

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1729/Del/2022
Assessment Year: 2012-13**

Sanjiv Gupta, G-602,
Pearl Gateway Tower,
Sector-44, Noida.

PAN: ADYPG8000D
(Appellant)

Versus DCIT, Central Circle-1,
Noida.

(Respondent)

Appellant by : Sh. Mukul Gupta, Ld. CA

Respondent by : Sh. Jeetandra Kumar Kale, Ld. Sr. DR

Date of hearing: 08.02.2023

Date of order : 27.02.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 07.07.2022, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 4, Kanpur (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2012-13.

2. In the instant case, the Assessee declared an income of Rs.23,57,510/- by filing its return of income on dated 29.09.2012. Thereafter, a search and seizure operation u/s. 132 of the Act was conducted on 11.11.2014 in the residential and office premises of the Assessee and consequent to that assessment order was passed on 31.12.2016 u/s. 153A read with section 143(3) of the Act, whereby the returned income of Rs.23,57,510/- was accepted as assessed income. Thereafter, the assessment was reopened u/s 147 of the Act by recording reasons and consequently notice dated 26.03.2019 u/s. 148 of the Act was issued and served upon the Assessee, whereby the Assessee was asked to e-file its return of income within 30 days of the service of the said notice. The Assessee in response failed to furnish its return of income. Thereafter, notices u/s. 142(1) were also issued on 22.05.2019, 13.09.2019 and 12.12.2019, but the same also remained un-complied. Therefore, in the constrained circumstances, the Assessing Officer, finding no alternative, completed the assessment as ex parte u/s. 144 of the Act on the basis of material available on record and ultimately added an amount of Rs.45,36,294/- as unaccounted expenditure on account of exemption claimed u/s. 54F of the Act.

3. The Assessee, being aggrieved, preferred first appeal before the Id. Commissioner on the legality of the initiation of proceedings u/s. 147/148 of the Act as well as on merits. The

Assessee before the Id. Commissioner claimed that in the notice u/s. 148 of the Act, the Assessing Officer has written incomplete address without mentioning the house number of the Assessee which reads as "Shri Sanjiv Gupta, **Sector-6, Noida, G.B. Nagar**", which goes to show that the notice u/s. 148 of the Act was not served upon the Assessee.

3.1 The Id. Commissioner though considered that plea of the Assessee, but found not acceptable on the ground that the Assessing Officer has observed in the assessment order that the notice was served upon the Assessee. From this it is evident that the notice was served on the correct address, as was previously done in the regular assessment and search assessment proceedings.

3.2 The Assessee before the Id. Commissioner also claimed that proceedings u/s. 147/148 of the Act have been initiated illegally by a non jurisdictional Income-tax Officer, Ward 3(3), Noida without verification of the return of Assessee and without verifying completed assessment u/s. 153A read with section 143(3) of the Act. The Id. Commissioner found the said submission/contention not correct on the reason that on the basis of information of the sale of property by the Assessee, clarifications were sought by ITO Ward 3(3), Noida by issuing

notice u/s. 133(6) of the Act and this was done in accordance to the standard operating procedure of the department, in which verifications are made in the matter of sale of such properties. But the Assessee chose not to comply such notice and this was in clear defiance of the proceedings taken up as per law. Therefore, ITO Ward 3(3), Noida recorded the reasons of initiating income escaping assessment proceedings, by taking requisite approval of the competent authority, i.e., the Pr. CIT, Noida and issuing the notice u/s. 148 of the Act dated 26.03.2019. Since all the procedures laid down by law, have been followed by the ITO Ward 3(3), Noida, the notice issued u/s. 148 of the Act cannot be said as illegal and beyond jurisdiction.

3.3 The Assessee before the Id. Commissioner also claimed that the DCIT, Central Circle-II, Noida reassessed the income of the Assessee without issuing any notice u/s. 148 of the Act and without any approval from PCIT or higher authority. The Id. Commissioner by considering the said claim of the Assessee held that the notice dated 26.03.2019 u/s. 148 of the Act was already issued after following all the procedures as laid down by law and the records were transferred to the DCIT, Central Circle-II, Noida. Since before recording the reasons and issuing notice u/s. 148, the approval of competent authority was sought and notice u/s. 148 of the Act was duly served upon the Assessee, therefore, there was no requirement on the part of the DCIT,

Central Circle-II, Noida to issue further notice u/s. 148 of the Act.

3.4 The Assessee before the Id. Commissioner further claimed that there was no escapement of income as capital gain arising out of sale of property, M-39, Sector 66, Noida, since the same was duly reflected in the return of income and that the Assessing Officer has erred in disallowing exemption u/s. 54F of the Act amounting to Rs.45,36,294/-. The Id. Commissioner considered the said contention of the Assessee and reproduced the working out of the capital gain arising out of sale of property situated at M-39, Sector 66, Noida, whereby the deduction to the extent of Rs.45,36,294/- was claimed u/s. 54F of the Act. The Id. Commissioner further held that the Assessee has claimed deduction u/s. 54F of the Act, amounting to Rs.45,36,294/- by making a claim that investment of Rs.76,65,350/- has been made, which includes purchase consideration of Rs.75,05,000/-, stamp duty of Rs.1,50,200/- and registrar fee of Rs.10,150/- in purchase of plot No. WA-18, Sector 135, Noida-201301. From the records produced by the Assessee, it was found that the Assessee has purchased the property at a sale consideration of Rs.75,05,000/-, however, the stamp duty value was Rs.1,49,91,000/-, therefore, this transaction is hit by the provisions of section 56(vii)(b) of the IT Act, i.e., the Assessee was required to offer Rs.74,86,000/- as tax in accordance to the

provisions of this section. The Id. Commissioner, therefore, granted an opportunity of being heard to the Assessee vide notice dated 14.06.2022, by which the Assessee was asked to furnish his response by 21.06.2022 to the show cause notice, which reads as under:

“In the ongoing appellate proceedings for AY 2012-13 in which disallowance u/s 54F of IT Act was made of Rs. 45,36,294/-, a submission is made that investment was made of Rs. 76,65,350/- (purchase consideration of Rs. 75,05,000/-, stamp duty of Rs: 1,50,200/- and registrar Fees of Rs. 10,150/-) in purchase of Plot No. WA-18, Sector 135, Noida- 201301. However it has been found that the purchase consideration i.e. Rs 75,05,000/- is less than stamp value of Rs. 1,49,91,000/- therefore you are required to explain as to why provisions of section 56(vii) of IT Act should not be invoked and / difference amount should be taxed as income.

This notice is also for giving you opportunity of being heard, therefore you directly/through your AR may attend the office of the undersigned on or before the given date and time in the notice, failing on which it shall be considered that you have nothing to say in this regard and the decision shall be taken accordingly.”

3.5 In response, the Assessee replied as under :

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.....

.....

Submission

“Immovable property transferred for inadequate, consideration w.e.f Asst, year 2014-15, where immovable property is received by an individual or

HUF for a consideration which is less than the valuation adopted for stamp duty propose by a sum exceeding Rs. 50000/- then the difference between the stamp duty valuation and consideration paid shall be deemed to be the income of the transferee.

If the date of agreement fixing the consideration value for transfer is different from the date of registration of the transfer, the stamp duty value as on the date of agreement, for transfer will be considered. This will apply only where part or full consideration is paid by any mode other than cash on or before the date of agreement for transfer.

It may be noted that a similar provision was introduced by finance No. 2 Act 2009 effective from 1st October 2009. However this provision was withdrawn retrospectively by the finance Act 2010 on the ground that this leads to double taxation as the transferor has already suffered the taxation on the difference of assessable value and actual consideration."

The present appeal is pertaining to A.Y. 2012-13 and no addition for inadequate consideration can be made for A.Y. 2012-13 moreover the purchase of property falls in A.Y. 2015-16.

Further in this case the complete proceeding of the case is bad in Law because of the followings:

1. No proper notice u/s 148 by jurisdictional A.O. was served upon the assessee.
2. Income tax officer ward 3(3) without mentioning complete address issued notice u/s 148 illegally without any jurisdiction as the jurisdiction of the case was with DCIT central circle Noida.
3. DCIT central circle 2 never issued notice u/s 148 and completed the assessment u/s 147 r.w.s. 144 without jurisdiction, on the notice issued by ITO ward 3 (3).

In view of above it is submitted that the whole proceeding be quashed as notice u/s 148 is bad in law by a non-jurisdictional AO and notice was never served upon the Assessee. Since the whole proceeding is bad ab-initio, the order passed be quashed. In an illegal proceeding no enhancement can be done. Moreover purchase of property is not falling in A.Y. 2012-13. It is further requested that appeal be disposed off on the

basis of this final representation dated 15.06.2022 and need not to wait for 21.06.2022. This representation dated 15.06.2022 be treated as final representation and appeal may be disposed off.”

3.6 The Id. Commissioner though considered the said reply of the Assessee but found the same not correct and ultimately directed the Assessing Officer to bring the amount of Rs.74,86,000/- into tax by issuing requisite demand notice while giving effect to this order and charge the requisite interest as per law u/s. 234A, 234B and 234C of the Act, by concluding as under:

That valuation of the property has been considered at Rs.75,05,000/-, however, the stamp value of the same has been taken at Rs.1,49,91,000/-. Therefore, it is concluded that the Assessee is entitled to deduction u/s. 54F of the Act but the provisions of section 56(vii)(b) of the Act are attracted since the Assessee is an individual and the purchase consideration of the land is less than stamp duty value of the property. This difference is Rs.74,86,000/- and the same is deemed income as per the provisions of this section. Since the provision of section 56(vii)(b) of the Act was introduced by the Finance Act, 2010 w.e.f. 01.10.2009 and the case of the Assessee pertains to F.Y. 2011-12. In this case, the transfer deed of lease hold rights in page No. 5, it is categorically mentioned that both the parties already entered into an Agreement to Sale which was duly registered in the office of Sub-Registrar, Noida on 15.11.2011 and for the same, stamp duty of Rs.1,50,200/- was paid. This means that the property was already transferred by the deed dated 15.11.2011 and this another Transfer Deed of Lease hold Rights was remaining part of the same. Further, the Assessee has taken benefit of section 54F of the Act by submitting that the investment has been made in the second property in FY 2011-12, then how can he himself claim that investment in this property has been made on 31.07.2014, that will definitely deprive him from making a claim of deduction u/s. 54 of

the Act. Further, looking to the facts of the case, it is concluded that the Assessee is entitled to claim of deduction u/s. 54F of the Act in the matter of capital gain arising from the sale of such property, since he has made requisite amount of investment in the property situated at plot No. WA-18, Sector-135, Noida and the payment of the amount of Rs.75,05,000/- was also made by the Assessee before 15.11.2011. Therefore, the submissions of the AR that this property has been purchased on 31.07.2014 by executing transfer deed of lease hold rights, is not correct since this transfer deed is simply extension of main registered deed dated 15.11.2011 and the investment in the property was already made and the property was already purchased for which the Assessee has also claimed benefit u/s. 54F of the Act. Thus, it is concluded that the actual purchase of property took place vide registered deed dated 15.11.2011, based on which the Assessee also took benefit as per the provisions of section 54F of the Act.

4. The Assessee being aggrieved against the addition of Rs.74,86,000/- which was directed to bring into tax by the Id. Commissioner, is in appeal before us.

5. Heard the parties and perused the material available on record. Coming to the merits of the case, the Id. Commissioner determined the liability to the tune of Rs.74,86,000/- by taking recourse of section 56(vii)(b) of the Act, mainly on the ground that the Assessee has entered into an agreement to sale which was duly registered in the office of the Sub-Registrar, Noida on dated 15.11.2011 and for the same stamp duty of Rs.1,50,200/- was paid on the income of Rs.74,86,000/- in accordance to the provisions of section 56(vii)(b) of the Act.

Since the transfer deed of lease hold rights dated 31.07.2014 is simply extension of main registered deed dated 15.11.2011 and the Assessee has already claimed the benefit u/s. 54 of the Act, and actual purchase of property took place vide registered deed dated 15.11.2011.

5.1 We have given thoughtful consideration to the peculiar facts and circumstances of the case. Let us peruse the provisions of section 56(2)(vii)(b) of the Act, which reads as under :

56(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i) dividends ;

(ia) income referred to in sub-clause (viii) of clause (24) of section 2;

(ib) income referred to in sub-clause (ix) of clause (24) of section 2;

(ic) income referred to in sub-clause (x) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(id) income by way of interest on securities, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(ii) income from machinery, plant or furniture belonging to the Assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(iii) where an Assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession";

(iv) income referred to in sub-clause (xi) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession" or under the head "Salaries";

(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after

the 1st day of September, 2004 but before the 1st day of April, 2006, the whole of such sum :

Provided that this clause shall not apply to any sum of money received—

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer; or
- (e) from any local authority as defined in the Explanation to clause (20) of section 10; or
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- (g) from any trust or institution registered under ⁶⁴[section 12AA or section 12AB].

Explanation.—For the purposes of this clause, "relative" means—

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendant or descendant of the individual;
- (vi) any lineal ascendant or descendant of the spouse of the individual;
- (vii) spouse of the person referred to in clauses (ii) to (vi);

(vi) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006 but before the 1st day of October, 2009, the whole of the aggregate value of such sum:

Provided that this clause shall not apply to any sum of money received—

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer; or
- (e) from any local authority as defined in the Explanation to clause (20) of section 10; or
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- (g) from any trust or institution registered under ⁶⁵[section 12AA or section 12AB].

Explanation.—For the purposes of this clause, "relative" means—

- (i) spouse of the individual;*
- (ii) brother or sister of the individual;*
- (iii) brother or sister of the spouse of the individual;*
- (iv) brother or sister of either of the parents of the individual;*
- (v) any lineal ascendant or descendant of the individual;*
- (vi) any lineal ascendant or descendant of the spouse of the individual;*
- (vii) spouse of the person referred to in clauses (ii) to (vi);*

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

PROVISO: Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

5.2 The provisions of section 56(2)(vii)(b) of the Act have been introduced by Finance Act, 2013 w.e.f. 01.04.2014 wherein the proviso was also inserted, which reads as under :

“Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause.”

5.3 Prior to the substitution of sub-clause (b), the provisions were as under:

“Any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property, shall be chargeable to Income-tax under the head ‘income from other sources’.”

5.4 From the old provisions, it is clear that prior to 01.04.2014, there was no such provision for considering the stamp duty value of any immovable property purchased with consideration fixed, for charging to tax. However by introducing new provisions and

proviso in section 56(2)(vii)(b) of the Act, it was introduced that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, then the stamp duty value on the date of the agreement, may be taken for the purposes of the sub-clause of section 56(2)(vii)(b) of the Act.

5.5 Coming to the instant case, which pertains to A.Y. 2012-13 and having involved agreement to sale dated 15.11.2011, executed between seller Sh. Sandeep and the purchaser Shri Sanjiv Gupta, who is Assessee herein, qua property i.e. plot No. WA-18 (measuring 383.40 Sq Mtrs) , Sector 135, Noida, District Gautam Budh Nagar.

As per agreement to sale dated 15.11.2011, the total sale consideration amount was settled at Rs.75,05,000/- on which stamp duty has also been paid @ 2% amounting to Rs.1,50,200/- and thereafter the transfer deed of lease hold rights of such property was executed on 31.07.2014 between the same parties on the same sale consideration of Rs.75,05,000/-. However, the value for the purpose of stamp duty, has been taken at Rs.1,49,91,000/- @ Rs.46000/- per Sqm and total stamp duty to the tune of Rs.7,50,200 (Rs.1,50,200 already paid + 6,00,000) was paid.

We observe that the Id. Commissioner by computing the liability u/s. 56(2)(vii)(b) of the Act, considered the agreement dated 31.07.2014 whereas it is a fact that the amendment vide Finance Act 2013 came into effect from 01.04.2014. Therefore, we are unable to understand, as to how this transfer deed of lease hold rights, has been taken into consideration by the Id. Commissioner in deciding the case pertaining to the assessment year 2012-13. Even otherwise, if the provisions of section 56(2)(vii)(b) are to be taken into consideration, in that eventuality also, the proviso would be clearly applicable, which prescribes clearly "where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, then the stamp duty value on the date of the agreement may be taken for the purposes of computation of income u/s. 56 of the Act". Therefore, in our considered view, the addition of Rs.74,86,000/- made by the Id. Commissioner in any sense is un-sustainable.

5.6 The Assessee also reiterated its claim that in the notice dated 26.03.2019 (page-9 of the paper book) the address of the Assessee has been written as Sector-6, Noida, GB Nagar which is incomplete and insufficient, therefore inference can be drawn that this notice was never served upon the Assessee.

We have given thoughtful consideration to this fact. No doubt, the address mentioned in the notice dated 26.03.2019 u/s. 148 of the Act is incomplete, however, in the assessment order, the Assessing Officer clearly recorded that the notice u/s. 148 of the Act dated 26.03.2019 was issued and served upon the Assessee. Thereafter, subsequent notices u/s. 142(1) of the Act were also issued to the Assessee. The Assessee also claimed/raised objection about such notice before the Id. Commissioner as well. We observe that the Assessee just raising objection with regard to such notice, has not filed any corroborative evidence in the form of affidavit or any RTI enquiry or postal receipt any other document etc., to substantiate its claim for not receiving the notice referred to above, however whatsoever may be, as we have decided the appeal of the Assessee on merit, hence restricting ourself from deciding this controversy.

5.7 Coming to the issues qua legality of notice u/s. 148 of the Act and jurisdictional defect in the proceedings u/s. 147 of the act, as we have decided the case on merits, hence, not dwelling into such issues, as the adjudication of the same should prove futile exercise.

6. In the result, the appeal filed by the Assessee stands allowed partly.

Order pronounced in the open court on 27.2.23.

Sd/-

Sd/-

(PRADIP KUMAR KEDIA) (N.K. CHOUDHRY)
ACCOUNTANT MEMBER JUDICIAL MEMBER

*aks/-

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi

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