

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI R.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.12/CHD/2020

निर्धारणवर्ष / Assessment Year :2012-13

Sh. Baljit Singh Bachal, VPO-Panjokhera Sahib, Ambala 134011	बनाम	The ITO, Ward-1, Ambala
स्थायीलेखासं./PAN NO: BANPB3278H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितीकीओरसे/Assessee by : Sh. Sudhir Sehgal, Advocate
राजस्वकीओरसे/ Revenue by : Smt. Meenakhshi Vohra, Addl. CIT

सुनवाईकीतारीख/Date of Hearing : 04.05.2021
उदघोषणाकीतारीख/Date of Pronouncement : 30. 07.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 03.10.2019 passed by Commissioner of Income Tax (Appeals)-4, Ludhiana [for short 'the CIT(A)'] for the assessment year 2012-13, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 147 / 143(3) of the Income Tax Act, 1961 [for short 'the Act'].

2. Brief facts of the case are that the Deputy Director of Income Tax(inv.) Patiala, received TEP alleging that during the year relevant to the assessment year under consideration, the appellant/assessee along

with Sh. Gurjit Singh and Sh. Jagdeep Singh purchased land measuring 143 Kanal and 5 Marla situated in village Pinjokhara, Tehsil Ambala from Sh. Tajinder Gudian, Smt. Rajinder Gudian and Sh. Prabhu Parmatama co-owners of the said land for a total consideration of Rs. 3,60,00,000 vide sale deed dated 02.03.2012. That the purchasers paid stamp duty of Rs. 18,00,000/-. As such the assessee paid Rs. 1,26,00,000/- as his share to the sellers towards sale consideration.

3. Since the assessee had not filed his return of income for the assessment year under consideration, AO issued notice u/s 148 read with 147 of the Act to the assessee on the basis of the said information. However, the AO did not receive any response from the assessee. Thereafter the AO issued notices u/s 142(1) of the Act on 19.05.17, 28.06.17, 19.07.17, 18.09.17, 29.09.17 and 16.10.17 directing the assessee to furnish the source of investment amounting to 1.28 crore and cash deposit of Rs. 18.35 lacs. However, the assessee either did not appear or sought adjournments. Accordingly, the AO issued show cause notice to the assessee directing him to explain as to why the assessment should not be completed u/s 144 of the Act. In response thereof, the authorized representative of the assessee appeared and filed return of income declaring total income of Rs. 276 and agricultural income of Rs.9,00,000/-. Thereafter AO issued notice u/s 143(2) of the Act. During the assessment proceedings the assessee contended that since Mr.

Tejinder Singh, his uncle had strained relations with his wife Smt. Rajinder Gudian, filed divorce petition in the district court Frauenfeld, Switzerland. Mr. Tejinder Singh accordingly decided to keep minimum assets in his name to avoid sharing of assets with his wife after divorce. Therefore, he along with co-sharer Mr. Prabhu Parmatama decided to transfer their share and share of Smt. Rajinder Gudian to the assessee, Mr. Gurdip Singh and Jagdeep Singh as Tejinder Singh was having power of attorney of his wife. Mr. Tejinder Singh and Mr. Prabhu Parmatama executed sale deed in favour of the assessee Baljit Singh, Mr. Gurdip Singh and Jagdeep Singh. Mr. Tejinder himself paid Rs. 18 lac towards stamp duty. No money was paid towards sale consideration by the transferees because as per the arrangement the said land was to be transferred back to Mr. Tejinder Singh after disposal of the pending divorce petition. Mr. Tejinder succeeded in getting divorce on 14.01.2015. Accordingly, the assessee transferred his share in the said land to his father on the basis of blood transfer deed who further transferred the same to Mr. Tejinder Singh by executing blood relation transfer deed. Similarly, Sh. Jagdeep Singh also transferred his share to Mr. Tejinder Singh through his mother by executing blood relation transfer deed. Sh. Gurjit Singh could not transfer his share due to death of his father who was competent to execute blood relation transfer deed in this case. The assessee further submitted that Mr. Tejinder Singh has

filed a civil suit for declaration to the effect that he is the owner-in-possession of the share of land transferred in the name of Gurjit Singh. The assessee further contended that neither any amount was paid by him and two others to Mr. Tejinder Singh when the land was transferred in their name or subsequently when the land was transferred back to Mr. Tejinder. However, the AO rejecting the contention of the assessee passed the assessment order determining the total income of the assessee at Rs. 1,26,00,280/-after making addition of rupees 1,26,00,000/- i.e., 1/3rd. amount of the total consideration for purchase of land in question and agriculture income of Rs.9,00,000/-

4. The assessee challenge assessment order before the Ld. CIT(A). The Ld. CIT (A) after hearing the assessee dismissed the appeal and confirm the action of the AO. Aggrieved by the said order passed by the Ld. CIT (A), the assessee has filed the present appeal.

5. The assessee has challenged the impugned order passed by the Ld. CIT(A) on the following grounds.

1. *That the Ld. Assessing Officer has erred in reopening the case u/s 147 and also there was no reason to believe that the income of the assessee has escaped assessment.*
2. *That no proper service of the notice U/s 148 had been made and also there is mechanical approval by the higher authorities with regard to reopening the case u/s 147and, thus, there being no application of mind, the reopening u/s 148 is bad in law.*
3. *Notwithstanding the above said grounds of appeal, the Ld. CIT has erred in confirming the action of the Assessing Officer in*

confirming the addition of Rs. 1,26,00,000/- as undisclosed investment u/s 69 of the Income Tax Act.

4. *That the reliance by the Ld. CIT(A) on the judgment of Hon'ble Punjab a Haryana High Court in the case of Paramjit Vs ITO as reported in 323 ITR 588, is wholly misconceived and it is not applicable the facts of the case.*
5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of.*

6. At the outset the learned counsel for the assessee submitted that the assessee does not want to press ground No. 1 and 2 of its appeal. Accordingly, we dismiss ground No. 1 and 2 of the appeal as not pressed.

7. Vide Ground No 3 and 4 the assessee has challenged the action of the Ld. CIT(A) in sustaining addition of Rs. 1,26,00,000/- made by the AO as undisclosed investment under section 69 of the Act. The Ld. counsel submitted before us that the Ld. CIT (A) has passed the impugned order in a mechanical manner without taking into consideration the evidence adduced by the assessee to substantiate his contention. The learned counsel submitted before us that the transaction in question was a part family settlement which was done to help Mr. Tejinder Singh who had decided to keep minimum assets in his name during pendency of the divorce petition filed by him against his wife Mrs. Rainnder Gudian. Therefore, the so-called purchasers did not pay any amount to the said sellers towards the sale consideration. Even the stamp duty was paid by Mr. Tejinder Singh. The Ld. counsel further pointed out that after obtaining divorce, assessee Baljit Singh and Sh. Jagdeep Singh transferred there share back to Mr. Tajinder Singh by executing blood relation transfer deeds. So far as the

share of Sh. Gurjeet Singh is concerned his share could not be transferred due to death of his father, however, Mr. Tejinder Singh has filed a Civil Suit for declaration in respect of 1/3rd. share. The Ld. counsel invited our attention to the copies of two sets of blood relation transfer deeds (available at pages 10 to 35 of the paper book), one executed by assessee and his father and another by Sh. Jagdeep Singh and his mother to transfer back their shares in the land in question to Mr. Tejinder Singh. The Ld. counsel submitted that since the assessee and Sh. Jagdeep Singh do not fall within the definition of blood relationship for the purposes of execution of the said deeds they transferred their shares through their father and mother respectively, who further transferred the same to Mr. Tejinder Singh. The Ld. counsel further invited our attention to the copy of plaint available at pages 36 to 44 of the paper book filed on 13.10.2020, in civil suit against Sh. Gurdip Singh to demonstrate that the land in question was transferred by Mr. Tejinder Singh under a family arrangement to keep minimum assets during pendency of divorce petition and to take back after the disposal of the petition. The Ld. counsel further invited our attention to the statements of Sh. Prabhu Parmatama recorded by AO during assessment proceedings and contents of affidavits sworn by Mr. Baljit Singh assessee, Mr. Tejinder Gudian and Mr. Prabhu Parmatama, (copies of which are available on record) to substantiate the contention of the assessee. The Ld. Counsel further invited our attention to the copy of statement of Bank account of Sh. Tejinder Singh Gudian to prove withdrawal entry of Rs. 19,00,00/- on 02.03.2013 for making payment towards stamp duty. The Ld. counsel further contended that the judgment of the Hon'ble jurisdictional High court

in the case of *Pritam Singh vs. ITO 323 ITR 588 (P&H)* relied upon by the Ld. CIT(A) is distinguishable on facts and not applicable to the present case. The Ld. counsel further pointed out that the concerned AOs have passed the assessment orders u/s 147 read with section 143(3) of the Act, in the case of Sh. Gurjit Singh and Sh. Jagdeep Singh, accepting the same contention. However, in assessee's case the AO made addition rejecting the identical contention raised in identical set of facts of the case. The Ld. counsel accordingly submitted that the action of the Ld. CIT(A) is contrary to the law laid down by the Hon'ble Supreme Court in the case of *Berger Paints India vs. CIT 266 ITR99 (SC)* and the Hon'ble jurisdictional High Court in the case of *CIT vs. Leader Valves Ltd. 295 ITR 273 (P&H)*. The Ld. counsel further placing reliance on the order passed by the SMC Bench of the Chandigarh Bench in the case of *Smt. Amarjit Kaur vs. ITO ITA No 40 &41/Chd/2019* dated 14.06.2019 submitted that since the Ld. CIT(A) has passed the impugned order ignoring the principle of consistency, the same is liable to be set aside. In view of the aforesaid submissions, the Ld. counsel submitted that the impugned order may be set aside.

8. On the other hand, the Ld. Departmental representative (DR) vehemently supporting the order passed by the Ld. CIT(A) submitted that the assessee has purchased 1/3rd share of the land in question vide registered sale deed therefore, the presumption of truth is attached with the sale deed. As regards the plea of the assessee that no money was paid at the time of purchase of the land, the Ld. DR placing reliance on the judgment of the Hon'ble Punjab and Haryana High Court in the case of *Paramjit Singh vs. ITO 323 ITR 588 (P&H)* submitted that as per the ratio

laid down in the said case, no oral evidence is admissible once the document contains all the terms and conditions and that sections 91 and 92 of the Indian evidence Act incorporate the aforesaid principle. The Ld. DR further placing reliance on the decision of the Chandigarh Bench of the Tribunal in the case of *ACIT versus Sh. Mohinder Singh*, ITA No. 665/Chd/2016 submitted that that once the sale of land between the parties is settled at a particular consideration, subsequently parties are estopped from their act and conduct to plead otherwise. The Ld. DR further pointed out that by getting the land in question back on the basis of blood relation transfer deeds, Mr. Tejinder since has illegally obtained the share of Rajinder Gudian and Shri Prabhu Paramatma. As regards the assessment orders in respect of the co-purchasers Jagdeep Singh and Gurjeet Singh, the Ld. DR submitted that both the orders are erroneous and prejudicial to the interest of the revenue, therefore proceedings under section 263 of the Act, are being contemplated in these cases. The Ld. DR invited our attention to the internal communications of the Department in this regard.

9. In rebuttal, the Ld. counsel for the assessee submitted that the cases relied upon by the Ld. DR are distinguishable on facts and the evidence on record, therefore the same are not applicable to the present appeal. The Ld. counsel submitted that in the case of *Paramjit Singh* (supra) sale deed was executed by uncle of the assessee in its favour whereby certain ancestral land was transferred to him. Amount of sale consideration was reflected in the sale deed. The assessee claimed that no consideration was paid and sale consideration was mentioned only for stamp duty purpose. The AO treated the amount of sale consideration as unexplained investment

and added the same to the income of the assessee. The CIT(A) set aside the assessment order however, in further appeal the Tribunal confirmed the action of the AO. The Hon'ble High Court confirmed the findings of the Tribunal, whereas, in the present case the land was to be transferred by the so-called purchasers to Mr. Tejinder Singh as per the pre-arranged plan. Accordingly, two purchasers have transferred back their share in the land in question to Mr. Tejinder Singh by executing Blood Relation Transfer Deeds. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *CIT versus Daulat Ram Rawatmull 87 ITR 239 (SC)*, the Ld. counsel submitted that since the assessee has discharged the burden of proving that no consideration was paid to the sellers, by adducing legal evidence, the Ld. CIT(A) has wrongly affirmed the action of the AO. The Ld. counsel further invited our attention to the copies of assessment orders passed in respect of the co-purchasers Gurjit Singh and Jagdeep Sing u/s 147 read with section 143(3) of the Act, accepting the identical plea taken by the them and pointed out that the department has taken a different view in case of the assessee consisting of same set of facts. The Ld. counsel further pointed out that the official communications referred by the Ld. DR pertain to post hearing period therefore not relevant to the present case.

10. We have heard the rival submissions of the parties and also perused the material on record including the cases relied upon by the parties. The undisputed facts in this case are that Mr. Tejinder Singh, real uncles of the assessee who was settled in Switzerland during the relevant period had filed divorce petition against his wife Rajindra Gudian. Mr. Tejender Singh in the capacity of co-owner and as holder of

power of attorney of his wife Rajinder Gudian and Prabhu Parmatama as co-owner of the land in question transferred the said land in the name of assessee Baljit Singh, Sh. Gurjit Singh and Sh. Jagdeep Singh by executing sale deed dated 02.03.2012. Later on the assessee and Sh. Jagdeep Singh transferred back their share on the basis of blood relation transfer deeds and Mr. Tejinder Singh has filed a civil for declaration in respect of the share of Sh. Gurjit Singh. The respective AOs have accepted the identical plea raised by Sh. Jagdeep Singh and Gurdip Singh and passed the assessment orders u/s 147 read with section 143(3) of the Act and accepted their nil returns. But in the case of the assessee, the AO made addition to the extent of his share in the total sale consideration recorded in the sale deed and the Ld. CIT(A) confirmed the same. Now the question arises as to whether the documentary evidence oral evidence and the circumstantial evidence adduced by the assessee are sufficient to substantiate his contention that no payment was made by him towards sale consideration to Mr. Tejinder and Mr. Prabhu Parmatama and to further rebut the presumption that the sellers transferred the land in question to the assessee and two others for a total consideration of Rs. 3,60,00,000/- as recorded in the sale deed?

11. As pointed out by the Ld. counsel in the case of *CIT versus Daulat Ram Rawatmull* (supra) the Hon'ble Supreme Court has held that the onus to prove that the apparent is not real is on the party who claims it to be so. In the present case since the assessee has alleged that sale consideration was not paid to the transferrers, the burden is upon the assessee to establish the alleged facts by adducing cogent and convincing evidence. In order to discharged the said burden, the assessee has placed on record the

documentary evidence in the form of an affidavits of Mr. Tejinder Singh and Mr. Prabhu Parmatama and the copy of statement of Mr. Prabhu Parmatama recorded by AO during assessment proceedings. The assessee has placed on record the copy of divorce petition filed by Mr. Tejinder Singh in the District Court Frauenfeld, Switzerland to prove strained relation between the spouse and ongoing litigation between Mr. Tejinder Singh and his wife Rajinder Gudian. The assessee has placed on record the copies of blood relation transfer deeds vide which he transferred his share in the land in question. The assessee has also placed on record the blood relation transferred deeds through which the co-purchaser Sh. Jagdeep Singh transferred back his share to Mr. Tejinder Singh. The assessee has further placed on record the copy of plaint file by Mr. Tejinder Singh in the court of the Civil Judge (senior Division) Ambala in civil suit for declaration against by Sh. Gurjit Singh, who could not execute blood transfer deed to transfer his share to Mr. Tejinder Singh due to death of his father. Para 4 of the said plaint reads as under: -

“4. That at the time of execution of the said sale deed it was agreed between the plaintiff and the defendant along with Baljeet Singh and Jagdeep Singh that as and when the plaintiff wants then the aforesaid land will be transferred in the name of the plaintiff as and at that time Baljit Singh, Jagdeep Singh and the defendant assured the plaintiff that they will transfer the land of the plaintiff in his name as and when he wants.”

12. The contents of plaint corroborate the contention of the assessee that the said land was transferred by Mr. Tejinder to the assessee and others with the condition to

transfer back in his name as and when asked. The copies of blood relation transfer deeds vide which the assessee transferred his share in favour of his father Sh. Kulwant Singh and Sh. Kulwant Singh transferred the same in favour of Mr. Tejinder Singh establish that the assessee transferred his share back to Mr. Tejinder voluntarily and without consideration. Similarly, Sh. Jagdeep Singh vide blood relation transferred his share in favour of his mother who further transferred the same by executing blood relation transfer deed transferred the same to Mr. Tejinder Singh (her brother). These facts further support the contention of the assessee. From the aforesaid facts conclusion can be safely drawn that the entire transactions were made without exchanging any money as consideration either at the time of sale by Mr. Tejinder Singh and another or at the time of taking back the said land from the assessee and two others. Hence, we find merit in the contention of the Ld. counsel that the facts of the case relied upon by the Ld. DR are distinguishable from the facts of the present case, therefore the ratio laid down in the said case is not applicable to the present case. Hence, in view of the peculiar facts of the present case and the direct and circumstantial evidence adduced by the assessee in support of his contention, we hold that the assessee and his co-purchasers had not paid any money towards sale consideration to their uncle Mr. Tejinder Singh or the other co-owners when the land in question was transferred in their names. The circumstantial evidence that the two purchasers transferred back their share to Mr. Tejinder Singh without any consideration further corroborates the contention of the assessee that the purchasers had not paid sale consideration to Mr. Tejinder Singh when the said land was

transferred in their names. So far as the legality or permissibility of such transaction is concerned, the same is not the subject matter of this appeal. As per the settled law income tax is levied on the real income of the assessee. In the present case, since the assessee has adducing cogent and convincing evidence to demonstrate that no money was paid towards sale consideration or otherwise to Mr. Tejinder, the action of the Ld. CIT(A) is not sustainable in law.

13. Further, the copies of assessment orders dated 25.12.2019 & 27.09.2019 passed by the concerned AOs u/s 147 read with section 143(3) in the case of the co-purchasers Sh. Gurjit Singh and Sh. Jagdeep Singh respectively, available at pages 45 to 53, show that the concerned AOs have accepted the identical contention raised by the assessee during assessment proceedings and accepted their nil returns. But in the case of the assessee the AO rejecting the same contention made addition of 1/3rd amount of the total sale consideration. So far as the contention of the Ld. DR that proceedings u/s 263 of the Act are being contemplated in the cases of Gurjit Singh and Jagdeep Singh is concerned, it is clear from the copies of official correspondences placed on record that the Ld. AICT Patiala Range and the Ld. JCIT Panchkula have sent proposals for initiating proceedings u/s 263 of the Act in the case of Jagdeep Singh and Sh. Gurjit Singh to the concerned Principal Commissioners on 28.12.2020 and 31.12.2020 respectively. As pointed out by the Ld. counsel, these proposals have been moved by the concerned officers during arguments of the present appeal before the Tribunal. Under these circumstances, the action of the Ld. CIT(A) cannot be justified. In the case of *Smt. Amarjit Kaur vs. ITO (supra)*, the SMC Bench of the

jurisdictional Tribunal following the ratio laid down by the Hon'ble Supreme Court in the case of *Berger Paints India Ltd.* and the Hon'ble Punjab and Haryana High Court in the case of *Leader Valves Ltd.* (supra) has deleted the addition sustained by the Ld. CIT(A) in violation of the principle of consistency.

14. In our considered view, the Ld. CIT(A) has passed the impugned order without taking into consideration the direct and circumstantial evidence placed on record by the assessee to substantiate his contention. Further, since the Ld. CIT(A) has passed the impugned order without taking into consideration the view taken by the department in the cases of co-purchasers, the impugned order passed in violation of principle of consistency is also bad in law. Hence, in view of the discussions made on facts, evidence on record and the cases discussed in the foregoing paras, we allow the appeal of the assessee and set aside the impugned order passed by the Ld. CIT(A). Accordingly, we direct the AO to delete the addition.

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

Order pronounced on 30th July, 2021.

Sd/-

Sd/-

(N.K. SAINI)

उपाध्यक्ष /Vice President

Dated : 30.07.2021

“आर.के.”

(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant

2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar