

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2491 /Del/2016  
(Assessment Year : 2010-11)

Mrs. Arvinder kaur, B-33-34, Sector- Gamma-I, G.Noida PAN : AJNPK5608E	Vs.	ITO, Ward-1(1), Aayakar Bhawan, A-2D, Sector-24, Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. Manoj Gupta, CA & Shri Kundan D. Wahi, CA
Revenue by	Sh. Vijay Kumar Kataria, Sr. DR

Date of hearing:	06.01.2023
Date of Pronouncement:	21.02.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The present appeal has been preferred by the assessee against the order u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "The Act"), dated 29.02.2016 of Ld. CIT(A)-1, Noida ( hereinafter referred to as Ld. First Appellate Authority or in short " Ld. F.A.A.") against the

assessment order dated 17.02.2015 passed by ITO, Ward-1(1), Noida (hereinafter referred to as "Ld. AO") for AY 2010-11 wherein the appeal preferred by the assessee was partly allowed.

2. The dispute between the revenue and the assessee arises out of transfer of a plot in favour of the assessee by one Sri Charan Singh. The assessee claimed before the Ld. AO, that it was a gift made to her on 15.04.2009 by her maternal uncle who had executed a gift deed on 15.04.2009. It was claimed by the assessee that as authorities were not transferring the property merely on the basis of gift, the maternal uncle had also executed agreement to sell without possession dated 13.05.2009, a notarized Will dated 25.03.2009 and also executed registered GPA dated 13.05.2009. Subsequently, the transfer deed was executed on 23.10.2010 by Sri Ravinder Singh the GPA of Sri Charan Singh, the maternal uncle of the assessee. The AO has rejected the claim of gift in the light of provisions of Section 56(2)(vii)(b) of the Act which were introduced in the Act by Finance Act, 2010, with retrospective effect from 01.10.2009. The Ld. AO had considered this transfer to be a deemed gift/ income in the hands of assessee valuing it for Rs. 1,23,88,000/- on the basis that at the time of execution of transfer deed on 23.03.2010, the stamp duty value paid was Rs. 1,27,88,000/- and reducing Rs. 4,00,000/- the sale consideration, shown to be paid in the transfer deed. The AO also concluded that the assessee had failed to explain the source of payment of Rs. 4,00,000/- and it was added the income as investment out of undisclosed source.

3. In the appeal preferred by the assessee, she challenged the order of Ld. AO on the ground primarily that Section 56(2) of the Act, has no applicability in the case as the gift has been made prior to 1<sup>st</sup> October, 2009

by way of a valid gift deed. It was submitted before Ld. FAA that the donor and the assessee were both uneducated farmers and due to ignorance, the amount of Rs. 4,00,000/- paid towards stamp duty has been inadvertently shown as sale consideration in the transfer deed. It was also claimed before Ld. First Appellate Authority that the Ld. AO had failed to appreciate that out of this Rs. 4,00,000/- a sum of Rs. 3,00,000/- was paid by cheque. So, there was no failure to explain source.

4. The Ld. First Appellate Authority in its impugned order has observed that the amendment brought by Finance Act, 2010 has been correctly invoked by the Ld. AO considering the transfer to be deemed gift, however, in regard to addition of Rs. 4,00,000/- the Ld. First Appellate Authority gave relief to the assessee to the extent of Rs. 3,00,000/- which were explained by the assessee from the bank statement showing that Rs. 4,00,000/- were transferred by the husband of appellant, however, Rs. 1,00,000/- which was shown prior to receipt of Rs. 4,00,000/- from her husband was found to be correctly assessed as unexplained investment in plot and to that extent it was confirmed.

5. The assessee has approached this Tribunal challenging the order of Ld. First Appellate Authority, raising following grounds of Appeal.

*“1. That in the facts and circumstances of the case and in law ld. CIT(A) erred in deeming gift of immovable property to appellant by Sh. Charan Singh (Mama Sasur ( Mama of husband of appellant) as sale.*

*2. That in the facts and circumstances of the case and in law ld. CIT(A) erred in invoking provisions of section 56(2)(vii) of Act to*

*the gift of immovable property to appellant (done) prior to 1.10.2009, the date of applicability of section 56(2)(vii) of Act.*

3. *That in the facts and circumstances of the case and in law ld. CIT(A) erred in not taking cognizance of gift deed and other supporting documents executed because of non compliance of provisions of Registration Act, 1908 and provisions analogous thereto.*

4. *That in the facts and circumstances of the case and in law ld. CIT(A) erred in upholding addition of Rs. 1 lakh made by ld. Assessing Officer supposedly under section 69 of Act.*

5. *The appellant crave leave to add, amend or alter grounds of appeal before hearing.”*

6. The ld. Counsels for the assessee and Ld. Sr. DR were heard and the record was carefully perused.

7. Arguing the case for assessee in regard to ground no. 1 to 3, the Ld. Counsel for the assessee took the Bench through the documents executed between the assessee and her maternal uncle, to contend that the Ld. Revenue authorities below have erred in invoking the provisions Section 56(2)(vii)(b) of Act which was effective from 01.10.2009 only, while documents of transfer in the form of gift deed was executed on 25.03.2009 followed by registered Will dated 13.05.2009, registered agreement to sell (without possession) and a registered GPA on 13.05.2009. Thus, all these documents were prior to 01.10.2009 i.e. date from which amendment of 2010 became effective retrospectively from 01.10.2009. It was contended

that out of ill advise and due to some confusion created by registration authorities documents of all sorts were executed to protect the interest of assessee while it was a simple gift with effect from 25.03.2009. It was submitted that the Id. Revenue authorities below wrongly considered the transfer deed executed on 23.10.2010 to be determinative document and considered transaction to be a deemed gift for the purpose of Section 56(2)(vii)(b) of the Act while the relevant document was executed on 25.03.2009 or 13.05.2009. He relied the judgment of Hon'ble Supreme Court of India in **Suraj Lamp and Industries Pvt. Ltd. vs. The state of Haryana and Ors. (2012) 1 SCC, 565** and referred to para no. 26 to contend that the documents executed in favour of the assessee like Will/ POA have been recognized to be valid documents as they have been executed prior to 11.10.2011 and it is only after 11.10.2011 such documents have become insignificant to claim a right to immovable property after judgment of Hon'ble Supreme Court of India in **Suraj Lamp and Industries Pvt. Ltd. case (Supra)**. Nothing was contended specifically for ground no. 4.

8. On the other hand the Ld. Sr. DR defended the orders of Revenue Authorities.

### **GROUND NO. 1, 2 & 3**

9. Giving thoughtful consideration to contention and matter on record it can be observed that the first document executed was (page no. 33 of PB), a gift deed dated 15.04.2009 on stamp paper of Rs. 10 bearing signatures of donor Sh. Charan Singh only. It is an unregistered gift but duly notarized. One unregistered Will dated 25.03.2009 by testator Sh. Charan Singh in

favour of the assessee (page no. 40 of the PB). There is a registered Will (page 34 of PB) dated 13.05.2009 of Sh. Charan Singh in favour of the assessee. There is a registered agreement to sell (without giving possession) dated 13.05.2009 (page no. 41 of the PB). In this sale consideration has been shown to be Rs. 4,00,000/-. The recital shows payment of Rs. 1,00,000/- as part payment made in cash. This agreement also mentions possession will be transferred at the time of execution of sale deed/ transfer deed. A general power of attorney was executed on 13.05.2009 by Sh. Charan Singh in favour of the Ravinder Singh, son of Bhag Singh. The same is on record at page no. 146 of the PB. 0000. Then lastly there is Transfer Deed of lease hold rights executed and registered on 23.10.2010.

10. Thus, what can be concluded is that the gift document of 15.04.2009 was the first document of a voluntary transfer of interest in immovable property without consideration and other documents like Will agreement to sell or GPA were executed subsequently on precautionary basis. The judgment relied by the Ld AR in **Suraj Lamp and Industries Pvt. Ltd. (supra)** protected documents like Gift, GPA and Will if they were executed before 11/10/2011 and aforesaid documents have to be considered as part of one transaction. In the case in hand the same was of the nature of Gift only.

11. The Ld. AO has erred in observing that the transaction is one of the nature where assessee has “received” immovable property for a consideration, which is less than the stamp duty value and thus considered it to be deemed gift/ income in the hands of assessee. In the context of “deemed gift” on the basis of inadequate consideration, the series of documents executed between the assessee and her maternal uncle indicate that the transaction was Gift only and had completed before 01.10.2009. So

the provisions of Section 56(2)(vii)(b) of the Act which were introduced in the Act by Finance Act, 2010, with retrospective effect from 01.10.2009 are wrongly applied. Transfer Deed of lease hold rights executed and registered on 23.10.2010 was merely documents whose execution became necessary for creating a legal title. Assessee cannot be put to disadvantage on basis of this documents dated 23/10/2010, so as to say that there was transfer of interest on this date only. All the previous documents once duly protected by **Suraj Lamp and Industries Pvt. Ltd. Case (supra)** deserved to be taken into consideration, which Ld. Tax Authorities below failed to do.

12. As with regard to **ground no. 4** the Ld.Tax Authorities below have fallen in error to not take into consideration the series of documents. Since the transaction is proved to be a gift, there is no question of any consideration being passed. The reference to consideration in agreement seems to be out of wrong advise parties may have received as they were advised to execute all sorts of documents with only intention to protect any contingency. However, the primary document of transfer of interest being the gift deed only.

13. In the light of aforesaid, grounds of appeal are sustained and accordingly, **appeal is allowed.**

**Order pronounced in the open court on 21<sup>st</sup> February, 2023.**

Sd/-  
(G.S.PANNU)  
PRESIDENT

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

*Date:- 21.02.2023*  
**\*Binita, SR.P.S\***

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI