

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.190/SRT/2019 (AY 2012-13)

(Hearing in Physical Court)

Dhirubhai R Patel Balwada, Hond, Taluka : Chikli, Navsari-396521 PAN No: BSEPP 9971 J	Vs	Income Tax Officer, Ward-2, Navsari
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Ms. Chaitali Shah, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	27.04.2023
उद्घोषणा की तारीख/Date of pronouncement	10.07.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income-tax (Appeals),Valsad [for short to as “Ld. CIT(A)”] dated 24.01.2019 for assessment year 2012-13, which in turn arises from the addition made by the Income Tax Officer, Ward-2, Navsari / Assessing Officer in assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 28.12.2017. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in reopening the assessment u/s 147 of the Act after issuing notice u/s 148.

2. Even otherwise the learned assessing officer has erred in passing the order u/s 147 by making the addition when he didn't make any addition on issues pertaining to the reasons recorded u/s 148(2) of I.T. Act.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.25,00,000/-being amount received on account of sale of agricultural land by wrongly considering it as unexplained.

4. It is therefore prayed that assessment framed u/s 143(3) r.s.w 147 of the Act may kindly be quashed and/or addition made by assessing officer may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Brief facts are that assessee is an individual and no return of income was filed by him for the year 2012-13. The Assessing Officer received information that assessee along with one co-owner jointly sold immovable property for a consideration of Rs.61,06,384/-. The assessee was having $\frac{1}{2}$ share in the said immovable property. On the basis of such information, the Assessing Officer was of the view that income of assessee has escaped assessment. The Assessing Officer after recording reasons and issued notice under section 148 dated 24.03.2017. In response to notice under section 148, the assessee filed his return of income for assessment year 2012-13 on 06.07.2017 declaring income

of Rs. 36,690/-. The copy of reasons recorded were provided to assessee on 03.08.2017. The Assessing Officer proceeded for re-assessment after serving statutory notice under section 143(2) r.w.s. 142(1) of the Act. During re-assessment, the Assessing Officer recorded that assessee along with his co-owners sold immovable property *i.e.*, agricultural land situated at Block No.796, area of land 1-93-24 hectare, Mouza-Balwada, Taluka Chikhli, Dist. Navsari for a consideration amount of Rs.35 lakh on 28.02.2012. On verification of details furnished by R & B / Department, Chikhli. The Assessing Officer further recorded that said land was agricultural land situated beyond eight kilometre away from Bilimora Municipality and assessee has shown same as exempted under section 2(14) of the Act. The Assessing Officer on verification of bank statement furnished by assessee noted that assessee has received an amount of Rs.15.00 lakh on 27.07.2011 and Rs.25.00 lakh on 03.03.2012 respectively. The assessee was asked to explain the credits in his bank account. The assessee submitted that said agricultural land was sold at a consideration of Rs.60.00 lakh and final

payment of Rs.25.00 lakh was received by him on 03.03.2012, which was not mentioned in the registered sale deed by mistake, but stamp duty was paid as per prevailing market rate (jantri rate). On the aforesaid observation, the Assessing Officer issued summons under section 131 of the Act to purchaser to appear on 18.12.2017. The Assessing Officer recorded that neither purchaser attended hearing before him nor filed any reply. The Assessing Officer issued final show cause notice dated 22.12.2017 recording all such anomaly. The assessee filed his reply vide reply dated 27.12.2017. In the reply, the assessee stated that he received Rs.25.00 lakh as sale consideration from Vijay B. Patel and credited in his bank account on 03.03.2012. The assessee furnished affidavit of purchaser and further stated that purchaser, Shri Vijay B. Patel was out of town and could not appear in his office and prayed not to make any addition. The reply of assessee was not accepted by Assessing Officer by taking his view payment of Rs. 25.00 lakhs was received after execution of sale deed and it is the duty of assessee to rectify the sale deed. The statement of Shri Vijay B Patel was recorded where he stated that he is

not aware how much payment was paid for purchasing said agricultural land. Thus, the payment made by Shri Vijay B Patel is not related to purchase consideration. On such observation, the Assessing Officer made addition of Rs.25.00 lakh in the assessment order dated 28.12.2017 passed under section 143(3) r.w.s. 147 of the Act.

3. Aggrieved by the addition in the assessment order the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed written submission. In the submission, the assessee stated that he has received consideration of Rs.40.00 lakh as a sale consideration, out of which Rs.15.00 lakh was received on 27.07.2011 and Rs.25.00 lakh on 03.03.2012. Both the considerations received through cheque, while sale deed executed on 28.02.2012. The sale deed contains the reference of Rs.15.00 lakh only. The Assessing Officer made addition of Rs.25.00 lakh by treating that same as unexplained consideration of Rs.25.00 lakh was paid by Shri Vijay B Patel for purchasing of agricultural land but due to inadvertent same was not mentioned in sale deed. Now both parties executed supplementary / rectification deed

on 12.04.2018 before Sub-Registrar, Chikhli. The copy of supplementary / rectification deed was filed and submitted that supplementary / rectification deed is a valid documentary evidence for acknowledgement of Rs.25.00 lakh as part of sale consideration. The assessee stated that identity of creditor is not disputed that Shri Vijay Babubhai Patel is a buyer and sale deed was executed, which contain PAN card as well as Aadhar card, thus the identity of person is proved. The sale consideration was received through banking channel duly mentioned in supplementary / rectification deed. Thus, genuineness of such transaction was proved and purchaser made payment out of his accumulated balance in bank account with Gandevi Peoples Co-Op. Bank Ltd. Therefore, creditworthiness is also proved. In the statement, the purchaser admitted to have given Rs.25.00 lakh to assessee through cheque. Thus, credit entry of Rs.25.00 lakh is no more unexplained.

4. The Ld. CIT(A) after considering the submission of assessee recorded that Assessing Officer in the assessment order noted that assessee sold agricultural land situated at Block No.796, area of land 1-93-24 hectare, Mouza Balwada,

Taluka Chikhli, Dist. Navsari where the assessee claimed same as tax exempted under section 2(14) of the Act, initially Assessing Officer noted that assessee sold the agricultural land for a consideration of Rs.15.00 lakh as per sale deed executed on 28.02.2012. However, the bank statement indicates receive of Rs.25.00 lakh on 03.03.2012 from the purchaser party. On asking such credit subsequent to purchase, the assessee stated that sale deed document mistakenly not reflected in sale deed for a consideration of Rs.25.00 lakh and filed affidavit before Assessing Officer, contending that Rs.25.00 lakh was nothing but a sale deed consideration amount. Such contention of assessee was not accepted by Assessing Officer. Before him, the assessee made similar submission and filed supplementary / rectification sale deed, *wherein* the amount of sale consideration was altered which registered on 12.04.2018. The Id. CIT(A) took his view that that affidavit and modified / rectification sale deed in appellate proceedings and appears to be an after-thought for payment unconnected with the agricultural land and confirmed the action of Assessing Officer. Further

aggrieved, the assessee has filed present appeal before the Tribunal.

5. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the order of lower authorities carefully. The Ld. AR for the assessee submits that admittedly assessee sold rural agricultural land and this fact was accepted by Assessing Officer as well as Ld. CIT(A) that impugned agricultural land situated at Block No.796, area of land 1-93-24 hectare, Mouza Balwada, Taluka Chikhli, Dist. Navsari, which is beyond Eight kilometre from municipal limit of Bilimora Municipality. Therefore, sale consideration received for rural agricultural land is exempt from taxation under section 2(14) of the Act. The Ld. AR for the assessee submits that due to oversight and inadvertent mistake, the consideration of Rs.25.00 lakh which was paid through banking channel, though subsequently, could not be recorded in the sale deed. However, Rs.25.00 lakh was part of sale consideration and such fact was accepted by purchaser party. On finding

mistake in the sale deed, supplementary / rectification deed was further executed before Sub-Registrar concerned in correcting the mistake by including consideration of Rs.25.00 lakh as part of sale consideration. The Assessing Officer raised objection that no rectification deed was registered by both the parties. However, subsequently both the parties filed supplementary / rectification deed dated 28.02.2012 which filed before Ld. CIT(A). The Ld. CIT(A) treated the same as after-thought. The Ld. AR for the assessee submits that there was no loss to State Government exchequer as assessee has already paid requisites stamp duty on the execution of sale deed and required fees was paid at the time of supplementary / rectification sale deed.

6. The Ld. AR for the assessee further submits that once the impugned agricultural land was accepted as rural agricultural land, therefore, consideration received on sale of such land cannot be brought to tax. Otherwise, assessee proved his case by proving all three ingredients the identity of creditor (purchaser) and genuineness of such transaction.

7. The Ld. AR for the assessee submits that he has also raised objection against the validity of assessment order passed under section 147 of the Act. The Assessing Officer issued re-opening on recording reasons that sale consideration received by assessee on sale of agricultural land has escape assessment and no addition on sale consideration either on account of sale, rather Assessing Officer has made addition on different issue without making any addition on the basis of reasons of reopening, thus, the addition is not sustainable. To support his submission, Ld. AR for the assessee relied upon on the judgment of Hon'ble jurisdictional High Court in the case of Principal Commissioner of Income-tax-5 vs. Manzil Dineshkumar Shah [2018] 95 taxmann.com 46 (Guj), Commissioner of Income-tax-II vs. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Guj)/[2013] 214 Taxman 38 (Guj)/[2014] 355 ITR 172 (Guj)[29.01.2013], Hon'ble Bombay High Court in the case of Commissioner of Income-tax-5, Mumbai vs. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bom)/[2011] 331 ITR 236 (Bom)/[2011] 239 CTR 183 (Bom)[12-04-2010].

8. The Ld. AR for the assessee in alternatively submits, that re-opening is not valid as the reasons to believe is based on mere suspicion and reasons recorded cannot be substituted or supplementary by any subsequent information. To support such submission, Ld. AR for the assessee relied upon the decision of Hon'ble Apex Court in the case of Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income-tax [1971] 82 ITR 147 (SC), Hon'ble Bombay High Court in the case of Principal Commissioner of Income-tax-32 vs. Rajesh D. Nandu (HUF) [2019] 101 taxmann.com 401 (Bom)/[2019] 261 Taxman 110 (Bom)[18-12-2018].
9. On the other hand, Ld. Sr-DR for the Revenue supported order of lower authorities. The Ld. Sr-DR for the Revenue submits that in the original sale deed there was no reference of Rs.25.00 lakh received by assessee. On confronting such fact and assessee explained that such credit in the bank account of assessee is a part of sale consideration. The assessing officer recorded the statement of purchaser who expressed ignorance about actual sale consideration. Thus, the credit of Rs.25.00 lakh was

nothing but unexplained credit received by assessee. Before Ld. CIT(A) the assessee tried to cover his case by filing supplementary / rectification deed by incorporating such credit of Rs.25.00 lakh as a part of sale consideration. The Ld. CIT(A) after considering all the submission of assessee disregarded the contention of assessee.

10. On the issue of validity of re-opening assessment, the Ld. Sr-DR for the Revenue submits that neither the assessee filed any objection against validity of reopening nor any grounds of appeal raised before Ld. CIT(A). The assessee raised grounds of appeal against the validity for the first time before Tribunal. As assessee has not raised such ground nor objected before Assessing Officer nor raised any grounds of appeal before Ld. CIT(A), thus, the assessee is now precluded from raising such grounds of appeal before Tribunal. The Ld. Sr-DR for the Revenue submits that once the notice issued under section 148 is valid notice, the assessing officer may make further addition which comes to his notice subsequently during the course of assessment proceedings. To support such contention, Ld. Sr-DR for the Revenue relied upon the decision of Hon'ble Karnataka

High Court in the case of N. Govindaraju Vs. Income-tax Office, [2015] 60 taxmann.com 333 (Kar)/377 ITR 243 (Kar). The Ld. Sr-DR for the Revenue submits that Hon'ble Apex Court in the case of Director of Income-tax Vs. Black & Veatch Prichard, Inc. [2019] 107 taxmann.com 290 (SC)/[2019] 265 Taxman 92 (SC)[14.09.2018] held that where no addition was made on basis of reasons recorded for reopening of as, it was not open for Assessing Officer to bring to tax some other income in course of reassessment proceedings against such decision, Special Leave Petition of Revenue has been admitted and the issue is pending before Hon'ble Apex Court. The Ld. CIT(A) also relied upon the decision of Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax, Bikaner v. Dr. Devendra Gupta [2008] 174 Taxman 438 (Raj)/[2011] 336 ITR 59 (Raj).

11. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on various case law relied upon by both the parties. I find that Assessing Officer made addition of Rs.25.00 lakh by taking view that during

assessment on verification of bank pass-book, he noted that assessee received consideration amount of Rs.25.00 lakh from purchaser party, subsequent to the execution of sale deed. On confronting such fact, the assessee explained that Rs.25.00 lakh credit is nothing but a part of sale consideration of rural agricultural land. I find that there is no dispute that impugned agricultural land sold by assessee was rural agricultural land as same is not disputed by lower authorities. The dispute is only with regard to credit of Rs.25.00 lakh came in the bank account of assessee subsequent to sale deed, if it is a part of sale consideration or not. The statement of purchaser was recorded, he evasively stated that he was not aware about execution of sale deed. However, during pendency of appeal before Ld. CIT(A), the assessee as well as purchaser filed supplementary / rectification sale deed before Sub-Registrar, Chikhli for original sale deed where the consideration amount of Rs.25.00 lakh was also added and such document was accepted by Sub-Registrar concern. The supplementary / rectification deed filed before Ld. CIT(A) was not accepted by taking view that it is an after-

thought. In my view, once the supplementary / rectification deed is accepted by Sub-Registrar the fact that subsequent payment of Rs.25.00 lakh was part of sale consideration also, the matter ends. So far as sale consideration is concerned, once the sale consideration of Rs.25.00 lakh is accepted as a sale consideration by Sub-Registrar local (Revenue) / Sub-Registrar concerned, it cannot be treated illegal by Income Tax Department, when the assessee right from the very beginning is asserting that credit in his bank account is a part of sale consideration on rural agricultural land. It is reiterated that agricultural land is also a rural agricultural land and purchaser party has also accepted this fact, in filing confirmation by way of affidavit as well as in supplementary / rectification deed dated 28.02.2012. Therefore, I do not find any justification in treating the credit as unexplained credit. Therefore, the addition made by Assessing Officer and confirmed by Ld. CIT(A) is deleted. In the result, the ground no. 3 of the appeal is allowed.

12. Considering the fact that I have accepted the plea of Ld. AR for the assessee on merit, therefore, on adjudication on

validity of reopening as raised in ground No. 1 & 2 has rendered academic.

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

Order pronounced on 10/07/2023 in open court.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 10/07/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

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By order

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat