

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.498 & 657/Del/2021
Assessment Years: 2016-17 & 2017-18

Smt. Shivani Madan, R/o J-278, Saket, New Delhi 110017 PAN AGGPM2632 Q	vs.	The ACIT, Central Circle 05, New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri Sahil Sharma, Adv.
For Revenue :	Shri Amitabh Kumar Sinha, CIT(DR)

Date of Hearing :	20.07.2023
Date of Pronouncement :	18.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

These appeals have been filed against the order of CIT(A)-24 New Delhi dated 22.02.2021 & 18.03.2021 for AYs 2016-17 & 2017-18.

2. Assessee has taken identical grounds in both the appeals hence we are taking AY 2016-17 as lead case. The grounds raised by the assessee In ITA No. 657/Del/2021 are as under:-

1. That on the facts and circumstances of the case and in law, the order dated 18.03.2021 of the CIT(A)-24, New Delhi ("Ld. CIT(A)") confirming the additions as per order dated 31.12.2019 passed by the ACIT, Central Circle 5, Delhi ("AO") u/s. 153A r.w. 143(3) of the Income Tax Act, 1961 ("Act) is bad in law and may kindly be quashed.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of Rs.9,80,000/- by the Ld. AO as Notional Rent under the head Income from House Property in respect of the second house, disregarding that the said property is already assessed in the hands of the assessee's husband, with the actual share of the assessee in the purchase consideration of the said house property being merely 5.4%.

3. Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the computation of notional rent by the AO, the computation being contrary to the relevant provisions of the Act.

3. At the very outset, the Id. CIT(DR) placing on record copy of order of ITAT Delhi Bench dated 05.01.2023 in assessee's own appeal for AY 2015-16 ITA No. 1642/Del/2020 submitted that the identical issue has been decided by the Tribunal against the assessee therefore the said order may kindly be followed dismissing the appeals of assessee. The Id. counsel of assessee, however supported the grounds of assessee but did not controvert the identical issue has been decided by the Tribunal against the assessee.

4. From copy of order of Tribunal for AY 2015-16 (supra) we note that the identical issue has been decided against the assessee with following observations:-

2.2. Ground No. 2 is being adjudicated herein below.

3. It is a search case. Search was conducted in Adam Smith Group of cases on 28.11.2017 under section 132 of the Income Tax Act, 1961 (the "Act") and the residential premises of the assessee was also covered. Consequent thereto, notice under section 153A of the Act was issued to the assessee on 26.04.2019 which was duly served. The assessee responded by filing return on 14.08.2019 declaring income of Rs. 21,09,800/- as against the original return filed on 21.08.2015 declaring income of Rs. 20,95,490/-.

4. Search material revealed purchase of first, second and third floor of property J-278, Saket, Delhi for Rs. 3.50 crores in joint ownership with the husband of the assessee on 08.03.2011. During assessment proceedings the Ld. Assessing Officer ("AO") asked the assessee vide notesheet entry dated 09.12.2019 to explain why income from the aforesaid property be not charged to tax under the head "income from house property". Vide reply submitted on 10.12.2019 it was submitted that the said property is a single unit and is owned by her husband. Her name in the sale deed is only for security purposes and that she contributed Rs. 20 lacs only during AY 2011- 12.

5. The explanation of the assessee was not acceptable to the Ld. AO. According to him the registered sale deed of the property has not defined shareholding between the co-owners. Therefore, ownership of the property would be considered 50-50 and taxed as per section 23(1)(a) of the Act. Since the assessee did not provide any expected reasonable rent of the property, he assessed the annual letting value at 8% of the cost of property as shown in the sale deed and computed income from house property as under:

<i>Value of property as per details submitted by the assessee (jointly owned)</i>	<i>3,50,00,000/-</i>
<i>Gross ALV @ 8% of above value</i>	<i>28,00,000</i>
<i>Standard deduction @ 30% u/s 24a</i>	<i>840000</i>
<i>Income from house property</i>	<i>1960000</i>
<i>Income assessable in hands of the assessee (50% share)</i>	<i>980000</i>

5.1 Accordingly, the Ld. AO taxed the assessee's share of 50% amounting to Rs. 9,80,000/- in her hands.

6. Aggrieved, appeal was filed before the Ld. CIT(A) who confirmed the impugned addition by observing as under:

"4.1.5 I have considered above facts as well as submissions of the appellant. As per the provisions of Section 22 of the Act, the ownership of a property is a condition precedent for levy of tax and the word "owner" in Section 22 of the Act is related with the taxability of the income from house property and not with the interest of a person in the property. Part of the payment, however small, has been made by the appellant. The dominion over the property existed in the name of wife and she was lawfully entitled to claim the income emerging from the property. Considering the fact that the appellant was joint owner of the property along with her husband and the sale deed did not specify the percentage of ownership, the Assessing Officer was justified in holding that the appellant was 50% owner of the property. Reliance is placed on the following case laws:

- R.B. Jodha Mai Kuthiala v. CIT [1971] 82. ITR 570 (SC)
- Kaur Singh v. CIT [1982] 11 Taxman 207/[1983] 144 ITR 756 (Punj. & Har.)
- Biraj Mohan Biswal v. CIT [1992] 198 ITR 465 (Ori.)
- Keshardeo Chamria, in re [1937] 5 ITR 246 (Cal.)

4.1.6 Since the property was vacant during the year, ALV of the property was liable to be taxed in view of provisions of section 23(1)(a) of Income. Tax Act.

4.1.7 The property was purchased by the appellant and her husband for Rs. 3,68,00,000/- and the Assessing Officer was justified in taking its value at Rs. 3,50,00,000/-. Hon'ble ITAT Ahmedabad in the case of Emtici Engineering Ltd. v. Asstt. Commissioner [1997] 58 TTJ 27 (Ahmedabad) held that in the absence of any better way of estimating the rent, the rate of interest on cost of building and land may provide a reasonable basis for determining the annual letting value of property, more particularly when the property is occupied by the owners themselves or by their close relatives. It was held that in view of the size of the property, its quality of construction and the capital invested thereon, the action of the authorities below, fixing the ALV at 8 per cent return on the cost is fair and reasonable and no interference is called for. The Assessing Officer has estimated ALV of the property at Rs. 28,00,000/- which is reasonable from which standard deduction @30% amounting to Rs. 8,40,000/- has been allowed as deduction. Out of income from house property taxable at Rs. 19,60,000/-, the Assessing Officer has rightly assessed 50% of it amounting to Rs. 9,80,000/- in the hands of the appellant. Hence, addition of Rs. 9,80,000/- is confirmed."

7. Dissatisfied, the assessee is in appeal before the Tribunal.

8. The Ld. AR submitted that the assessee has made investment of 5.4% amounting to Rs. 20 lacs. However, it is customary to include wife's name in the sale deed. The property is in the name of both husband and wife but the amount contributed by the wife is only 5.4% of the total investment. Therefore, taxing 50% of house property income in the hands of the assessee is not justified. Referring to section 26 of the Act,

the Ld. AR submitted that since shares of husband and wife who are co-owner of the property are definite and ascertainable, share of the assessee in the income from property being contribution of 5.4% only towards the purchase cost, can at best be brought to tax to the extent of 5.4% only. He relied on the decision of Allahabad Bench of Tribunal in ACIT vs. C.K. Malik (2004) 89 ITD 249 (Alld) and the decision of Calcutta High Court in CIT vs. Ajit Kumar Roy (2001) 252 ITR 468 (Cal).

9. The Ld. DR on the other hand submitted that ownership in the property is determined as per the mutation records. The sale deed nowhere specified the share of the co-owners. Therefore, share of co-owners is not ascertainable. Drawing our attention to the payment schedule appearing at page 24 of the assessee's Paper Book, the Ld. DR pointed out that no name has been mentioned and the entire consideration of Rs. 3.50 crores was paid by the vendee, namely both the co-owners husband and wife. Only inference of 5.4% share of wife is drawn from payment made by her. Otherwise in the entire sale deed, there is no definite and ascertainable share of the coowners. The mutation is in the name of both husband and wife.

10. In rebuttal, the Ld. AR submitted that payment made by the wife evidenced by the bank statement appearing at page 19 of the Paper Book has not been disputed by the Ld. AO.

11. We have given careful thought to the rival submission of the parties and perused the records. The material seized in search conducted on 28.11.2017 revealed that during the year, the assessee had purchased a property at 816, Gaur Heights, Vaishali. This property has been declared as her Self Occupied Property. Material seized in search also revealed that the assessee has purchased property J-278, Saket, Delhi in joint ownership with her husband in AY 2011-12. The issue for consideration before us is the assessment of income from house property, J-278, Saket, Delhi in the hands of the assessee.

12. Co-ownership of property comes into existence, interalia, by virtue of a joint purchase of the property. Property J-278, Saket, New Delhi was purchased vide sale deed executed on 8.2.2011 by the husband Mr. Ashish Madan and the assessee jointly on payment of Rs. 3,50,00,000/- in the following manner to the transferor, M/s. Dayal Project Pvt. Ltd. :

Pay order/Bank Draft No./Cheque No.	Date	Amount	Drawn on	In favour of
203301	1/2/2011	5,00,000/-	IDBI Bank Ltd.	M/s. Dayal Projects Pvt. Ltd.
203306	5/2/2011	5,00,000/-	IDBI Bank Ltd.	M/s. Dayal Projects Pvt. Ltd.
203307	9/2/2011	20,00,000/-	IDBI Bank Ltd.	M/s. Dayal Projects Pvt.

				<i>Ltd.</i>
213915	9/2/2011	20,00,000/-	IDBI Bank Ltd.	<i>M/s. Dayal Projects Pvt. Ltd.</i>
474480	7/3/2011	16,50,000/-	Axis Bank Ltd.	<i>M/s. Dayal Projects Pvt. Ltd.</i>
1451395	7/3/2011	3,50,000/-	Citi Bank N.A	<i>M/s. Dayal Projects Pvt. Ltd.</i>
686337	8/3/2011	2,80,00,000/-	Axis Bank Ltd.	<i>M/s. Dayal Projects Pvt. Ltd.</i>

The copy of sale deed appears at pages 20-31 of the Paper Book.

13. On perusal of the sale deed, the Ld. AO was of the view that the shareholding has not been defined between the co-owners. The Ld. CIT(A) has also recorded the finding in para 4.1.5. of his appellate order that the assessee was joint owner of the property alongwith her husband and that the sale deed did not specify the percentage of ownership. It was for this reason that the Ld. AO held the assessee to be 50% owner of the property. The Ld. DR also highlighted the fact that the ownership in the property is determined as per the mutation record and the sale deed nowhere specified the share of the co-owners. We are inclined to agree with the stand taken by the Ld. AO/CIT(A) and the Revenue that the sale deed only speaks of the joint ownership of the property by the husband and wife without specifying their definite and ascertainable share in the property. Moreover, the total cost of the property J-278, Saket, Delhi stated before the Ld. AO during assessment proceeding in reply submitted by the assessee on 10.12.2019 does not match with the sale consideration paid as per the sale deed executed on 08.03.2011. Therefore, the claim of the assessee that she is joint owner of the property to the extent of 5.4% only is baseless as the facts and circumstances of the case do not support this claim.

14. Reliance by the Ld. AR on the decision of Allahabad Bench of the Tribunal in C.K. Malik's case (supra) is misplaced. In that case, there was no sale deed in favour of the assessee and others. It was a case of construction of the property at total cost of Rs. 6,82,692/- in which the assessee contributed Rs. 5,54,791/-; his wife, Rs. 1,00,400/-; son Rs. 16,500/- and another son Rs. 12,000/-. The shares of the co-owners were definite and ascertainable. It was in the backdrop of such a factual matrix that the Tribunal held that the Ld. AO has rightly assessed the share of the assessee in the rent according to his investment as per section 26 of the Act. The facts in the case before us are different. Here the sale deed has been executed and the shares of co-owners are not specified at all.

15. It is interesting to note that in C.K. Malik's case (supra) there is reference of decision of Hon'ble Allahabad High Court in Saiyad Abdulla vs. Ahmad AIR 1929 All 817, and the Tribunal observed that in this authority it is held as under:

"In the absence of specification of the shares purchased by two persons in the sale deed, it must be held that both purchased equal shares."

16. In the case at hand also there is sale deed and the co-ownership is evidenced therein but there is no specification of shares of the husband and wife in the sale deed. Therefore, following the decision of the Hon'ble Allahabad High Court in Saiyad Abdulla's case (supra), it must be held that husband and wife purchased equal shares and therefore, the Revenue is justified in bringing to tax 50% of the income from house property in the hands of the assessee.

17. The decision of Hon'ble Calcutta High Court in Ajit Kumar Rao's case (supra) relied upon by the Ld. AR also does not help the assessee. In that case, the assessee's wife had purchased a flat in her name but she being the housewife did not have independent source of income and the entire investment was made by the assessee (husband). It was in such a scenario that the Hon'ble Calcutta High Court held that the income from property should be taxed in the hands of the assessee (husband) and not in the hands of his wife. In the case before us, the property has been purchased by husband and wife in co-ownership jointly. The assessee is not a housewife. Computation of income for AY 2015-16 appearing at page 2 of Paper Book shows that she is salary earner and earned salary of Rs. 24 lacs from Adam Smith Associates Pvt. Ltd. in AY 2015-16. Therefore, on facts the case of the assessee before us differs from the Ajit Kumar Rao's case (supra).

18. For the reasons set out above, we find no substance in ground No. 2 of the assessee and reject the same.

5. Since undisputedly, facts and circumstances of AY 2015-16 are quite similar and identical to the facts of AY 2016-17 and 2017-18 therefore respectfully following the order of the Tribunal for AY 2015-16 (supra) grounds of assessee on sole issue are decided against the assessee dismissing both the appeals.

6. In the result, the both the appeals of assessee are dismissed.

Order pronounced in the open court on 18.08.2023.

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

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 18th August, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi