

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' NEW DLEHI**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER**

**ITA No. 3055/Del/2019  
Assessment Year: 2015-16**

Bimla Mittal, H.No. 544, Ward No. 16, Hodal, Palwal (Haryana) <b>PAN : ALZPM4643B</b> (Appellant)	vs.	Income-tax Officer, Ward 1(2), Faridabad.  (Respondent)
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Appellant by : None  
Respondent by: Sh. Om Prakash, Sr. DR

Date of hearing: 02.05.2022  
Date of order : 05.05.2022

**ORDER**

This appeal filed by the assessee is directed against the order dated 29.08.2018 passed by Id. CIT(A)- Faridabad for the assessment year 2015-16 on the following grounds :

*"1. Hon CIT(A) erred in upholding the order of Hon AO passed under section 143(3) of the Income Tax Act, 1961 which was passed against the provisions of the Income Tax Act, 1961.*

*2. Your honor, hon AO has made an addition of Rs.12,50,000/- (however hon CIT (Appeals) has partially allowed the appeal to the extent of 2/3rd of the amount added by hon AO and sustained the addition to the extent of 4,16,667/-) during the assessment*

*proceedings on account of stamp duty payment from undisclosed sources, which is illegal and incorrect.*

*3. Your honor, addition of Rs. 12,50,000/- was made by honorable AO on account of stamp duty payment from unexplained sources is incorrect and illegal as per the provisions of section 68 and 69 of the Income Tax Act 1961. It may be noted that AO has not clarified under which section he has made this addition.*

*4. Your honor, stamp duty of Rs. 12,50,000/- is paid for the registry of said land which is owned by three persons i.e. Bimla Mittal ALZPM4643B, VIJAY MITTAL ALZPM4645H and VIKAS KUMAR MITTAL ALWPM0183F, all three are income tax payee and have their own sources of income. They are regular income tax payee. The AO is erred in adding all the stamp duty of Rs. 1250000 paid by all the three registry holders, in the assessee Smt Bimla Mittal only. Bimla Mittal is only one third owner of the Land and hence only one third stamp duty is attributable to the assessee and hence AO is quite wrong in adding Rs. 1250000 in her total income.*

*5. Other Grounds will be submitted at the time of hearing.*

*6. Your honor, the assessee Smt Bimla Mittal has submitted her net worth while at the time of assessment proceedings, in the net worth it is clearly shown the sources of stamp duty. The AO has ignored the facts and submissions available on records.*

*7. Your honor, the AO has also ignored the fact that the husband of the assessee had recently expired leaving the deal of plots. He must have left some of money for the stamp duty. Accordingly, balance sheets have been*

*filed on records which show the sources of payment. No questions have been raised by the AO on the sources provided and hence A.O. is quite incorrect in this respect.”*

2. A notice through speed post acknowledgement due was sent to the appellant on 07.02.2022, which has been returned un-served with a remark ‘unknown’. Notice has been issued to the appellant/assessee on the address H. No. 544, Ward No. 16, Hodal, Palwal, Haryana 121106 and the same address has been mentioned Form 36 by the assessee in the column of ‘complete address for sending notices’. As per judgment of Hon’ble Supreme Court in the case of PCIT vs. M/s. I Ven Interactive Ltd. dated 18.10.2019 in Civil Appeal No. 8132 of 2019, in absence of any specific information to the Assessing Officer with respect to change of address and/or change of the name of assessee, Assessing Officer would be justified in sending the notices at the available address mentioned in the PAN database of the assessee. Respectfully following the same, we hold that when the assessee has filed return mentioning a particular address as per his PAN database, which has also been noted by the Assessing Officer as well as by the assessee himself in Form No. 36 as complete address for sending the notices and the assessee is not found available on the same address and no information about change of address to the Assessing Officer by the assessee, then we safely presume that all possible efforts have been made regarding service of notice on the assessee on the address given in PAN data

and by assessee and assessee is not available, then we have no alternate but to proceed ex parte qua assessee to decide this appeal after hearing the submissions of Id. Sr. Departmental Representative (DR).

3. Learned DR, supporting the assessment as well as the first appellate order, submitted that the Assessing Officer was right in making addition in the hands of the assessee. He further submitted that the Id. CIT(A) took a reasonable and justified approach in granting relief to the assessee of 2/3<sup>rd</sup> of the addition and sustained the addition to the extent of Rs.4,16,667/-, as the assessee failed to explain the source of stamp duty paid by her along with co-owners. Therefore, the order of the Id. CIT(A) may kindly be upheld.

4. On careful consideration of the arguments of the Id. DR along with assessment as well as first appellate order, I find that before the Id. CIT(A), the assessee submitted an explanation that the amount of stamp duty paid to the extent of Rs.4,16,667/- was paid out of consideration received on sale of property amounting to Rs.14,50,000/- prior to 28.01.2010. However, this explanation of the assessee was not allowed by the first appellate authority by observing that the sale consideration was received in cash or cheque is not mentioned in the sale deed and even if it is presumed that the sale consideration was received in cash in January, 2010, then it is almost impossible to assume that the same cash was

available with the assessee and co-owners and was utilized by them for purchasing the stamp papers in February, 2014.

5. In the backdrop of above findings of the authorities below and the explanation of the assessee, I am of the considered view that the assessee was not required to explain the source of stamp duty paid by all three co-owners, but the onus was to explain the source to the extent of Rs.4,16,667/- only utilized for purchasing the stamp papers. Id. CIT(A) has not disputed that there was a sale of land against consideration of Rs.14,50,000/- and the assessee being the seller of the property, executed the sale deed in January, 2010. If the Id. CIT(A) was not satisfied with the explanation of the assessee and the facts were not clear regarding receipt of consideration in cash or cheque then he could have asked the Id. Authorized Representative of the assessee to explain the position as to whether sale consideration regarding the sale deed executed by the assessee in January, 2010 was received in cash or cheques. No such exercise has been taken by the Id. CIT(A) and he proceeded to hold that even if for the sake of arguments, it is presumed that the sale consideration was received in cash in January, 2010, then it is impossible that the same sale consideration was available with the assessee for purchasing of the stamps. In my humble understanding, when the assessee, by way of submitting copy of sale deed, has substantiated that she has received sale consideration of Rs.14,50,000/- prior to purchase of property and

purchase of stamp papers to the extent of Rs.4,16,667/-, then it has to be presumed that the assessee has submitted all possible evidence under her control and command, explaining the source of amount used for purchase of stamp papers. If the Id. CIT(A) was not satisfied and clear about the explanation of the assessee then he could have undertaken further enquiries asking the assessee to substantiate his explanation by way of additional documentary evidence. Without doing such exercise, he proceeded to reject the explanation of the assessee at the threshold which is not a reasonable and justified approach. The assessee is a sr. citizen lady belonging to a village background and submitted all possible documentary evidence in the form of copy of sale deed showing the receipt of sale consideration of Rs.14,50,000/- prior to the purchase of stamp papers to the extent of Rs.4,16,667/-. Therefore, we allow the appeal of the assessee accepting the explanation of the assessee submitted before the Id. CIT(A) and consequently, the Assessing Officer is directed to delete the addition.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on /05/2022.

Sd/-

**(C.M. GARG)**  
**JUDICIAL MEMBER**

Dated: 05/05/2022

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