

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No. 783/Agra/2018
(ASSESSMENT YEAR-2012-13)**

Chet RamVerma S/o Shri Pooran Singh, Shivsinghpur, Etah. PAN:ADZPR2257E Assessee)	Vs.	ITO- Ward, 3(1), Etah. (Revenue)
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Assessee by	Shri. Rishi Aggarwal CA along with Sh Chet Ram assessee
Revenue by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	02.09.2020
Date of Pronouncement	22.09.2020

ORDER

Per, Laliet Kumar JM.:

The present appeal is filed by the assessee feeling aggrieved by the order of
ld. CIT(A), dated 11.09.2018 for Assessment Year 2012-13.

*“1. Because the Ld. CIT(A) has wrongly, illegally and
arbitrarily rejected the appellant's specific grounds and
submission objecting the validity of initiation of proceedings u/s
147 and consequent issue of notice u/s148. Considering the*

facts of the case and the legal position the Ld. CIT(A) should have quashed the assessment framed u/s 143(3)/147 of the I.T Act.

2. Because the assessment framed is also wrong and bad in law as reasons recorded for initiating proceedings has not been supplied to the assessee before framing the assessment. On this legal ground also the assessment deserves to be quashed.

3. Because the assessment framed is wrong, bad in law and without jurisdiction as the approval/sanction as required u/s 151 of the I.T Act has not been obtained. The approval, if any, is a mechanical approval which is bad in law. On this legal ground also the assessment deserves to be quashed.

4. Because the Ld. CIT(A) has wrongly, illegally and arbitrarily confirmed the addition made by the Assessing Officer under the head Capital Gain -applying the provisions of section 50C of the I.T Act.

5. Because the Ld.CIT(A) while confirming the addition has erred both on facts and in law in rejecting the appellant's specific ground and submission on the issue. Since the appellant executed the sale deed as power of attorney holder which is not in dispute, the capital gain cannot be assessed in the hands of the appellant.

6. Because the Assessing Officer has made the addition under the head capital gain solely relying on the statement of the

persons who executed the power of attorney in the favour of the appellant. Ld. CIT(A) while confirming the addition has legally erred ignoring the fact that the statement cannot be relied upon and cannot be made basis of addition until and unless the opportunity of cross examination has been allowed .

7. Because the Ld. CIT(A) while confirming the addition has erred both on facts and in law in rejecting the appellant's specific submission and ignoring the fact:-

i) In the statement of the persons who executed power of attorney in favour of appellant, they admitted that the photo and signature on power of attorney is of them.

ii) In land records there is no name of the appellant as owner.

iii) Since the appellant is not the owner of the property, provisions of section 50C will not be applicable on him.

8. Because considering the facts of the case and the legal position the addition made by the Assessing Officer and confirmed by Ld. CIT appeal deserves to be deleted.

9. That the appellant craves to add amend alter modify or delete any or all of the grounds of appeal before or at the time of hearing.”

1. Facts in brief, the AO had received information regarding the sale of an immovable property amounting to Rs. 69,10,000/-. After making a

preliminary enquiry in this regard, proceedings were initiated by issuing a notice u/s 148 on 30.03.2017. In response, the appellant submitted that ITR originally filed on 18.05.2012 may be treated as filed in response to the notice issued u/s 148. Thereafter, notices u/s 143(2) and u/s 142(1) were issued. With regard to the sale of the property, the appellant explained that he had sold the same as a power of Attorney holder on behalf of six persons and he did not sign the sale deed as an owner.

2. The Id. AR had submitted that assessee, he had executed the sale deed in the capacity of agent/ power of attorney holder on behalf of six principal co-owners. (Copy of Registered Power of Attorney enclosed —Page 1 to 3 of Paper book). The property was sold for Rs. 10,00,000/- having circle value at Rs. 69,10,000/-. vide sale deed executed on 27.08.2011 on behalf of the owners (Copy of Sale Deed enclosed — Page 4 to 41 of Paper book). The statement of assessee was recorded by the AO page 80.
3. The AO recorded statements of the persons who had issued the power of Attorney. They submitted that the land was sold to the appellant earlier for Rs. 2,50,000/- and they have not received the consideration in respect of the

sale made by the appellant on 27.08.2011. (Copy of statements enclosed — Page 42 to 78 of Paper book). They submitted that the land was sold to the appellant earlier for Rs. 2,50,000/- and they have not received the consideration in respect of the sale made by the appellant.

4. Therefore, the AO held that the appellant had sold the property as an owner and hence, the LTCG was assessable in his hands. On the basis of the available facts, the AO assessed the LTCG of Rs. 65,31,869/-. Thus, the assessment was completed at Rs, 65,31,869/-.
5. The Ld. CIT(A) without appreciating the facts and rejecting the assessee's specific submission confirmed the addition.
6. Feeling aggrieved by the order passed by the lower authorities the assessee is in appeal before us for the grounds stated hereinabove.
7. The ld. AR for the assessee had submitted that the addition made by the assessing officer and confirmed by the Commissioner appeal were provided on the wrong assumption that the assessee is the owner of the property. It was submitted that the assessee was merely the registered Power of Attorney

holder, which was very workable and there is no mention of handing over of the possession to the assessee by 6 persons. It was further pointed out that there is no sale document on record which shows that the property was transferred by the 6 persons by way of a registered document in favour of the power Attorney holder. It was further submitted that even in law the power Attorney holder cannot be assumed to be the owner of the property and therefore the reopening of the assessment and the additions made by the assessing officer in the hands of the assessee are bad in law and cannot be sustained. The assessee relied upon the decision of the hon,ble Supreme Court in the matter of Suraj Lamps Industries [2011] 14 taxmann.com 103 (SC) and also recent judgement in the matter of Seshasayee Steels (P.) Ltd.[2020] 115 taxmann.com 5 (SC)

8. The assessee had also filed the written submissions in support of the case of the assessee. We are reproducing herein below the written submission relevant for the above said respect which are to the following effect:

“Execution of Power of Attorney which was registered.

As already submitted earlier, the appellant had executed the sale deed on behalf of the principal co-owners by executing the

Power of Attorney (PoA) enclosed as Page 1 to 3 of the Paper book and hence the tax liability should be on the original sellers and not of the agent. In relation to the same, following undisputed facts are laid below:-

- a. That the description of the Power of Attorney (Mukhtyarnama) is given in original sale deed also. (Please refer the sale deed — Page 7 and 8 of the Paper book mentioning "Mukhtyaar" along with the name of the six persons)
- b. That the PoA was executed and sale deed signed by the assessee only due to non-availability of all the six sellers at a time.
- c. The name and address of the sellers are clearly given in PoA. The photos and signatures on the PoA were that of the sellers as admitted by them in their statements. (Refer statement of Shri. Shanti Swaroop in reply to question 5 of the AO — Page 44 of Paper book)
- d. The land owner only executed the PoA in favour of the assessee for selling the property. They did not transfer the ownership of the land in favour of the assessee.
- e. PoA had nowhere mentioned about:
 - > transfer of the possession of the property
 - > transferring or enabling the enjoyment of the property.
 - > payment of any consideration by the PoA holder enabling the

transfer of property under Income Tax Act or Transfer of Property Act.

f. Kindly refer Page 4 and 5 of the CIT(A) Order.

ii. Statements Recorded

As already submitted above, the Ld. AO recorded the statements on oath of all the six persons who were the original sellers of the land. In relation to it, following undisputed facts are laid herein:-

a. The six persons denied the fact that had written any PoA in favor of the assessee. Instead they stated that they had executed sale deed in favor of the assessee for sale consideration of Rs. 2,50,000/-.

b. The PoA writers stated that the land was sold to the appellant for Rs. 2,50,000/-. However, on the other hand, they denied that any amount was received to them by the appellant on the sale of land.

c. They admitted in their statements that the photos affixed on the PoA and signatures thereon belonged to them but they signed the PoA believing it to be a sale deed. Refer statement of Shri. Shanti Swaroop in reply to question 5 of the AO — Page 44 of Paper book)

d. The statement regarding no knowledge of the PoA and that executing the same as a sale deed is more than a lie.

e. The persons were literate and educated enough evidenced by:

Ø their signatures thereon the PoA (no one has put a thumb print pointing that they knew how to read and write) and thus could understand a document written in plain Hindi language in a legible manner.

Ø their educational details. (Kindly refer Page 6 of the CIT(A) Order).

f. The PoA did not mention the amount of sale consideration proving the fact that it could not have been assumed as a sale deed by the writers of PoA.

f. The Ld. AO did not make any independent inquiry from the witnesses of the PoA (who signed PoA as witnesses to it) and registered sale deed to cross-verify the statements of the PoA writers.

g. The Ld. AO totally defied the legal documents like Registered Sale Deed, Registered PoA and land records with Sub-Registrar, Etah.

h. In fact, even on the Order Sheet, no entry on the date of recording of the statement i.e. 15.12.2017 was made therein by the Ld. Assessing Officer stating that statements of the six persons were recorded. (Refer Order Sheet — Page 86 of the paper book)

It is evident that the actual owners gave false statement before the Ld.

AO with the clear objective of shifting their tax liability on the shoulders of the assessee. The Ld. AO totally relied on the false statements recorded of the original sellers and rejected the statement of the assessee and made the addition.”

9. On the other hand the ld. DR, had submitted that the assessee was actual owner of the property and the assessee has not come forward to explain his conduct for the last 5 years after getting the power Attorney from the said 6 persons. In fact the assessee was required to explain as to how the money was given by the assessee as power Attorney holder to these 6 persons had further the assessee was also required to render the account for the activities carried out by the assessee for the last 5 years after obtaining the power Attorney. It was submitted that the 6 persons in the statement had clearly mentioned that they have sold the property to the assessee for the valuable consideration of ₹ 250,000 in the year 2006 and therefore the long-term capital gain cannot be assessed in the hands of these persons. The revenue had also filled the written submissions to the following effect:

*“POWER OF ATTORNEY: NOT STATED TO BE IRREVOCABLE LACK OF AGENCY
Has not been revoked because Agent has an interest in the subject matter.*

- A. *All acts of agent on behalf and for Principal.*
- B. *The Agency Binds the Principal.*
- C. *It is the Principal that can be sued.*
- D. *It is the duty of Agent to render account to the Principal.*
- E. *Power of Attorney- Agent has been placed in a position of confidence; Fiduciary in respect of the property- He is a trustee to the Principal- Must prefer Interest of Principal to as own Bound to Account for all profits to the Principal.*

Sec. 212. Skill and diligence required from agent – An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direction consequences of his own neglect, want of skill, or misconduct.

- F. *The case skill or diligence required is not that such the Agent in Fact Possesses. But such as is reasonably necessary for performance of his undertaking as reasonably to be expected.*
- *A property of stamp value of 69 Lakhs is being sold for 10,00,000/- implies a lack of skill and contrary to Principals Interest- Not an Agent.*

G. A.O. relied on false statement of the original sellers and rejected the Assessee's Statement.

In respect of Agency, i.e. Power of Attorney, not stated to be irrevocable, the Assessee in his statement states that he has no proof or evidence of paying sale consideration to the original owners.

Nor does he provide proof of rendering Accounts to the original owners. The A.O. has rather relied on statement of Assessee.

H. Description of Land

Pg. 43 Statement of 'Owner'

Gata 568 Area .243 Hectare 19.07.2006

Description of land -Power of Attorney

EK KITTA JAGAH JISKA GATA 568 Hectare .243

MAUZA BHAGIPUR PARGANA ETAH

Description of Land

As per sale Deed

Pg. 25 of Sale Deed dated 16.03.2011

Pg 5 APB

SAMPATTI KA PRAKAR "PLOT"

-Description of land undergoes a transformation from Power of Attorney to Sale Deed- From "Land" to "Plot" and 5 years time.

1. Between 2006-11-5 yrs. – There has to be evidence of management of property for or on behalf of Principals. No such evidence. No Agency."

9. We have heard the rival contentions of the parties and perused the material on record. Admittedly, immovable property can only be transferred by a person for a consideration by transferring the possession of property through a registered written document as per section 54 of the Transfer Of Property Act read with the corresponding provisions of Stamp Duty And Registration Act . In the present case the revenue has failed to bring on record any document demonstrating handing over of possession / transfer of possession from alleged seller to the assessee either by transfer of title from them to the assessee either by way of a gift or by way of a sale deed.
10. In the absence of any transfer document coupled with transfer of possession it cannot be concluded that the assessee was owner of the property in law. In our view reliance by the assessing officer on Power Of Attorney, is misplaced as there is neither the handing over of the possession from these

persons to the power Attorney holder (assessee) took place nor there is a reference of any sale consideration in the power Attorney. We are also of the opinion that the power Attorney was also revocable.

11. In the light of the above it cannot be inferred or concluded that the 6 persons have transferred the property to the assessee or in other but the assessee was the owner of the property which was sold by the assessee for a consideration of ₹ 10 lakhs on which the long-term capital gain had arisen as the guidance value was more than 69 lakhs. Further we may mention that AO can not rely on the oral statement of the alleged seller, which is contrary to the written registered document POA. In our view contrary oral statement of a person can not be accepted contrary to the registered document unless it satisfy the requisite conditions as mentioned under Evidence Act, which in present case are missing.

12. It is a settled position of law and do not require much argument that the tax liability arising out of the long-term capital gain is required to be fastened on the registered owner of the property and not on the assessee who is merely a power-of-attorney order. We may also been to record that, the assessee has set up his case being that of the power Attorney holder, but the Assessing

Officer has failed to bring on record the chain of the title document in the form of registered sale deed etc , which can prove that apprent was not real or in other words transfer took place within four corner of law by virtue of POA. In the present case needful has not been done by the assessing officer to bring on record the title of the assessee, by virtue of which the assessee became owner of the property . In the light of the above we are of the opinion that the assessee is able to make out a case for grant of relief favour and accordingly the case of the assessee is required to be allowed and the assessment made by the revenue is required to be deleted.

13.We may rely upon the decision of the honourable Supreme Court in the matter of Seshasayee Steels (P.) Ltd. [2020] 115 taxmann.com 5 (SC), wherein it was held as under :

“Having heard learned counsel for both the parties, it is necessary to first set out the statutory provisions:

Section 2(47) of the Income-tax Act, 1961:

2. In this Act, unless the context otherwise requires,-

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(47) "transfer", in relation to a capital asset, includes,-

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(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 1 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1.- For the purposes of sub- clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA;]

Explanation 2. - For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;)

Section 53A of the Transfer of Property Act, 1882:

53A. *Part performance.*— Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

11. In order that the provisions of Section 53A of the T.P. Act be attracted, first and foremost, the transferee must, in part performance of the contract, have taken possession of the property or any part thereof. Secondly, the transferee must have performed or be willing to perform his part of the agreement. It is only if these two important conditions, among others, are satisfied that the provisions of Section 53A can be said to be attracted on the facts of a given case.

12. On a reading of the agreement to sell dated 15-5-1998, what is clear is that both the parties are entitled to specific performance. (See clause 14)

13. Clause 16 is crucial, and the expression used in clause 16 is that the party of the first part hereby gives 'permission' to the party of the second part to start construction on the land.

14. Clause 16 would, therefore, lead to the position that a license was given to another upon the land for the purpose of developing the land into flats and selling the same. Such license cannot be said to be 'possession' within the meaning of Section 53A, which is a legal concept, and which denotes control over the land and not actual physical occupation of the land. This being the case, Section 53A of the T.P. Act cannot possibly be attracted to the facts of this case for this reason alone.”

14. Similarly in the matter of Suraj Lamp (supra) the hon,ble SC held as under:

“13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan v. Basant Nehata - 2005 (12) SCC 77, this Court held :

"A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank* - 94 [2001] DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of '*GPA sales*' or '*SA/GPA/WILL transfers*' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such *bona fide*/genuine transactions.

15. Respectfully following the decision of the honorable Supreme Court in the above noted matters and also on account of fact that there is no transfer of property had taken place from these persons to the assessee, the addition in

the hands of the assessee is bad in law and accordingly the appeal of the assessee is allowed .

16. In the light of the above the appeal of the assessee is allowed.

Order pronounced in the open court on 22/09/2020.

**Sd/-
(DR. M.L. MEENA)
ACCOUNTANTMEMBER**

**Sd/-
(LALIET KUMAR)
JUDICIALMEMBER**

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Copy forwarded to:

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

Sr. Private Secretary
ITAT, Agra