

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. A.D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No.2876/Del/2015 : Asstt. Year: 2011-12

ACIT, Circle-52(1), New Delhi	Vs	Late Sh. Amarjeet singh through legal heirs Sh. Kunwar Raj Sing, Smt. Bupinder kaur, Ms. Ameet Bhatia and Ms. Puneet Kaur Prop. M/s S.M. & Sons, 23, Regal Building, Connaught place New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AAGPS2209D		

Revenue by : Ms. Shweta Yadav SR-DR

**Assessee by : Sh. K. Sampath, Adv. &
Sh. V. Rajakumar**

Date of Hearing: 10.02.2022

Date of Pronouncement: 12.04.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-18, Delhi, dated 27.02.2015.

2. The Revenue has raised following revised grounds of appeal:

"1. Whether on the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the Short Term Capital Gain amounting to Rs.2,90,89,450/-.

2. Whether on the facts and circumstances of the case, the Id.

CIT(A) has erred in deleting the interest expenditure amounting to Rs.6,75,523/-."

3. The assessee is an individual and deriving income from property, share income as partner in M/s S.M. & Sons and M/s Santokh Singh & Sons and interest income. The assessee filed its return of income on 30.09.2011 declaring an income of Rs.19,27,700/-. Subsequently, the assessee revised its return of income on 23.02.2013 declaring income at Rs.38,09,925/- on account of withdrawal of interest of Rs.17,69,625/- paid on bank loan and claimed under the head "property income" which was for business purposes.

Short Term Capital Gains:

4. During the year, the assessee sold immovable property for Rs.9.75 crores but not capital gain was disclosed in the return of income as per the AIR information available with the AO. The assessee explained that he and Sh. Manjit Singh had agreed to sell the property no. XVI/10197/Plot/KH no. 1449-1251, GN 16, Beadon Pura, Ajmal Khan Road, Karol Bagh, New Delhi to BIC Logistics Ltd. on 19.10.2010 through their Director, Sh. Paramjeet Singh who has got authority for purchase of property vide resolution dated 20.10.2010. It was explained that the assessee did not receive any sale consideration from the company as the company did not make any payment. No detail of any payments has been mentioned in the sale deed and there was no details of payment given to Sh. Amarjeet Singh. Before the AO, it was explained that the assessee did not give possession of above property to M/s BIC Logistics Ltd. as no payment has been received. The assessee is already declaring

the above property in his return of income for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14. The investment in above property is also reflected in the balance sheet of the assessee. Hence, the provision of Section 45(1) and Section 2(47)(v) of the Income Tax Act, 1961 are also not applicable as there was no consideration received nor the assessee has parted with the property.

5. The AO after considering the reply of the assessee held that the assessee has not denied having executing the sale deed in favour of BIC Logistic Ltd. and the assessee has even filed copy of sale deed dated 26.10.2010 for Rs.9.75 crores. The AO held that the assessee has only contended that no payment has been received in lieu of transfer of this property and therefore no possession was given, however, from the perusal of the sale deed, it is noticed that payments have been made by BIC Logistics Ltd. It is clearly mentioned in the sale deed that payments have been made by various cheques in the name of MRB Promoters Pvt. Ltd., cheques in the name of Sh. Manjit Singh and cash. The assessee has also acknowledged having received the payment in front of the Registrar. Thus, it is clear that Sh. Manjit Singh has taken payment by cheques in his name and name of his company MRB Promoters Pvt. Ltd. Hence, there remains no doubt that cash payment mentioned in the Registry has been received by Sh. Amarjit Singh. To verify the claim of the assessee about the payment schedule, notice u/s 133(6) was issued to the sub-Registrar, Asaf Ali road, New Delhi requesting for a certified copy of the said sale deed. On receipt of the sale deed, the AO noticed that the payment schedule was not mentioned in the original sale deed available in the records

of sub-Registrar. The space has been left blank. However, the copy provided by the assessee clearly states that payment has been made through various cheques and cash. The AO held that all this raises a serious doubt about the intention of the assessee and by any stretch of imagination it is not thinkable that any wise person would execute a sale deed in other person's favour without getting full payment. The other claim of the assessee is that possession of the said property was not handed over to the purchaser has also been disputed by the AO as it has been clearly mentioned in the sale deed that the said property was in tenancy with 8 tenants and therefore symbolic possession of the rented portion was handed over to the purchaser. The AO held that the assessee has not included this property in his original return of income, only in revised return of income this property has been included and no rent has been declared from this property.

6. The Id. CIT (A) deleted the addition on the grounds that there is no evidence of receipt of the sale price handing over of the possession of the property. The Id. CIT (A) held that the provisions of Section 45(1) and Section 2(47)(v) are not applicable on the facts of the case and since the ownership has not been transferred, the applicant remain to be the owner of the property no capital gains arises. The Id. CIT (A) also held that the original sale deed has been obtained by the AO from the sub-Registrar wherein the payment schedule has not been reflected. Since, there is no record of receipt of the payment and the space has been left to blank, the Id. CIT (A) held that facts lead to a conclusion that no payment has been received by the assessee.

7. Aggrieved the revenue filed appeal before us.

8. The Id. DR argued that having signed the sale deed before the sub-Registrar, the assessee cannot argue that the registration of the sale deed has not been completed. Having registered the sale deed, it is legally submitted that the transfer of property has indeed taken place. Referring to the contents of the sale deed, the Id. DR explained that it was clearly mentioned that the property has also been handed over symbolically. The Id. DR has taken us through the deed dated 10.10.2008 wherein the property measuring 357.85 sq. mts. along with constructed area of 500 sq. mts. on three floors has been purchased by Sh. Amarjit Singh Bhatia and Others (Sh. Manjit Singh from Kanha Estate Pvt. Ltd. through its Director, Sh. Gulshan Kumar for Rs.9,75,000/-). The said property had 14 tenants as per the deed dated 10.10.2008. Vide indemnity bonds dated 30.01.2009, Sh. Bhupender Singh Sethi, the tenant surrender the tenancy right in favour of the assessee and Sh. Majnit Singh similarly with Sh. Satya Prakash Metha one of the other tenant. It was argued that the sale of the property is completed on 26.10.2010 for Rs.9.75 crores and an amount of Rs.58,50,000/- has also been paid towards stamp duty. It was argued that nobody will lose an amount of Rs.58,50,000/- paid towards the stamp duty and the arguments of the assessee that the sale has not been taken place cannot be accepted.

9. On the other hand, the Id. AR argued that the assessee Sh. Amarjit Singh has not signed the sale deed at the back of page no. 2 of the said sale deed. It was also argued that the

page no. 5 of the sale deed has not mentioned about the details of the payments received by the assessee. It was argued that,

i) No mutation has taken place in the name of buyer BIC Logistics Ltd. in the record N.D.M.C.

ii) Notice no. Tax/Jt A & C/NDMC/KBZ/2013-14/Q 2872/ dated 28/11/2014 proves that in their record property stands in the name of Charanjit Kaur, Kirpal Singh and Jai Singh and not in the name of M/s BIC Logistics Ltd. The company BIC Logistics Ltd. is not the owner of property.

iii) No electricity connection has been transferred.

iv) No water connection has been transferred.

v) No letter had been given to tenants of sale of property.

vi) The vacant possession of shop no.3 of ground floor which the appellant has taken from Bhupinder Singh Sethi is with appellant.

vii) The vacant possession of office of 900 sq. feet at first floor which the appellant had taken from Satya Prakash Mehta is with the assessee.

viii) Affidavit of the assessee of no payment received.

ix) Affidavit of the assessee that possession of property has not been given.

x) Property is shown in the income tax return of the appellant till today.

xi) The purchase value is reflected in the balance sheet of the appellant till today.

x) It is undisputed that the appellant is owner of 33% of property no. XVI/10197/Plot/KH no. 1449-1251 Gali no. 16, Beadon Pura, Ajmal Khan Road, Karol Bagh, New Delhi.

10. After carefully going through the facts before us and the pleadings of both the parties, the following picture emerges:

1. The assessee is the 33% owner of the property measuring 357.85 sq. mts. along with constructed area of 500 sq. mts. The remaining 67% is owned by Sh. Manjit Singh.
2. The said property was purchased for Rs.97.50 lacs on 10.10.2008 from Kanha Estates Pvt. Ltd.
3. Subsequently, the property was sold to BIC Logistics Ltd. for a consideration of Rs.970.00 lacs on 26.10.2010.
4. The sale deed was registered in the Sub-Registrar office vide Registration No. 10476 in book No. 1 Volume No. 13896 page no. 150 to 160 on 26.10.2010.
5. The photographs of Sh. Manjit Singh and the assessee have been duly reflected on the registered deed at back side of page no. 9.
6. The details of sale of the property has been forwarded to the Income Tax Department under AIR.
7. The Assessing Officer has obtained a copy of the sale deed from the sub-Registrar u/s 133(6).
8. Based on the sale deed, the Income Tax Department computed short term capital gains.

9. The assessee disputes the sale of property and contends that he has not signed and the details of payments have not been reflected in the sale deed.
10. The assessee contends that he has not received the any payment and the property is still in the name of the assessee and not transferred.
11. The assessee contends that the property is continued to be reflected as assessee's own in the Income Tax Returns/balance sheet.
12. Hence, it was contended that no payment has been received, no transfer took place and hence no capital gains are computable in accordance with Section 45(1) and Section 2(47)(v) of the Income Tax Act, 1961.

13. In nutshell, though the registration of the sale deed has been executed before the sub-Registrar, the assessee contends that in the absence of any receipt of payment, no sale of property could take place and no capital gain arises.

11. We have gone through the relevant provisions of transfer of property Act and the Income Tax Act which are as under.

12. Section 45(1) reads as under:

"45. (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place."

13. Section 2(47)(v) reads as under:

"Section 2(47).....

(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 (4 of 1882); "

14. Section 53A of the Transfer of Property Act, 1882 reads as under:

"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 nowhere 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.]"

15. This is a classic case wherein the property has not been handed over inspite of the registration done owing to non-receipt of the amounts. This issue is a grey matter which needs to be proved undisputedly owing to the conflicting nature of the documents as filed with the Income Tax Department, Registration Department and the arguments taken before us by both the parties. The assessee claims that he continuous to be in the possession of the property. No material has been brought on record by the revenue to prove the receipt of the money against argument that the assessee has not received the amounts. The purchaser has paid stamp duty of Rs.58.50 lacs which cannot be expected to be spent profligately by the purchaser. The purchaser has not taken any steps to occupy the property as per the documents. At the same time, the revenue has also not confirmed with regard to the payments received by the assessee, as to which account the amounts have been credited or as to the receipt of money by both the parties namely, the assessee and Sh. Manjit Singh. The assessee is 33% owner of the property whereas Sh. Manjit Singh is 67% owner. The returns of Sh. Manjit Singh, the amounts received by Sh. Manjit Singh, the taxation thereof the receipts of 67% owner have not been brought on record to examine the issue in a holistic manner. While the assessee disputed the receipt of the payment, no enquiries have been conducted from BIC Logistics Ltd. to confirm whether they have fulfilled or defaulted the payments as mentioned in the agreement.

16. Under these circumstances, it needs to be investigated and confirmed by the revenue that the assessee has indeed received monies from BIC Logistics Ltd. Investigations are also required

to find out the fact whether the assessee is still in the possession of the property or parted with the property. Hence, in the interest of justice and in order to avoid duplication of work and for accelerated disposal, the matter is being remanded back to the file of the Id. CIT(A) to get the investigations conducted under his/her supervision and obtained the much-needed factual reports from the Assessing Authorities/Investigation Wing as deemed fit and pass a speaking order in provisions of the Income Tax Act. The assessee shall comply with the notices issued by the revenue without seeking any unnecessary adjournments.

17. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order Pronounced in the Open Court on 12/04/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 12/04/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR