

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A" BENCH: BANGALORE**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

**ITA. No. 2235/Bang/2019
Assessment Year: 2008-09**

Shri D. Padmanabhan, No. 583/1, Old Syndicate Bank Road, 1 st Main, Indiranagar 1 st Stage, Bangalore – 560 038. PAN: ABVPP2739B	vs.	The Deputy Commissioner of Income Tax, Circle-7(1), Bangalore.
(Appellant)		(Respondent)

Assessee by	:	Smt. R. Prathiba, Advocate
Revenue by	:	Shri K. Sankarganesh, JCIT (DR)

Date of Hearing :	06.10.2021
Date of Pronouncement :	09.11.2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 20/08/2019 passed by the Ld.CIT(A)-9, for assessment year 2008-09 on following grounds of appeal:

	<i>GROUND OF APPEAL (enclosed separately)</i>	<i>Tax Effect relating to each Ground of appeal</i>
1.	<i>The learned CIT (A) erred in passing the order in the manner which he did.</i>	<i>General</i>
2.	<i>The learned CIT(A) erred in confirming the income of Rs. 1,64,32000/- as unexplained money u/s 69A of the Act. Further erred in not appreciating submission of the Appellant that the sum of Rs. 1,64,32,000/- was the sale proceeds of agricultural</i>	<i>Rs. 1,64,32,000/-</i>

3.	<i>The learned CIT(A) ought to have appreciated that the Appellant had correctly shown the sale price of agricultural land /profit on sale of agricultural land on the basis of amount received which is duly confirmed by the buyer also. Thus, the addition confirmed is bad in law.</i>	Rs. 1,64,32000/-
4.	<i>The learned CIT(A) ought to have appreciated the fact that there was no unexplained money at all and the credits in Bank Account are duly explained. Therefore the provisions of Section 69A of the Act will not applicable to the facts of the case.</i>	Rs. 1,64,32000/-
5.	<i>The learned CIT(A) ought to have appreciated the fact that the sum of Rs. 1,64,32,000/- as received by the Appellant was the money received as sale consideration of agricultural land and it is to be accepted as such and the addition confirmed u/s 69A of the Act is bad in law and ought to be deleted.</i>	Rs. 1,64,32000/-
6.	<i>The learned CIT(A) ought to have appreciated that higher sale price mentioned in the sale agreement was to be taken in to account when it had been routed through the banking channel instead of lower guidance value at which sale property was registered. Thus, the addition was confirmed has to be deleted.</i>	Rs. 1,64,32000/-
6.	<i>The learned CIT (A) erred in upholding the interest u/s 234B and 234C of the Act.</i>	General
7.	<i>Without prejudice the disallowances as confirmed by the learned CIT (Appeals) are arbitrary excessive and ought to be reduced substantially</i>	General
8.	<i>For these and such other grounds that may be urged at the time of hearing the Appellant prays that the appeal may be allowed.</i>	General
	TOTAL TAX EFFECT	49,29,600/-

Brief facts of the case are as under:

2. Assessee sold agricultural land bearing unit No. 63 in survey No. 219/1C-2 & 209/IC 3 at Sevaganapally Village, Hosur Taluk to one to Mr. D. Kannan for Rs. 1,64,32,000/-. The said was consideration received by assessee as follows:

Date	Amount	Mode
24-01-2007	Rs.1,00,00,000 as advance	RTGS
13-07-2007	Rs. 64,32,000 balance amount	Kotak Bank Chq. No. 000441
TOTAL	Rs. 1,64,32,000	

2.1 The Ld. AO observed that the sale of the agricultural land was registered on 11/07/2007 in the office of Sub-registrar, Hosur, at the instance of buyer, at the prevailing Market value of Rs.9,00,000/- and the applicable stamp duty of Rs. 72,520/- was paid on the declared value. Assessee treated the actual capital gain of Rs. 1,57,28,000/- as exempt from capital gain and hence did not offer to tax.

2.2 During scrutiny proceedings, in support of actual sale consideration of Rs. 1,64,32,000/-, assessee produced bank statements and confirmation from buyer to the Ld.AO. The Ld.AO observed that, though entire sale consideration was received through banking channels, it was held to be unexplained income u/s. 69A. Ld.AO relied on the registered sale deed which was registered for value of Rs. 9,00,000/-.

3. Aggrieved by the addition, the assessee preferred an appeal with CIT(A).

3.1 During the course of hearing with Ld.CIT(A), a copy of the said sale deed was submitted.

Subsequently on 15/04/2013 based on the stamp duty applicable for the actual consideration received/paid amounting to Rs.1,64,32,000/-, the differential stamp duty of Rs. 12,42,560/- was paid and endorsement of payment was also acknowledged by the Sub-registrar, Registration Dept., Govt. of Tamilnadu on reverse side of page 3 of the registered sale deed.

3.2 The Ld.CIT(A) after considering the above payment of differential stamp duty on the actual sale consideration held that the actual sale consideration is to be reckoned for workings of the capital gain and accordingly deleted the addition of Rs.1,64,32,000/-

4. Aggrieved by the order of Ld.CIT(A), revenue filed appeal before this *Tribunal*.

4.1 It was argued that Ld.CIT(A) did not give opportunity to the Ld.AO to examine the additional evidence. This *Tribunal* thus vide order dated 19/09/2014, remanded back the matter to the Ld.CIT(A) with a direction that fresh opportunity be given to the Ld.AO to examine the additional evidence in the form of endorsement of additional stamp duty on the registered sale deed.

4.2 Thereafter Ld.CIT(A) called for remand report from the Ld.AO. In the remand report, the Ld.AO observed as under:-

F. No. ABVPP2739B/C-1(2)(2)/2018-19

Dated : 29/10/2018

To,

The Commissioner of Income Tax (Appeals)-9,
Bengaluru.

(Through proper channel)

Sir,

Sub: Remand report in the case of Sh. D. Padmanabhan for AY 2008-09 -reg.

Ref : Appeal petition filed by the assessee for A.Y. 2008-09 before the
Commissioner of Income Tax (Appeals), Bengaluru.

Kindly refer to the above.

A remand report was called for by the O/o CIT(A)-9 vide letter dated 10.10.2018 in the case of Sh. D. Padmanabhan for AY 2008-09 for the appeal pending in the instant case.

The assessee sold an agricultural land in the AY 2008-09 and paid the stamp duty of Rs. 72,520/- according to which, stamp duty value of the property sold comes out to be Rs. 9,00,000/-.

The case was selected for scrutiny assessment. During the scrutiny proceedings, it was seen that the assessee has received a sum of Rs. 1,64,32,000/-. The assessee claimed that the sum was received due to sale of the property.

However, the AO relied upon the figure of the stamp duty paid by the assessee and valued the deal at Rs. 9,00,000/-. Further, the entire amount received by the assessee, was added back by the AO as unexplained income u/s 69A of the IT act.

After the assessment order was passed, the assessee preferred appeal before the CIT(A).

In the course of appeal at the CIT(A) level, the assessee calculated the total stamp duty that would be due on sale of Rs. 1,64,32,000. During the course of the appellate hearing, the assessee paid the differential stamp duty. The date of this transaction was 15.04.2013. It can be seen from the order of

CIT(A) that it was same as the date of hearing in front of CIT(A), which was almost three years after the assessment order dt.13.12.2010.

Subsequently, the assessee's appeal was allowed. However, the department went on further appeal to ITAT where the bench remanded the case back to the office of CIT(A) to hear afresh giving the assessing officer a chance to look at the fresh evidence filed before the CIT(A).

Comments of the AO after examining fresh evidence

1. It needs to be noted that at the time of assessment order, the stamp duty was paid by the assessee only for the sale consideration of Rs. 9,00,000/-. Hence, the assessment order passed by the AO is correct in making the aforesaid addition.
2. Further, it is clear from the facts of the case that even though the assessee paid the stamp duty on a later date after passing the assessment order, it does not render the addition invalid because these facts were not presented before the AO at any time by the assessee.
3. Actually, it should also be noted that the extra payment of stamp duty by the assessee was made only after the addition was made by the assessing officer by accepting the value of the property as per stamp duty paid by the assessee himself. Hence, even if we accept the version of events as stated by the assessee as correct, it must be admitted by the assessee that there was an intention in the deal to willfully evade the payment of stamp duty. Because, only after realizing that the demand raised by the Income Tax Authorities is higher than the stamp duty that was to be paid, assessee has done a cost-benefit analysis. On this basis, it was decided to pay the stamp duty to avoid the payment of Income-Tax. Thus actions of the assessee were not based on respect or fear of the law. Rather, motive of his action was to evade the payment of the taxes due as per law.
4. Regardless, the fresh evidence brought before Your Honor is examined and found to be correct.
5. In these circumstances, it is prayed before Your Honour that the case may be decided on its merits.

Based on the above remand report, the Ld.CIT(A) held as under.

“30. In the present case the document conveying transfer is registered but the value is Rs. 9 Lacs. Another document purportedly conveying such a transfer [the receipt dated 15.4.13 showing the payment of differential stamp duty] is not registered. Therefore, following the decision of Hon'ble Supreme Court [which is rendered after amendment in section 17A of the Registration Act, 1908 in the year 2002.] I find that the appellants' case fails on the grounds of lack of legally admissible evidences.

31. Further, on examination of Hon. HIGH COURT OF PUNJAB AND HARYANA decision in the case of Paramjit Singh [supra] and Hon. ITAT Chandigarh decision in the case of Mohinder Singh [supra], I find that once documents contain all terms and conditions, sale consideration disclosed in sale deed was to be accepted and no evidence could have been adduced to contradict such sale consideration. I also hold that the plea of the appellant, if admitted, would render the instrument as insufficiently stamped making it as inadmissible in evidence and cannot be acted upon. Further, no evidence for sufficiently stamped document is available. Further, allowing the appellant to take such pleas will be against the public policy.”

5. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us.

5.1 Before us, the Ld.AR submitted that when the entire consideration is received through banking channels, the amount cannot be taxed under section 68, only on the basis that the sale value shown in the conveyance deed is less than the actual consideration. She placed reliance on the following decisions.

- ITO Vs. Dr. Koshy George and Anr. (2009) 317 ITR 116 (Coch-Trib)
- CIT Vs. Intezar Ali (2013) 38 taxmann.com 103 (Allahabad)

5.2 The Ld.Sr.DR relied on orders passed by authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

5.3 In the case of the assessee before us, the sale consideration was fixed at Rs.1,64,32,000/- and admittedly the buyer paid entire consideration through banking channel in the following manner:

1. 24.01.2007 Rs.1,00,000/-by RTGS Inward
2. 13.07.2007 Rs.64,32,000/- by Cheque No.000441 of Kotak Bank.

5.4 The amounts had been duly reflected in the accounts of the assessee's bank statement furnished before authorities below. Further, the buyer has confirmed for having paid the entire consideration and the mode of payment.

5.5 The reason for not re-registering the property sold at transaction value is that as per the Sub-Registrar at Hosur, Tamil Nadu, the document once registered cannot be re-registered as per their process. The parties to the agreement were advised to pay the shortfall in stamp duty as per the transaction value by means of payment of short fall in stamp duty. This payment is tagged on to the original sale deed and the total stamp duty realized is the original amount plus the additional amount paid by the parties to the sale deed. We note that originally stamp duty was paid on guidance value which was much lesser than the transaction value/market value, and subsequently, short fall in stamp duty was paid so that the total stamp duty on the transaction value of Rs. 1,64,32,000.

5.6 We note that the Ld.CIT(A) proceeded on a wrong footing that there is another document that effectuated transfer on which the additional stamp duty has been paid. Further the Ld.CIT(A) wrongly held that such document has not been registered. The Ld.CIT(A) also held that no evidence is filed proving the document having sufficiently stamped.

5.7 We note that this *Tribunal* vide order dated 19/09/2014 remanded the issue to Ld.CIT(A) to verify whether additional stamp duty was paid on 15.04.2013 in respect of the agreement dated 11/07/2007. At this juncture, we refer to para 4 of the remand report that reads as under:

“4. Regardless, the fresh evidence brought before your Honor is examined and found to be correct.”

5.8 Thus it is clear that assessee and the buyer has paid additional stamp duty on the agreement dated 11/07/2007. It is a fact that the additional stamp duty was paid after passing of assessment order. There is also a certificate issued by the stamp authority acknowledgment of such additional stamp duty.

5.9 We note that all the transaction have been through banking channels. It is not the case of revenue that the genuineness, creditworthiness and identity are being doubted. Merely because the proof of payment of additional stamp duty was not available at during assessment proceedings, the sale proceeds received by assessee could be disallowed by invoking provisions of section 69A. Such addition cannot be held to be correct and are unsustainable in the eyes of law.

Accordingly, the grounds raised by assessee stands allowed.

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

Order pronounced in open court on 09th November, 2021.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated: 09th November, 2021.
/MS/

Copy to

1. The Appellant
2. The Respondent
3. CIT(A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore