

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 1922/Del/2021
निर्धारणवर्ष/Assessment Year : 2010-11

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| Rekha Sanjay, B-92, Old Kondli, HB Colony, Delhi - 110 096. | <u>बनाम</u> Vs. | Income Tax Officer, Ward : 60 (4), New Delhi. |
| PAN No. AQBPS9773P | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

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| निर्धारितकीओरसे / Assessee by : | Shri Anil Jain, Advocate; |
| राजस्वकीओरसे / Department by | Ms. Meenakshi Dohore, [Addl. CIT] - D. R.; |

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| सुनवाईकीतारीख/ Date of hearing : | 02.01.2023 |
| उद्घोषणाकीतारीख/Pronouncement on : | 20.02.2023 |

आदेश / ORDER

PER C. N. PRASAD, J.M.

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred

to CIT (Appeals)]/National Faceless Appeal Centre [NFAC], Delhi, dated 21.10.2021 for the Assessment Year 2010-11.

2. The assessee has raised the following substantive grounds of appeal:-

“1. The Ld. CIT (A) has erred in confirming the action of the AO in initiating the proceedings u/s 148.

2. The Ld. CIT (A) has erred in confirming the addition of Rs.60.88 Lakhs made u/s 69B.

3. The Ld. AO and CIT (A) has erred in making the entire addition of the investment of the property in the hands of Ms. Rekha Sanjay though she is the owner of only half of the property as per sale deed and remaining half is owned by her husband.

4. The Ld. CIT (A) Faceless has passed the order without giving proper opportunity to the appellant.

5. The order of Ld. CIT (A) is against law and facts of case.”

3. This ld. Counsel for the assessee at the outset submits that there is no justification in making addition under section 69B of the Income Tax Act, 1961 (the Act) at Rs.60,88,500/- in respect of property purchased by the assessee along with her husband, Sanjay C Prakash. The ld. Counsel submits that the property was purchased in the year 2009 as joint owners and the sale consideration of Rs.60,88,600/- was paid by the assessee over a period of time during the assessment years 2009-10, 2010-11 and 2021-22. However, the Assessing Officer treated entire consideration of Rs.60,88,600/- as unexplained investment for

assessment year 2010-11 in the hands of the assessee alone though the property was purchased jointly. The ld. Counsel for the assessee referring to the assessment order passed in her husband's case (Shri Sanjay C. Prakash) which is placed at page 59-60 of the paper book submits that the Assessing Officer made addition of Rs.10,09,800/- under section 69 of the Act as an unexplained investment by passing the best judgement assessment under section 144 read with section 147 of the Act. The ld. Counsel submits that in the husband's case the Assessing Officer treated Rs.20,19,600/- as unexplained investment in purchase of property and being 50% of share in the property an addition of Rs.10,09,800/- was made in the case of the husband.

4. The ld. Counsel further submits that the assessment was re-opened based on incorrect facts in the case of the assessee also. The ld. Counsel submits that assessee along with her husband entered into agreement for purchase of property Plot No. A-052A, Sector 72, Noida, on 25.02.2009 with the allottee Mr. Gopi on payment of Rs.4,50,000/- in addition to the total cost of plot payable to Noida Authority in instalments and the cost of the property is as under:-

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| (a) Amount payable to Noida Authority from 2009 - 2014 | Rs. 52,92,000/- |
| (b) Premium payable to Mr. Gopi | Rs. 44,50,000/- |
| (c) Stamp Duty | <u>Rs. 3,46,500/-</u> |
| TOTAL : | <u>Rs.60,88,500/-</u> |

5. The ld. Counsel submits that even though the assessee is only a co-owner of the property the entire sale consideration was treated as unexplained investment in the hands of the assessee. He further submits that there is no justification at all in considering the entire purchase consideration of Rs.60,88,500/- as unexplained investment in the hands of the assessee. The ld. Counsel for the assessee further submits that an amount of Rs.7,51,000/- was paid to Noida Authority during assessment year 2009-10, an amount of Rs.2,00,000/- was paid to Shri Gopi and an amount of Rs.1,15,000/- was paid towards Stamp Duty totaling to Rs.10,68,000/-. Similarly in the assessment year 2010-11 an amount of Rs.8,36,600/- was paid to Noida Authority, an amount of Rs.2,50,000/- was paid to Mr. Gopi and an amount of Rs.2,32,000/- was paid towards Stamp Duty totaling to Rs.13,18,600/-. The ld. Counsel further submits that in the assessment year 2020-21 the assessee has paid an amount of Rs.37,04,000/- to Noida Authority. Therefore, the ld. Counsel submits that during the assessment year under consideration an amount of Rs.13,18,600/- only was paid towards purchase of the property.

6. On hearing both the parties and perusing the material placed before us it is evident that the property was purchased by the assessee along with her husband, Shri Sanjay C. Prakash. However, the entire purchase consideration was assessed in the hands of the assessee alone under section 69B of the Act as un-explained investment. On perusal of the assessment order we see that in the case of assessment proceedings the assessee has

not produced any document before the Assessing Officer. Considering the submissions and taking the evidences placed on record, we are of the considered view that in the interest of justice this matter has to go back to the Assessing Officer for proper appreciation of evidence and to complete the assessment de novo. Hence the assessment is set aside and the Assessing Officer is directed to redo the assessment de novo in accordance with law considering the evidences placed on record. The assessee is directed to file the necessary details before the Assessing Officer and co-operate with the assessment proceedings. The grounds raised by the assessee are partly allowed.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on : 20/02/2023

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

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 20/02/2023

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

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| Date of dictation | 16.02.2023 |
| Date on which the typed draft is placed before the dictating member | 16.02.2023 |
| Date on which the typed draft is placed before the other member | 20.02.2023 |
| Date on which the approved draft comes to the Sr. PS/ PS | 20.02.2023 |
| Date on which the fair order is placed before the dictating member for pronouncement | 20.02.2023 |
| Date on which the fair order comes back to the Sr. PS/ PS | 20.02.2023 |
| Date on which the final order is uploaded on the website | 20.02.2023 |
| Date on which the file goes to the Bench Clerk | 20.02.2023 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the order | |