

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी” चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
“B” CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER &
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.1378/CHD/2017

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Sandeep Goyal, House No. 468, Sector 20-A, Chandigarh.	बनाम	The DCIT, Central Circle-1, Chandigarh.
स्थायी लेखा सं./PAN NO: ACSPG9220E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Shri S.Phani Kishore, CIT (DR)

सुनवाई की तारीख/Date of Hearing : 03.02.2020
उदघोषणा की तारीख/Date of Pronouncement : 03.02.2020

आदेश/Order

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the order dated 04.08.2017 of the Commissioner of Income Tax(Appeals)-3 Gurgaon [hereinafter referred to as CIT(A)] pertaining to assessment year 2007-08 on the following grounds of appeal :

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 16,04,250/- in respect of profit on the sale of land.

2. *That the Ld. CIT(A) has erred in adopting the sale consideration of the property at Rs. 20,13,000/- against the sale consideration as per registered title deed at Rs. 4,50,000/-.*

3. *Notwithstanding the above said ground of appeal, if the sale consideration have been adopted by the Assessing Officer on the basis of agreement to sell, dated 29.08.2006 at Rs.20,13,000/-, then the cost of acquisition on the basis of agreement, dated 25.07.2005, which was to the tune of Rs. 19 lacs, should have been accepted as per evidence furnished before the Assessing Officer.*

4. *That the stand as taken by the Lower Authorities in adopting the purchase consideration as per registered title deed and sale consideration as per agreement to sell, is contradictory, since both the agreements have to be considered in order to have uniform stand.*

5. *That the finding of the CIT(A) is against the facts and circumstances of the case.*

2. A perusal of the above grounds of appeal reveal that the sole issue raised by the assessee is relating to the addition of Rs. 16,04,250/- made by the AO in respect of profit on sale of land by taking the sale price of the property at Rs. 20,13,000/- as against the sale consideration mentioned in the Registered Deed at Rs. 4,50,000/-.

3. The brief facts relating to the issue under consideration are that during the search proceedings conducted on M/s Surya Nectar & Parabolic Group of cases on 17.09.2010 at the residence of the assessee, documents related to purchase (Registration deed dated 24.08.2005) between Mukesh Kumar, and Sh. Sandeep Goyal in respect of 3 Biswa Land at Village Baltana showing consideration of Rs. 3,75,000/- and document (Agreement to sell) dated 29.05.2006) between assessee and Sh. Baljit Singh for a total consideration of Rs. 20,13,000/-

were seized in respect of the same plot. The AO observed that though the sale price mentioned in the Registered Deed was at Rs. 4,50,000/- whereas as per the Agreement to Sell executed by the assessee with the purchaser, sale consideration settled was Rs. 20,13,000/-. The AO further observed that the profit from this transaction from sale of plot was not reflected in the return of income filed u/s 139 of the Act as well as the return filed u/s 153A. The AO, therefore, took the sale price as was mentioned in the Agreement to Sell seized during the search action and accordingly, made the impugned addition of Rs. 16,04,250/- into the income of the assessee u/s 69 of the Income Tax Act.

4. Being aggrieved by the order of the AO, the assessee preferred appeal before the CIT(A).

5. During the appellate proceedings assessee submitted that the land in question, infact, was purchased by the assessee two years ago from the same person namely Shri Baljit Singh to whom the land in question was sold by the assessee in the year 2006. The assessee also produced before the ld. CIT(A) a copy of an Agreement to Sell dated 25.07.2005 and stressed that infact the said land was purchased by the assessee from the same person namely Shri Baljit Singh at a cost of Rs. 19 lacs whereas the Sale Deed was registered at the circle rate of Rs. 3,75,000/-. The plea of the assessee has been that either

the AO should take the cost of acquisition as mentioned in the Registered Deed dated 24.08.2005 and the sale price as mentioned in the Registered Deed dated 16.11.2006 for an amount of Rs. 4,50,000/- and assess the profit on sale of land accordingly or in the alternative, the AO should take the purchase price as mentioned in the Agreement to Purchase dated 24.08.2005 i.e. at Rs. 19 lacs and the sale price as mentioned in the Agreement to Sell dated 29.05.2006 at Rs. 20,13,000/-. However, the CIT(A) rejected the contention of the assessee observing as under :

(a) The addition has been made by the AO on account of profit earned from sale of land as per the seized documents.

b) The appellant has tried to recompute the profit on the basis of agreement to sell at Rs. 19,00,000 as against registration deed showing purchase at Rs. 3,75,000/-

c) It has been held by the Courts that only the transaction value as per registration deed has to be considered while computing the profits on sale of land and no other agreement can be accepted with regard to the same.

d) The appellant has not challenged the sale price taken by the AO at Rs. 20,13,000/- on the basis of agreement to sale seized during the search.

e) However, the profit on sale of land during the year under consideration u/s 69A of the Act is not correct as per law as it is not a case of unexplained investment.

In view of the above, the appellant's income is to be assessed u/s 45 of the Act as Short Term Capital Gain at the rates applicable during the year under consideration.

6. Being aggrieved by the above order of the CIT(A), the assessee has come in appeal before us.

7. We have heard the rival contentions and perused the material available on record. A very important and peculiar fact in this case is that the land had allegedly been purchased by the assessee from the same person namely Shri Baljit Singh in the year 2005 to whom the land in question was sold. The assessee has pleaded that as the sale price was written at a much lower rate i.e. Circle Rate/Collector Rate in the Registered Deed at the time of sale of land, in the same manner at the time of purchasing the land, the purchase price was also wrongly mentioned at a lower Circle Rate at Rs. 3,75,000/- whereas the assessee had paid the total purchase price at Rs. 19 lacs. In view of the peculiar circumstances that there is a gap of only two years between the Purchase Deed and the Sale Deed and also taking note of the fact that the assessee has alleged that the land in question has been sold to the same person from whom it was purchased two years ago, in our view, the AO should have thoroughly examined the contentions of the assessee including by way of summoning the said purchaser namely Shri Baljit Singh to verify the contentions of the assessee. Rejecting the contention of the assessee on the ground that the Purchase Agreement has been produced by the assessee at a stage, later whereas, the Sale Agreement was found during the search action, in our view is not justified. It is the duty on the part of the AO to consider

the contention of the assessee and make necessary investigations to arrive at a true and correct factual position and then to assess the income of the assessee accordingly. In view of this, the impugned order of the CIT(A) is set aside and the matter is remanded back to the file of the AO with a direction to consider the contentions of the assessee and examine the true factual position by way of summoning the alleged purchaser namely Shri Baljit Singh and also requiring the assessee to prove the financial position/credit worthiness of his capacity to pay Rs. 19 lacs for the purchase of the said land in the year 2005 and also to consider the other relevant facts and circumstances and to decide the issue afresh in accordance with law.

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

Order pronounced in the Open Court on 3rd Feb., 2020.

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(संजय गर्ग)
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar