

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

आयकर अपील सं/ I.T.A. No.4033/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

ACIT-24(1) Room No.604, Piramal Chambers, Jeejeebhoy Lane, Lalbaug, Parel Mumbai-400 012	बनाम/ Vs.	Ajay Jagdishnarain Agarwal 10 th Floor, 1 st Avenue Goregaon Mulund Road Opp. Inorbit Mall Malad(W), Mumbai-400 064
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPA7571Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Satya Pinisetty, DR	
Assessee by:	Shri Vishnu garwal, AR	

सुनवाई की तारीख / Date of Hearing: 24/03/2021
घोषणा की तारीख /Date of Pronouncement: 31/05/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 29/03/2019 passed by the Commissioner of Income Tax (Appeals) -36, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2015-16

2. The revenue has raised the following grounds: -

1. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing appeal of the assessee on the issue of income from other sources of Rs.2,85,42,477/- u/s 56(2)(vii) of



the I.T.Act, without considering the following factual and legal aspects:

i) The assessee could not furnish any documentary evidence for providing that the said property was purchased by the assessee's father JN Agarwal in 1974 itself.

ii) As per Section 53A of the Transfer of Property Act, the transfer will be completed only when full sale consideration received by the seller, property is registered in the name of purchaser and possession was given to the purchase. In the case of the assessee, the above said there conditions were not fulfilled in the year 1974 whereas the said conditions were fulfilled in the year 2014

2. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored

3. The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary

3. The facts of the present case are that the assessee filed his return of income on 18/09/2015, declaring total income to the tune of Rs.81,99,170/- for the AY 2015-16. The return was processed u/s 143(1) of the Act. The assessment was selected for scrutiny. Notices u/s.143(2) and 142(1) were issued and served upon the assessee. The assessee was the partner of M/s Gokul Construction Company, City Life Developers, Agarwal Construction Co., Krish Enterprises, Orchid Enterprise, Punit Construction Co., Geopreneur Realty Co., and Aditya GP Realty Co., engaged in the construction business. The income of the assessee was mainly from income from the house property, income from salary, share profit under income from business or profession and income from other sources. In the relevant AY, the assessee purchased the property by virtue of conveyance deed registered on 05/09/2017. The market value of the said property was of Rs. 9,75,27,000/-. The transaction value of Rs. 70,20,570/- and stamp duty in sum of Rs. 48,79,000/- was paid. The income of the assessee was assessed in view of the provisions u/s 56(2)(vii) of the I.T.Act and his share in sum



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of s. 2,85,42,477/- was added to the income of the assessee, the total income of the assessee was assessed in sum of Rs 3,67,41,642/-. Feeling aggrieved, the assessee filed appeal before the Ld.CIT(A), who allowed the claim of the assessee. Therefore, the revenue has filed the present appeal before us.

ISSUES NO.1 and 2:

4. Under these issues, the assessee has challenged the allowance of the claim of Rs.2,85,42,477/- u/s 56(2)(vii) of I.T.Act. The Ld. DR has argued that the CIT(A) wrongly allowed the claim of the assessee, therefore, finding of the CIT(A) is not justifiable, hence is liable to be set aside. However, on the other hand. The Ld. AR of the assessee has strongly relied upon order passed by the Ld.CIT(A) in question. Before going further, it is necessary to advert the finding of the Ld.CIT(A). Be in question.

4. I have carefully considered the facts of the case, the submissions of the Appellant and the views enumerated by the AO in his order and have arrived at the conclusion as under.

4.1. The Grounds of appeal no.s.1 & 2 relate to the addition of Rs.2.85.42.477/- made by the AO u/s 56(2)(vii)(b) of the Act. On perusal of the documents and submission ii can be stated that land was purchased by late Shri. Jagdishnarain Agarwal in the year 1974. Full payment of purchase consideration was also made to Vendors and Original Owners and Confirming Parties in the past. The Original Owners and confirming Parties had given requisite confirmations before the Deputy District Collector that they had transferred possession of said land to laic Shri. Jagdishnarain Agarwal. Further, the Original Owners and Confirming Parties had given Power of Attorney to late Shri. Jagdishnarain Agarwal which gave him wide powers relinquishing the rights and title of Original Owners and Confirming Parties. These facts clearly suggest that rights in the immovable property had been created in the hands of late Shri. Jagdishnarain Agarwal and which were acquired by way of inheritance by die Appellant and other legal heirs on demise of



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his father. As such. the AO cannot make addition in the hands of the Appellant for property which already belongs to him and for which he had entered in Conveyance Deed to make such property formally in his name

4.2 The facts of the case reveal that the Appellant had made payment to parties involved in the litigation to drop their claims over the property. These payments were in the nature of compensation for settlement of their claims and not towards purchase consideration. The purchase consideration had already been paid by father of the Appellant to Vendors and Original Owners and Confirming Parties. All the aforesaid facts were agreed by the Vendors and Original Owners and Confirming Parties in the Conveyance Deed. It is also a fact that the property was not registered in the name of late Shri. Jagdishnarain Agarwal due to pending litigation. The said registration could have been done vide a Conveyance Deed which was entered into by the Appellant being successor of late Shri. Jagdishnarain Agarwal in the FY 2014-15 after opting for out of court settlement with litigating parties. It is but natural that as (the Conveyance is made in FY 2014-15. the office of sub-registrar had charged stamp duty on prevailing ready reckoner value for the said property. This fact can be verified from page no 31 of the paper book wherein the Appellant had submitted challan of payment of stamp duty and registration charges. The nature of article mentioned as "A-25 Conveyance/Sale/Transfer/Assignment Deed." So the stamp duty for conveyance and sale is same as the words are used interchangeably.

4.3 Further, it is also noted that one of the recipients of payment was Shri. Parshuram Shinde. He was neither owner of the land nor he was successor of the Original Owners and Confirming Parties. However, the Appellant had made the payment to him in order to make him relinquish rights, claims, if any which he was having pursuant to conditional purchase agreement he had entered into with one of the Original Owners and Confirming Parties in the year 1986 if the present Agreement had been a Purchase Agreement. Then the Appellant would not have made payment to Shri Parshuram Shinde who was not the owner of the property.

4.4 Threading of Conveyance Deed which is subject matter of litigation in isolation and without considering prior Agreement to Sale, documents of the case filed with Bombay High Court. Notice



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of Motion and order of Bombay High Court against such Notice of Motion. Power of Attorneys issued by Original Owners and Confirming Parties to late Shri. Jagdishnarain Agarwal. Memorandum of recording of possession in favor of late Shri. Jagdishnarain Agarwal. Memorandum of Family Settlement. Deed of Confirmation between the Appellant and Vendors would be unfair, unjustified and without considering the totality of the facts and circumstances of the case.

5. After going through the order passed by the CIT(A), we noticed that the property was purchased by Jagdish Narian Agarwal in the year 1974 after paying the full consideration. The original owners/vendors confirmed the transaction and the parties had given requisite confirmation before the district collector. They transferred the possession of the said land to Late Shri Jagdishnarian Agarwal. Original owners and confirmation parties also executed the Power of Attorney in favour of Late Shri Jagdishnarian Agarwal in which all rights were given to him. The property was exclusively under the ownership and possession of the Shri Jagdishnarian Agarwal, which was acquired by the appellant or other legal heir on demise of his father Shri Jagdish Narian Agarwal. The property was under litigation for a long time and the compensation was given for the settlement. The property was registered with the name of Shri Jagdishnarian Agarwal till the pending of the litigation, however, the same was came with the name of the appellant and other legal heirs by virtue of conveyance deed in the FY 2014-15. The registrar had charged stamp duty and prevailing market value for the said property. Accordingly, it is opined by the CIT(A) that the land was not a fresh purchase. Hence, deleted the additions raised in view of the provisions u/s 56(2)(vii)(b) of the Act in sum of Rs.2,85,42,770/-. The facts are not distinguishable at this stage. The



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factual interpretation of the transaction was clearly described by the CIT(A). Accordingly, we are of the view that the Ld.CIT(A) has passed the order judiciously incorrectly, which is not liable to interfere with the appeal at this stage. Accordingly, all the issues are decided in favour of the assessee, against the revenue.

ISSUE NO.3

6. Issue no.3 is formal in nature, which does not require any adjudication at all.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 31/05/2021

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 31/05/2021
Thirumalesh, Sr.PS.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai