed as cost of acquisition.

2.3 The Ld. AR of the assessee also submitted that the Assessing Officer has confirmed actual payment to Mr. Kisan, which he has stated on page 4 in Para 4. c) of assessment order as follow:

"Rs.36,00,000/- is not at all connected to the transaction of purchase of land by the assessee and in turn sale of said land."

Further, necessity of payment to Mr. Kisan has been established through court order dated 3rd December 2012 of Hon'ble Civil Judge Senior Division, Kopargan, which is on page 13 of the Paper Book. In that suit Mr, Kharat Plaintiff and present assessee and other defendants have arrived to compromise and withdrawal of purses on terms of payment of Rs. 36,00,000/-.

2.4 The Ld. AR of the assessee has placed reliance on the following decisions:

(a) Miss Daun Dadabhoy Kapadia Vs. CIT (1967) 63 ITR 651(SC)

(b) CIT Vs. Daksha Ramanlal (1992) 197 ITR 123 (Guj.)

(c) R.M Arunachalam Vs. CIT, 227 ITR 222(SC)

(d) CIT Vs. Manjula J. Shah 355 ITR 474 (Bom)

3. Per contra, the Ld. DR has placed strong reliance on the orders of the Authorities below.

4. Feeling aggrieved by the order of the Ld. CIT(Appeals), the assessee filed appeal before us. We find that the Ld. CIT(Appeals) has upheld the order of the Assessing Officer by observing as under:

“4.3.3 As regards payment of Rs.36,00,000/- to Kisan Kharat, it has been argued that the said payment was made to avoid any legal dispute. It was argued that Kisan Kharat filed a civil suit against Aruna Jadhav (original land holder), Shri Ragunath Katore (son of the appellant), Shri Bharat Chaudhary, Shri Bhausahib Katore (husband of appellant) and the appellant herself on 08.10.2012. It was stated that due to civil suit, it became difficult for the appellant to proceed with the sale of the land. Therefore to avoid such litigation the appellant entered into a Kararnama dated 04.12.2012 by which Shri Kisan Kharat withdrew the suit after receiving the payment of Rs.36,00,000/-. It appears that the entire story has been created just to suppress the tax liability. Shri Bharat Chaudhary in fact does not have any locus-standi in the matter as he was in no way connected with the land in question.

4.3.4 On perusal of aforesaid discussion on law as well as facts, the claim made by the appellant towards inflated cost of acquisition is considered to be without any merit due to under mentioned discrepancies:

(i) The land was acquired by the appellant by registered sale deed dated 30.07.2012. There is no mention of any such further payment to be made to the alleged persons in such deed.

(ii) The main logic being given that to avoid litigation payment was made to the two persons, is not at all acceptable as because there is no mention of any dispute in the purchase deed dated 30.07.2012. It appears that entire story has been cooked so as to reduce the tax liability on account of Short Term Capital Gain.

(iii) The land acquired by the appellant was sold on 11.12.2012 and the so called kararnama with Shri Bharat Chaudhary was entered after the sale deed was completed i.e. on 28.12.2012. If the matter would have been under litigation then the sale deed could not have been registered.

(iv) Shri Bharat Chaudhary was the co-owner- of the land along with Shri Bhausahib Ranganath Katore with whom the appellant entered into the purchase deed for total consideration of Rs.50,00,000/-. Therefore, it is held that total consideration was already paid to Shri Bharat Chaudhary and the subsequent claim of Rs.2,50,000/- by way of Kararnama dated 28.12.2012 is nothing but an afterthought.

(v) Shri Klsan Kharat is nowhere connected with the transaction as he was neither owner of the land nor involved in any other capacity with the land transaction. Just because he filed a civil suit on 08.10.2012 and for withdrawal of the same on 03.12.2012, does not entitle him to receive any payment from the appellant. If such practices are allowed then any person can make any sort of claim by filing the suit.

(vi) It has been claimed in the Kararnama that the entire amount of Rs. 61,00,000/- was paid by way of cash, which reflects that genuineness of transaction itself is doubtful.

(vii) In fact the karanama is nothing but a self serving paper which has been made basis for inflating the cost of acquisition. The Hon'ble Supreme Court in the case of Mcdowell and Company Ltd. Vs. CTO (154 ITR 148) has held that "colourable devices cannot be a part of tax planning and it is wrong to encourage dubious methods to avoid payment of tax."

(viii) Even if it is assumed that the payment was made to avoid litigation, then the claim is highly disproportionate and in fact even more than the sale consideration paid by the appellant on acquisition of the land. The cost of acquisition by the appellant is Rs. 50,00,000/- and the payments made to these two persons to avoid litigation is to the extent of Rs, 61,00,000/-.

4.3.5 In the light of the aforesaid discussion, it is held that the claim made towards cost of acquisition in the form of payment to Shri Kisan Kharat and Shri Bharat Chaudhary is nothing but a cooked up story to inflate the cost of acquisition so as to reduce the taxable amount of short term capital gain. In fact, the appellant has thoroughly failed to discharge his onus of proving that such payments were in the nature of expenditure which has been laid out or expended wholly and exclusively in connection with transfer/sale of the land.

4.3.6 Hon'ble Jurisdictional High Court in the case of **CIT vs. Roshanbabu Mohammed Hussein Merchant** (275 ITR 231) has held that "when the property was acquired without any encumbrance thereon then the assessee cannot claim any future liability, which arises after the property is acquired." In the case of the appellant also at the time of purchasing the property on 30.07.2012 there was absolutely no encumbrance and alleged claim of liability towards Shri Kisan Kharat and Shri Bharat Chaudhary is nothing but an afterthought. Therefore, by applying the ratio of decision also the appellant cannot make any subsequent claim towards cost of acquisition.

4.3.7 Hon'ble ITAT Hyderabad Bench in the case of Syyed Nawab Hussain Vs. ACIT (39 Taxman. Com 177) has also upheld the

disallowance where there was no material to show that payees were having any title on the property. In that case the assessee had claimed certain payments to few relatives of his forefathers out of sale consideration received on the sale of ancestral property. Hon'ble Bench held that since there was no material to show that there relatives were having any title over property, therefore, assessee was not entitled for claiming deduction while computing capital gains.

4.3.8 The appellant has also placed reliance on some decisions, however the same are distinguishable on facts. In the case cited of CIT vs. Abrar Alvi, the issue was regarding expenditure related to removal of encumbrances. However as per detailed facts mentioned supra, there was absolutely no encumbrance on the property which was sold by the appellant.

4.3.9 As regards the case of CIT vs. Bradford Trading Co., the issue was regarding impediments created due to litigation and without removing those impediments the property could not be transferred. In the present case the appellant has failed to prove as to how the suit filed by the alleged payee was creating any impediment in the transfer of the property. The suit was filed by Shri Kisan Kharat who had no locus standi with the land in question, as mentioned in detail in the preceding paragraphs. Therefore there was absolutely no legal impediment in transferring the property by the appellant, due to the alleged suit filed by Shri Kharat.

4.3.10 To sum-up, it is held that the appellant has made inaccurate claims towards cost of acquisition to the extent of Rs. 61,00,000/- (claiming to be payment made to Shri Kisan Kharat and Shri Bharat Chaudhary) and the same has been rightly disallowed by the Assessing Officer. The order of the Assessing Officer is perfectly in order and the same is upheld. The ground is accordingly dismissed.”

5. We have considered rival submissions of the parties and perused the material available on record. Before we deal with the issues raised by the assessee in the present appeal, we would like to record the dates and events which are relevant for adjudication of the present appeal.

<i>Dates</i>	<i>Events</i>
<i>16-3-2009</i>	<i>Aruna G. Jadhav entered into an agreement for sale of the property with Bhausahab R. Katore and Kisan S. Kharat for an amount of Rs. 11.00 lakhs</i>
<i>5-7-2010</i>	<i>Aruna G. Jadhav executed sale deed in favour of Bharat B. Choudhari and Raghunat Katore .</i>

5-7-2010	<i>Bharat Katore and Raghunat Katore executed irrevocable registered power of attorney in favour of Bhausahab R. Katore</i>
25-10-2010	<i>An amount of Rs. 44,25,000/- was deposited with the Collector by Bharat Katore and Raghunat Katore.</i>
14-12-2011	<i>The Collector passed an order of N.A. (Non-agriculture).</i>
30-7-2012	<i>Raghunath B. Katore and Bharat B. Choudhari executed a registered sale deed in favour of Hirabai Katore w/o Bhausahab R. Katore .(Appellant – assessee)</i>
8-10-2012	<i>A suit for specific performance and declaration was filed by Kisan S. Kharat against Aruna G. Jadhav, Raghunath Katore and Bharat B. Choudhari</i>
3-12-2012	<i>Kisan S. Kharat unconditionally withdrawn the suit filled on 8.10.2012.</i>
4-12-2012	<i>Rs.36,00,000/- was allegedly paid in cash being the compensation to Kisan S. Kharat for arriving at the compromise as a condition for withdrawing the suit in three installments i.e 16-6-2012, 3-12-2012 and 4-12-2012 for an amount of Rs. 12.50 lakhs, Rs. 12.50 lakhs and Rs.11.00 lakhs respectively</i>
12-12-2012 & 25-12-2012	<i>Rs.25,00,000/- was allegedly paid in cash to Bharat B. Choudhari.</i>

5.1 It is a case of the assessee before us that the amount of Rs. 36.00 lakhs was paid to Kisan S. Kharat on account of settlement entered between the assessee and Kisan S. Kharat with a view to improve the title of the assessee. Further, it was the case of the assessee that Rs.25.00 lakhs was paid by the assessee to Bharat B. Choudhary for pursuing litigation before the Collector and the Civil Court. The learned A.O has considered the contention of the assessee and had not agreed to allow the amount of Rs.61.00 lakhs to be taken as expenditure incurred by the assessee for improving the title of the

assessee. On appeal, the findings given by the A.O was confirmed by the learned CIT(A).

5.2 In our view, in accordance with the law, the period for filing the suit for specific performance under Specific Relief Act, 1963 is provided for three years from the date of agreement. In the present case, the agreement was entered into between Aruna G. Jadhav and Bhausahab R. Katore and Kisan S. Kharat on 16-3-2009 and therefore, the period of limitation ends on 16-3-2012. Meaning thereby a suit for specific performance and declaration filed by Shri Kisan S. was maintainable upto 16-3-2012, as per Article 54 of the Limitation Act 1961. Moreover, if we look into the amendment made in the suit, there is no reference of encumbrances on the property purchased by the assessee and there is no claim for recovery of damages etc. for Rs.36,00,000/-. Further, if we look into the compromise document dated 3-12-2012, it is clear that the suit filed by shri Kisan S. Kharat was unconditionally withdrawn and therefore, there was no occasion of making the payment of Rs.36.00 lakhs to Kisan S. Kharat made by the assessee. For the ready reference, we are reproducing hereunder the contents of the compromise which was filed in the paper book:

“Compromise pursis from Plaintiff and Defendant No. 1 to 5 as follows:

- 1) That the plaintiff had brought this suit for specific performance from Agreement to sale dated 16-3-2009 asking for sale deed to be registered jointly in his favour;*
- 2) As per pursis Para No.1 and various demand, prayers mentioned in the suit regarding agreement to sale dated 16-3-2009 plaintiff relinquish, release, withdraws all his prayers, demands and complaint mentioned in suit.*
- 3) Plaintiff had released, withdraws all his grievance, complaint and prayer mentioned in the said suit. Plaintiff withdraws this suit and does not want to try it further.*

4) *As sec. 52 of transfer of property act was registered in sub-registrar office, Rahata according to the suit, the said notice shall be concluded/decided as per the compromise pursis.*

5) *That all the deeds and transactions between defendants are admitted to plaintiff and no complaint, grievances are remain, survives for plaintiff. Plaintiff withdraws all his complaints and prayers mentioned in the suit. Therefore, the said special civil suit shall be pronounced/decided according to the compromise pursis. And decree shall be drawn accordingly.”*

5.3 From perusal of the aforesaid contents of compromise document, it is crystal clear that the suit was withdrawn by Kisan S. Kharat unconditionally and there was no reference of making of the payment by the assessee Shri Hirabai Katore. Further, we also notice that besides Hirabai Katore there are other co-defendants in the suit and it is not clear which of the defendants have entered into the compromise with the plaintiff. Moreover, in the sale document, there is clear stipulation that the property is free from any kind of encumbrances. There is one more reason to dis-agree with the contention of the learned A.R. that the amount of Rs. 36.00 Lakhs were paid pursuant to the agreement vide receipt dated 4-12-2012. On cursory glance of the document, it is clear that stamp paper on which the affidavit was made, was purchased by Bhausahab R. Katore and details of alleged payment of Rs. 36 Lakhs in installment given to Kisan S. Kharat, as on 16-6-2012, 3-12-2012 and 4-12-2012 for an amount of Rs.12.50 lakhs, Rs.12.50 lakhs and Rs. 11.00 lakhs respectively. The Bench is unable to accept that the payment of Rs.12.50 lakhs was given on 16.06.2012 by the assessee in cash even prior to institution of the suit by Kisan S. Kharat and admittedly the suit was filed on 8-12-2012 only i.e much after making the payment and purchase of property by the assessee.

5.4 Therefore, the evidence relied upon before us by the assessee in the form of affidavit at page 48 cannot be considered and is required to be rejected being self serving document and contrary to normal circumstances. Further, we are of the opinion that the amount of Rs.36.00 lakhs was allegedly paid in cash and the assessee has not been able to disclose the source for making the alleged payment to Shri Kisan S. Kharat. Even otherwise, if a person makes the payment in cash beyond the stipulated amount as provided by the Act then there is a violation of the said provision of sec. 269SS of the Act. If Shri Kisan S. Kharat admitted to have received the amount in cash from the assessee then he is liable for violation of provision u/s 269ST of the Act.

5.5 Similarly, in respect of other payment allegedly paid by the assessee to Bharat B. Choudhari for an amount of Rs.25.00 lakhs, we are of the opinion that firstly, Shri Bharat B. Choudhari had sold the property along with Katore viz. Hirabai B. Katore on 13-7-2012 for a total consideration of Rs.50.00 lakhs. Secondly, being the owner of the property, the entire sale consideration falling to his share had already been received and admitted by Shri Bharat B. Choudhari in the sale document executed on 30.07.2012. Therefore, there was no reason or logic for paying unauthorized amount of Rs.25.00 lakhs on the date hereinabove mentioned by the assessee in cash. In our view, the payment was made in cash in violation of the provision of sec. 269SS and 269ST.

5.6 Lastly, we are of the opinion that there was no improvement in the title of the assessee or the improvement in the property as no evidence was led before us showing that Shri Bharat B. Chowdhury had contributed substantially either before the Collector or before the Civil Court. Further, we

may record that the Collector had issued the certificate on 14/12/2011 i.e. much prior to the purchase of property by the assessee on 30.07.2012, hence, there was necessity to make the payment to this person as well. In view of the above, the findings recorded by the lower authorities are in order and no interference is called for.

6. In the result, **the appeal of the assessee is dismissed.**

Order pronounced on 13th day of February, 2020.

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

Sd/-
LALIET KUMAR
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 13th February, 2020.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	12.02.2020	Sr.PS/PS
2	Draft placed before author	13.02.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		