

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.582/Ind/2019
(Assessment Year: 2010-11)

Ambesh Shrivastav 111, Scheme No.74C, Vijay Nagar, Indore, Madhya Pradesh - 452010	Vs.	Income Tax Officer-1(4) Indore
PAN No.AHCPS4715P		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by :	Shri Ashish Porwal, Sr.D.R.

Date of Hearing	20.09.2022
Date of Pronouncement	21.09.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 23.02.2019 passed by the Commissioner of Income Tax (Appeals)-1 Indore (in short 'CIT(A)'), arising out of the order dated 27.12.2017 passed by the Income Tax Officer-1(4), Indore under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2010-11.

2. The assessment order was finalized by the Ld.AO on 27.12.2017 by making addition of Rs.5,33,255/- on long term capital gain.

3. In appeal, the same is confirmed by the Ld. CIT(A). Hence, the instant appeal before us.

4. The brief facts leading to the case is this that the assessee alongwith 21 co-sellers sold immovable property lying and situated at Talawali Chanda to M/s. Sarthak Innovations Pvt. Ltd. The sale deed was registered under Section 2(14) of the Act on 21.10.2009 for a stated consideration of Rs.30Lakhs in which the assessee's proportionate share comes to only Rs.1,36,561/-. The case of the Revenue is this that the property is situated within a distance of 8 kms. from the municipal limits of Indore. Therefore, it is a capital asset within the meaning of Section 2(14) of the Act and capital gain is chargeable on sale of such land. The deed was registered on 21.10.2009. Therefore, the capital gain has been found chargeable for the year under consideration. The market value of the property has been assessed by the Sub-Registrar at Rs.1,31,00,000/- as against the sale consideration of Rs.30,00,000/-. Since, the document was registered on 31.10.2009 as per guideline of the A.Y. 2010-11, the assessment was finalized upon addition under Section 50C of the Act, which was further confirmed by the first appellate authority.

5. None appeared at the time of hearing on behalf of the assessee. It further appears from the records that though the matter was fixed for hearing on number of occasions, the assessee neither filed written submission nor

attended. However, Ld.DR made his argument and supported the order passed by the authorities below.

6. We also further considered the order passed by the Ld.CIT(A). The crux of the finding of the Ld.CIT(A) in regard to moot point enrolled in this particular matter as reproduced herein below:

*“ 4. **Ground Nos. 1 & 2:** Both the grounds of appeal have been raised against the initiation of proceeding under section 147 of the Income Tax Act, 1961. During the course of assessment proceedings as well as appeal proceedings, the appellant has taken the plea that the issue of notice u/s 148 of the Income Tax Act, 1961 by way of invoking section 147 of the Income Tax Act, 1961 was bad in law. It has mainly been contended that the impugned capital asset was transferred to the purchaser in F.Y. 2007-08 and the sale consideration was duly received in said year through the directly /through POA holder. Further, it was contended that since the possession of the land was also given in the above financial year, the reopening of the case for the A.Y. 2010-11, which is under consideration was bad in law. I have perused the facts of the case carefully. I have also noted the findings of the AO which is mainly based on the registered sale deed dated 21/10/2009. It has been observed that the documents for sale deed was prepared in this case continuously in three different financial years i.e. 2006-07, 2007-08 & 2008-09 and finally the sale deed was registered in F.Y. 2009-10 which is relevant to the A.Y. 2010-11. It is also observed that the sellers of the plots have signed the sale deed in three different financial years whereas the purchaser has paid the additional stamp duty in accordance with market value assessed by sub-registrar in the F.Y. 2009-10. Therefore, admittedly till the registration of the document, the same was simply a draft document having no legal sanctity. Moreover, the fact of transaction having been taken place had come to the possession of AO through AIR information leading to further proceedings. Since, no PAN of the sellers was specified in the sale deed, the information if not received from AIR would never have reached to the assessing officer. Therefore, it was valid and important information in possession of the AO relevant to the A.Y. 2010-11 which led the initiation of proceedings u/s 147 of the Income Tax Act, 1961. Therefore, in my considered opinion, the AO had no reason to reopen the case of A.Y. 2008-09 as the information was relevant to A.Y. 2010-11. Further, these objections were raised by the appellant before the AO during the assessment proceedings. The same have been found dealt with by the AO through a speaking order which is duly reproduced at page nos. 3 to 6 of the assessment order. The various case laws cited by the appellant have been gone through and the same have been found distinguishable on facts. Therefore, keeping in view the facts and circumstances of the case, I do not find any infirmity in invoking section 147 of the Income Tax Act, 1961 by the AO. Therefore, both the grounds of appeal are **dismissed**.*

*5. **Ground No.3:** This ground of appeal has been raised against the assessment of capital gain in accordance with the deeming provisions of section 50C of the Income Tax Act,*

1961 considering the total consideration of impugned capital asset at Rs.1.31 Crores as assessed by the subregistrar. The AO has discussed the issue in details at para nos. 6 to 8 of the assessment order besides considering the same while disposing of the objections raised against reopening of the assessment which is also discussed in details at para no. 4 of the assessment order. The appellant, during the course of appeal proceedings has contended that the possession of the plot under consideration was handed over to the purchaser i.e. M/s Sarthak Innovation Pvt. Ltd. on 27/11/2007 which is relevant to A.Y.2008-09. In support of the same the appellant has relied on the draft sale deed which has been signed through the POA holder on behalf of the appellant. It has further been contended that the entire sale consideration of Rs.1,36,561 /- has been received in the F. Y.2007 -08 in pursuance of sale deed duly submitted to the sub-registrar office for the purpose of registration. Therefore, the appellant states that all the conditions required under the provision of section 2(47) of the Income Tax Act, 1961 have been fulfilled for making the transaction complete in the F.Y. 2007-08.

5.1 I have gone through, the assessment order, written submissions, order dealing with objections u / s 147 of the Income Tax Act, 1961. I have also gone through the impugned sale deed dated 21/10/2009, the draft of which have been signed by the sellers of the plots in different financial years i.e. 2006-07, 2007-08 & 2008-09. It is also an admitted fact that the final registration of the draft document could take place only in the F.Y. 2009-10 relevant to the assessment year under consideration. The information regarding such transaction has also come to the possession of the AO much after the registration took place. Due to peculiar facts of the case under consideration, it is difficult to accept the contention of the appellant that the transaction in this case was complete in the F.Y.2007-08 complying with the conditions under section 2 (47) of the Income Tax Act, 1961. I have gone through the assessment record maintained with AO and found that the 22 peoples have come together to sell their plots through a single registry to a builder called "M/ s Sarthak Innovations Pvt. Ltd." It is further seen that all the plots have been sold through five POA holders alongwith some direct sale on cash basis. The information received by the AO from M/ s Sarthak Innovations Pvt. Ltd. during the course of assessment proceedings revealed that the following POA holders transferred the plots and received the amount on behalf of the persons (sellers) indicated against the names.

Sr. No.	Name of POA Holders	Parties for whom amount received	Cheque Nos.	Amount	Remarks
1	Surendra Tamar	1.Govind Tare 2.Chandrakanta Jain 3.Sukhda Paranjpe	631777	5,00,000/-	
2	Paraschandra Jain	1. Ramanlal Jain	631773	5,00,000/-	
3	Manoj Tare	1.Vishal Chawda 2.Surendra Bapat	631776	5,00,000/-	
4	Balkrishna Porwal	1. Sindhu Kasture 2.Omprakash Chauhan 3.Sandeep Patwari	631774	5,00,000/-	
5	Rajkumartiwari	1. KalpnanJain	631775	5,00,000/-	

		2. Asha Panot 3. Kamna Khadelwal 4. Pratirna Jain 5. Harbhajan kaur			
6	Direct	1. Deepak Pandit 2. Suman Trivedi 3. Manoj Joshi 4. Chandrasen Sonone 5. Asha Tiwari 6. Prasanna S. Nair 7. Ambesh Shrivastav 8. Kaushalya Bai Jain	Cash	5,00,000/-	

It is evident from the above chart that the contention raised by the appellant is not acceptable because the size of all the 22 plots was almost same, whereas the POA holders have received cheques of Rs.5 lacs each on behalf of 14 parties which has not been found identical. It is also not understood how Shri Paraschandra Jain was issued cheque for an amount of Rs.5 lacs on behalf of only one seller i.e. Shri Ramanlal Jain. Similarly, POA holder Shri Rajkumar Tiwari has received a cheque of Rs.5 lacs on behalf of 5 Parties (sellers) which leaves the sale consideration at Rs.1 lac per seller whereas, as per the size of the plot, the sale consideration should have been well above Rs.1 lac. The above chart clearly establishes that it is a colorable device adopted by the sellers as well as the purchasers to avoid capital gain and also to explain the investment easily. I had also occasion to see the copy of ledger account filed by M/s Sarthak Innovation Pvt. Ltd. for the F. Y. 2009-10. It has been observed that the said purchaser has reflected the above amounts of Rs.5 lacs each to 5 persons and an amount of Rs.5 lacs in cash to various persons under the "**Land advance Talavalichandra Account**" which clearly means that the purchaser had never considered the transaction as complete in any assessment year earlier to A.Y. 2010-11. Further, no such land has been taken in to balance sheet before the above said assessment year. This clearly proves that neither the consideration paid was full and final nor the possession of land was handed over to M/s Sarthak Innovations Pvt. Ltd. before F.Y. 2009-10. I have further gone to see if the real sellers including, the appellant under consideration has ever received her /his share of amount out of the respective Rs.5 lacs paid to the POA holder. It is found that there is no such evidence of having received the appellant's share either through banking channel or otherwise. Further, the appellants have been relying heavily on the POA issued to the respective holders. These POAs can never been considered either as agreement to sale or any proof of sale made to the holder. Therefore, the same cannot be of any help to prove that the sale of plot was complete in A.Y. 2008-09 and the possession was handed over.

5.2 In view of above facts, the plea cannot be accepted that the transaction was complete in A.Y. 2008-09. Similarly, the document under consideration i.e. draft sale deed presented in the office of sub-registrar can neither be treated as complete sale deed nor the agreement to sale on the strength of which it could have been said that consideration was received and possession was handed over to the purchaser of the property. Therefore, various case laws cited by the appellant have also not been found applicable on the peculiar set of facts under consideration. Therefore, considering the above stated facts and the entirety of the circumstances and relevant documents, the AO has been found justified

in assessing the capital gains in the A.Y. 2010-11 when the sale deed pertaining to the land belonging to as many as 22 persons was completed by way of proper registration. The same has been worked out by the AO at Rs.5,33,255/- on the basis of deemed sale consideration of Rs.5,96,315/- under section 50C of the Income Tax Act, 1961. The addition is therefore confirmed. Therefore, all the grounds of appeal are here by dismissed.”

Upon careful consideration of the order passed by the Ld.CIT(A) and AO, as well, we do not find any ambiguity in such order passed by them. More so, in the absence of any assistance rendered by the assessee at the time of hearing of the matter, we have no other alternative but to uphold the order passed by the Ld.CIT(A). Assessee’s appeal is, therefore, found to be devoid of merit and, thus, dismissed.

7. In the result, assessee’s appeal is dismissed.

This Order pronounced in Open Court on 21/09/2022

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER
Indore; Dated 21/09/2022

S. K. Sinha, Sr. PS

True Copy

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

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

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Indore