

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'SMC' "I (2)", NEW DELHI]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 3590/Del/2018
Assessment Year : 2009-10

Sukhdev Singh, C-66, Surya Nagar, Ghaziabad (Uttar Pradesh) PAN : ABBPS0078E	Vs	The Income Tax Officer, Ward : 2 (3) Ghaziabad.
(APPELLANT)		(RESPONDENT)

Revenue by	Shri Pradeep Singh Gautam, Sr. D. R.;
Assessee by	Shri Rajat Jain, C. A.; & Shri Akshat Jain, C. A.;

Date of hearing:	02/03/2020
Date of Pronouncement:	17/03/2020

ORDER

PER PRASHANT MAHARISHI, AM:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Noida, dated 06.03.2018 for assessment year 2009-10.

2. The assessee has preferred the following grounds of appeal:-

“ 1. That the Ld. CIT(A) erred in law in holding the initiation of the assessment proceedings under section 147 of the Income tax Act, 1961 as valid without

appreciating the fact that no valid reasons were recorded in the case of the appellant which is sine qua non for assumption of jurisdiction to assess the case under section 147 of the Act. Hence assessment framed under section 147 of the Act is bad in law and liable to be quashed.

2. That the Ld. CIT(A) erred in law and fact in modifying and enhancing the addition made by assessing officer from Rs 43,25,300/- to Rs 1,90,18,000/- on account of "Long Term Capital Gain on sale of land", without appreciating the fact that reasons recorded for initiation of assessment proceedings under section 147 of the Act are nonexistent as the said reasons were recorded in respect of "source of purchase of immovable property" for which no addition has been sustained by Hon'ble CIT(A). Hence, the very basis of initiation of assessment proceedings under section 147 ceases to exist, therefore all the proceedings flowing therefrom is null and void.

3. That the Ld. CIT (A) erred in law and fact in modifying and enhancing the addition made by assessing officer from Rs 43,25,300/- to Rs 1,90,18,000/- by ascertaining new source of income i.e. "Long Term Capital Gain on sale of land" without jurisdiction, by disregarding the settled law that CIT(A) has no power to assess the source of income, which was not the subject matter of original assessment.

4. That the Ld. CIT(A) erred in law and fact in modifying and enhancing the addition made by assessing officer from Rs 43,25,300/- to Rs 1,90,18,000/- without appreciating the fact that assessment proceedings completed twice in the case of appellant under the same section for the same assessment year i.e. under section 147 of the IT Act, 1961 by ITO, Ward - 2, Phagwara and by ITO Ward-2(3), Ghaziabad vide order dated 13/12/2016 and 16/12/2016 respectively for assessment year 2009-10.

5. That the Ld. CIT(A) erred in law and fact in modifying and enhancing the addition made by assessing officer from Rs 43,25,300/- to Rs 1,90,18,000/- on account of "Long Term Capital Gain on sale of land" without appreciating the fact that the appellant had erred the said land through Power of Attorney to two persons and failed to consider the affidavits furnished by them confirming that the said land and entire sale consideration received on sale of such land belongs to them and nothing has been paid to anyone out of sales consideration.

6. That the Id. CIT (A) erred in law and fact in modifying and enhancing the addition made by assessing officer from Rs 43,25,300/- to Rs 1,90,18,000/- without appreciating the fact that the addition on account "Long term capital gain on sale of land" has already been made on substantive basis by ITO, Ward-2, Phagwara in the hands of persons to whom land was transferred by the appellant on Power of Attorney and therefore, addition of the same in hands of the appellant tantamount to double taxation.

That the appellant craves leave to add, amend or alter any of the grounds of appeal. "

3. Brief facts of the case shows that assessee is an individual, who filed his return of income on 11.03.2011 showing returned income of Rs.1,34,000/- and agricultural income of Rs.15,000/-. The information was available that assessee has purchased immovable property for Rs.35 lakhs in Financial Year 2008-09 and, therefore, notice under Section 148 of the Income Tax Act, 1961 (the Act) was issued on 15.03.2016. Assessee did not file any return in response to that notice. Therefore, several notices u/s 142(1) of the Act were issued to the assessee and none appeared. Therefore, Assessing Officer passed an order u/s 144 of the Act making a addition of Rs.43,25,300/- determining total income of the assessee at Rs.44,74,300/-. The addition of Rs.43,25,300/- was made for purchase consideration of Rs.35 lakhs and Stamp Duty paid of Rs.8,25,300/-.

4. The assessee preferred appeal before the learned CIT (Appeals) challenging re-opening of the assessment as additional ground and filing of additional evidences. The learned CIT (Appeals) sent the additional evidences with respect to its admissibility and merit to the Assessing Officer. Assessing Officer submitted the remand report on 25.10.2017. Based on this the learned CIT (Appeals) admitted the additional evidences and proceeded to adjudicate the issue on the merits. Against the remand report the assessee also submitted a rejoinder. On the issue of taxability, it was found that assessee has not purchased any property, but has sold one property through two different power of attorney executed in favour of two different persons, namely, Shri Kamaldeep Singh and Shri Kamal Ashish Singh. Further two sale deeds were registered on 19.05.2008 and 04.02.2009 for a total

sale consideration of Rs.1,03,16,000/-. It was further contested that the Income Tax Officer, Ward 2, Phagwara has passed an assessment in the case of the assessee wherein long term capital gain of Rs.1,90,18,000/- is assessed on protective basis and same Income Tax Officer has also assessed long term capital gain on substantive basis in the hands of two power of attorney holders Shri Kamaldeep Singh and Shri Kamal Ashish Singh for Rs.95,09,000/-. Thus, the learned CIT (Appeals) noted that assessee is the actual owner of the impugned property. He further noted that residential address of the assessee is C-66, Surya Nagar, Ghaziabad and jurisdiction lies with Pr. Commissioner of Income Tax, Ghaziabad. He also noted that PAN address of the assessee also shows the above jurisdiction. He also perused appeal filed by the assessee as well as two other persons against the orders passed by the Income Tax Officer, Phagwara. However, he did not give any opinion on these orders passed by the Income Tax Officer, Phagwara for the reason that this would be separate appeals to be decided by the concerned CIT (appeals). The learned CIT further noted that, before the Income Tax Officer, Phagwara, assessee claimed that the impugned land sold is not a capital asset as it falls beyond the specified distance and further not chargeable in his hands. However, that Assessing Officer noted that that land falls within the municipal limits of Goraya and, therefore, it is a capital asset under Section 2(14) of the Act. He further noted that Assessing Officer has considered index cost of acquisition of the above property for Rs.16,14,000/- against the sale consideration of Rs.2,06,32,000/- and computed long term capital gain of Rs.1,90,18,000/-. He also taxed it on substantive basis in the hands of Power of attorney holder and protective basis in hands of assessee.

5. On perusal of the above details, the learned CIT (Appeals) issued notice on 29.12.2017 with respect to the enhancement of the assessment stating that total sale consideration should have been taken by the Assessing Officer at Rs.2,06,32,000/- and, therefore, he taxed the income of the assessee including long term capital gain of Rs.1,90,18,000/- against the addition made by the Assessing Officer of Rs.45,25,000/-. Thus the enhancement of Rs.1,90,18,000/- to that extent was made.

6. As assessee also challenged the re-opening of the assessment by raising additional ground, the learned CIT (Appeals) held that Assessing Officer received the information from Dy. Commissioner of Income Tax, Phagwara and, therefore, Assessing Officer had reason to believe to re-open the assessment. He further stated that before the Assessing Officer, assessee has never denied that the relevant property does not belong to him. Thus, re-opening of the assessment was upheld. Therefore, assessee is in appeal before us.

7. Before us the learned Authorized Representative submitted that the re-opening of the assessment is invalid as the information mentioned by the Assessing Officer is that assessee has purchased immovable properties amounting to Rs.35,00,000/-. In fact, the assessee has sold the immovable property through power of attorney holders. Therefore, the reasons recorded are incorrect.

8. He also challenged that the satisfaction recorded by Additional Commissioner of Income Tax merely states that "Yes, I am satisfied that

it is a fit case for issue of notice under section 148 of the Act.” He also submitted that the satisfaction recorded by the Pr. Commissioner of Income Tax, Ghaziabad, also says that “Yes, It is a fit case for issue of notice under section 148 of the Act.” Therefore, he submitted that re-opening of the assessment as well as the satisfaction recorded is not proper. He further stated that even the assessment order in para No. 3 as well as on the first para of the assessment order speaks about AIR information that assessee has purchased immovable property for Rs.35 lakhs. He, therefore, submitted that there is a wide variance in the context, quantum for which the case of the assessee is re-opened as well as the assessment order. He, therefore, submitted that re-opening in the present case deserves to be quashed.

9. On the issue of the merit, he submitted that the addition has been made in the hands of the assessee on protective basis by Income Tax Officer, Ward 2, Phagwara and on substantive basis by the same Assessing Officer in the hands of Shri Kamaldeep Singh and Shri Kamal Ashish Singh. He further referred to the assessment order as well as the appellate order of all three entities. He also referred to the order of the CIT (Appeals) in all the three entities. He submitted that CIT (Appeals)-II, Jalandhar has passed appellate order in the case of all these three entities vide order dated 19.09.2017 in case of two power of attorney holders and on 21.09.2017 in the hands of the assessee. It was submitted that the CIT (Appeals) has noted that assessee has not received any money and total sale consideration have been received by the two power of attorney holders. Thus, addition in the hands of the assessee has been deleted. He further referred to the order of the learned CIT (Appeals) in case of both the two power of attorney holders

wherein the learned CIT (Appeals) has confirmed the order of the learned Assessing Officer on substantive basis. He then submitted that issue reached before the Amritsar Bench of the Tribunal in the case of Shri Kamal Ashish Singh in ITA No. 721(Asr.)/2017 wherein the order was passed on 24th June, 2019 dismissing the appeal of the assessee. He, therefore, submitted that the co-ordinate bench has already held that amount is taxable in the hands of one of the GPA holders, therefore, same shall not be once again taxed in the hands of the assessee. Thus his argument was that the power of attorney holders have earned the money as they have received the same and have never denied that capital gain is chargeable to tax in their hands and where the ITAT has also held the same to be taxable in the hands of those persons, the same is not required to be added once again in the hands of the assessee.

10. The learned Departmental Representative vehemently supported the orders of the lower authorities and submitted that there is no infirmity in the re-opening of the assessment, satisfaction of the higher authorities while granting the approval, enhancement by the CIT (Appeals) and confirmation of the addition on the merits in the hands of the assessee. He also submitted that there is no idea that when assessee transferred this to power of attorney holder and when assessee offered same for taxation in his hands.

11. We have carefully considered the rival contentions and perused the orders of the lower authorities. Further we have also perused the orders passed by the Income Tax Officer, Ward 2, Phagwara, in the case of assessee as well as the power of attorney holders. We have also

perused the orders of the CIT (Appeals), Jalandhar, in case of all these three persons. On careful consideration of the whole facts, it emerges that the co-ordinate bench in the case of one of the power of attorney holders confirmed the addition in their hands vide order dated 24.06.2019 in ITA No. 721 (Asr.) of 2017. They have held that the impugned property is a capital asset. They have also held that the sale consideration has been received by the power of attorney holders. Therefore, we are duty bound to follow the order of the co-ordinate bench on the same issue. In view of this, we dismiss ground No. 1 & 2 of the appeal against re-opening of the assessment as the issue has already been concluded as taxable in the hands of power of attorney holders and the grounds related to re-opening are merely academic.

12. On the issue of ground Nos. 2 to 6 as co-ordinate bench has held that same is chargeable to tax in the hands of power of attorney holders as per the decision of the co-ordinate bench we find no reason to deviate from the same. Thus, the natural corollary would be to delete the addition for this year in the hands of the assessee.

13. However, we hastened to add that it is not coming out from the facts that when assessee has transferred these 'capital assets' to two general power of attorney holders. Naturally, assessee would be subject to tax as 'capital gain' if it is 'capital assets' then, in the year these assets were transferred by assessee. Learned Assessing Officer may take legal recourse, in the hands of assessee, in that assessment year.

14. In view of our above finding ground No. 3 to 6 are allowed of this appeal.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on : 17/03/2020.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Date : 17/03/2020.

MEHTA

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	16/03/2020
Date on which the typed draft is placed before the dictating Member	17/03/2020

Date on which the typed draft is placed before the Other member	17/03/2020
Date on which the approved draft comes to the Sr.PS/PS	17/03/2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	17/03/2020
Date on which the fair order comes back to the Sr. PS/ PS	17/03/2020
Date on which the final order is uploaded on the website of ITAT	17/03/2020
Date on which the file goes to the Bench Clerk.	17/03/2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	