

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1331/DEL/2020
[Assessment Year: 2016-17]**

JCIT, Spl. Range-12, 806, 8 th Floor, E-2, Block, Dr. SPM Civic Centre, New Delhi-110002	Vs	Ms. Shalu Walia, 5/22, Roop Nagar, Delhi-110007
		PAN-AAJPW0493N
Revenue		Assessee

Revenue by	Sh. Anuj Garg, Sr. DR
Assessee by	Sh. Sajeve Bhushan Deora, Adv.

Date of Hearing	12.12.2023
Date of Pronouncement	14.12.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of the Ld. CIT (Appeals)-12, New Delhi dated 12.02.2020 for the assessment year 2016-17.

2. The grounds of appeal raised by the assessee reads as under:-

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the exemption u/s 54 and 54EC of the Act ignoring fact that the property in question is not a long term capital asset within the meaning of IT Act, 1961 and was not covered under the provision of clause (b) of Explanation 1 to section 2(42A) r.w.s. 49(1).

2. Whether on the facts and in the circumstances of the case in law, the Ld. CIT(A) has erred in allowing the indexed cost of acquisition of the entire property whereas

during the year the assessee had sold only a part of the said property.”

3. Brief facts of the case are that the assessee is an individual and engaged in the business and profession under the name and style of Impression Inc. The assessee was selected for scrutiny under CASS. A notice u/s 143(2) of the Act was issued along with questionnaires. The AO noted that the property no. 5/22 Roop Nagar, was purchased by Sh. Kavar Kultar Singh from Delhi Development Authority by virtue of a sale deed dated 15.07.1970. On 21.02.2011, Sh. Kultar Singh executed a General Power of Attorney in favor of his brother Sh. Kawaljit Singh, empowering him to sell, transfer or gift the property in any manner as deemed fit. The document was duly registered in the office of the sub-registrar, SD-1, Delhi. Sh. Kawaljit Singh subsequently through a gift-deed transferred the property to his daughter in-law the (appellant). The gift deed was executed by virtue of the powers granted to him under the General Power of Attorney. The gift deed is dated 23.08.2014. Later on, the assessee sold the property on three different dates - on 05.05.2015, 06.05.2015 and 09.03.2015. The issue for determination is arising out of the said transaction. The submission filed by assessee has been considered by the AO and not found tenable due to following reason:

- i. The assessee has Stated that Shri Kanwaljit Singh, the father in law of assessee, became the owner of the inherited property by virtue of clause 3 of General Power of Attorney, GPA, (page No. 3) dated 14.02.2011, whereas as per clause 3 of GPA, Shri Kanwaljit Singh only got the right to mutate in his own name, however he has

not mutated the property in his own name. Hence he has not become the owner of the property.

ii The assessee has stated that the property which she acquired through gift deed was inherited property and she has received from his father in law i.e. Shri Kanwaljit Singh. However, the fact is that the property was not inherited property. It was purchased by Shri Kanwar Kultar Singh in the year 1970, hence Shri Kultar Singh was the absolute owner of the said property for which he was given POA to his brother Shri Kanwaljit Singh.

iii As per the gift deed made by Shri Kanwaljit Singh the property was transferred by Shri Kanwar Kultar Singh and not by Shri Kanwaljit Singh as it is mentioned that the property has been transferred on behalf of recorded owner ie. Shri Kanwar Kultar Singh. The relevant para of gift deed at page no. 3 is produced as under:

“And whereas, by virtue of the powers conferred upon him vide the said General Power of Attorney said Shri Kanwaljit Singh S/o Late Shri Trilok Singh, is thus executing this gift deed on behalf of the recorded owner i.e. Shri Kanwar Kultar Singh @ Shri Kultar Singh S/o Late Shri Trilok Singh.”

iv A plain reading of the above make it clear that at the time of making gift deed, Shri Kanwaljit Singh, father in law of the assessee was not the owner of the property and Shri Kanwaljit Singh acted on behalf of his brother Shri Kanwar Kultar Singh only. He was not legal owner of the property at the time of making gift deed, hence

the property in the hand of assessee can't be treated as inherited property.

v The said property has been gifted by the Attorney i.e. Sh. Sh. Kawaljit Sing s/o Late Sh. Trilok Singh to the assessee, his daughter -in-law on behalf of Brother i.e Sh. Kultar Singh vide Gift Deed dated 23.08.2014. The gift was given by Sh. Kultar Singh without any consideration through his attorney i.e. Sh. Kawaljit Singh. As per the explanation (e) to section 56(2) (vii), the assessee is not a relative of Sh. Kultar Singh.

vi. Without prejudice to the above, an Inheritance is all or part of a person's estate and/or assets that is given to an heir once the person is deceased or through some Will deed. An inheritance is typically a cash endowment given to younger heirs. So it is also a matter of fact whether the assessee is covered under the legal heirs as per Hindu Succession Act.

vii The assessee has stated that since the property is an inherited property which she received through a gift deed, hence she is eligible for getting indexation benefit thereon. As stated above the property belongs to the brother of her father in law and not her own father in law, hence it is not an inherited property, therefore the holding of previous owner for calculation of inflation index is not allowable to the assessee.

viii. The facts of case laws cited by assessee are not matching with the facts of the assessee.

3.1. Based on above discussion the AO held that the following conclusion has been drawn:

i. The assessee has not paid any amount for acquisition of property except stamp duty and transfer charges, hence, the cost of acquisition of property has been considered at Rs. 42,29,800/-.

ii The holding of the property in the hand of the assessee was less than 36 months, the property is treated as short term capital assets and hence, the capital gain arose on the sale of property is short term capital gain.

iii The cost of acquisition of the property is considered as 42,29,800/-and the assessee held property for less than 36 months, the benefit of indexation is not allowable to the assessee.

iv. The capital gain claimed by assessee is in the nature of short term capital gain, hence, the assessee is not eligible for exemption u/s 54 of Rs. 4,95,85,000/- and u/s 54EC of Rs. 50,00,000/-.

3.2. The AO concluded that the assessee has already offered Rs.3,27,59,537/- as the Long Term Capital Gain, the same is considered as Short Term Capital Gain for tax rate purpose and balance amount of Rs.8,10,60,663/- is added to the income of the assessee as Short Term Capital Gain.

4. Against the above order, the assessee filed appeal before the Ld. CIT(A).

5. The Ld. CIT(A) considered the issue elaborately and held as under:-

“5.1 The issues emanating from the appeal revolves mainly on the issue of determination of 'holding period' in the hands of the appellant. Whether in the facts and circumstances of the case and having regard to the legal position, the asset sold by the appellant can be treated as 'short-term' or

'long-term' capital asset. The claim of exemption u/s 54EC/54 of the Act, is consequential.

5.2 *Legal position:- The legal position in the present case is required to be analyzed with respect to the provisions laid down in sub-section (1) of section 49 read with clause (42A) of section 2 of the Act.*

(a) *Section 49 prescribes 'cost with respect to certain modes of acquisition. Clause (ii) of Sub-section (1) specifies that where the capital asset has become the property of the assessee under **a gift or will**, the cost of acquisition of the assets shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of improvement of the assets.*

(b) *Further, Explanation-I, sub-clause (b) of clause (42A) of Section 2, provides that, in determining the period for which any capital asset is held by the assessee, in the case the capital asset which becomes the property of the assessee in the circumstances mentioned in sub-section (1) of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section.*

5.3. *The above legal position need to be analyzed in the factual matrix as enumerated hereunder :-*

(i) *That the property which is the subject matter of dispute was acquired by the appellant by way of a gift.*

(ii) *The said gift deed was duly registered and applicable stamp duty has been paid thereon.*

(iii) *The property was gifted by father-in-law the donor) to his daughter-in-law (donee), out of natural love and affection. [this is evident from the copy of the gift deed submitted by the appellant].*

(iv) That the donor had also acquired absolute ownership of the property on account of a registered General Power of Attorney entered into between him and his brother.

5.4 Therefore, taking into account facts of the case, it cannot be denied that the appellant acquired the property by way of gift. A gift is defined under the Transfer of Property Act, 1882 as "the transfer of certain existing moveable or immovable property, made voluntary and without consideration, by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee." By implication, it follows that a gift deed is a document that evidences such a transfer and takes effect during the lifetime of the donor.

5.5 The conclusion arrived at by the A.O at clause (v) of para 9 of the assessment order, that the gift was given by Sh. Kultar Singh without any consideration through his attorney i.e. Sh. Kawaljit Singh, is not inconsonance with facts of the case and is erroneous. Further, invocation of explanation (e) to Section 56(2)(vii) to the facts of case is also not the correct interpretation of law and has no bearing on the facts of the case. The Assessing Officer has not brought on record any document or evidence that would suggest -

- a) That the General Power of Attorney was void or voidable. The legal validity of the said document, which was duly registered has remained outside the pale of doubt. Thus, by virtue of the GPA, absolute power of ownership has been vested in the donor. The power to gift is a consequential outcome of the said power.
- b) The gift deed was duly executed following legal procedures, including payment of applicable stamp duties. The said document remains a valid legal instrument, in the context of lack of any adverse inference brought on record by the Assessing Officer.
- c) From the available documents, it is also, without any doubt that the donor and donee are related, the appellant being the daughter-in-law of the donor.

5.6 Therefore, in the absence of such adverse findings as enumerated in (a) to (c) of para 5.5 of will not be just and proper to arrive at conclusions, as has been done by the Assessing Officer.

5.7 Further, the Assessing Officer's reference to explanation (e) to section 56(2)(vii) also appears to be based on erroneous reading of the provision. Extrapolating principles applicable under a particular head (Income from Other Sources) to another head (Capital Gains) does not have legal legs to stand on.

5.8 Therefore, it can be concluded that the property was received by the appellant as a 'gift'. The provision of sub-section (1) of Section 49 of the Act is squarely applicable. Consequentially, the period of holding of the previous owner, as specified in clause (42A) of Section (2) of the Act will also apply. Accordingly, the exemption u/s 54 and 54EC of the Act cannot be denied to the appellant.”

6. Against the above order, the Revenue is in appeal before us.

7. We have heard both the parties and perused the records. We find that the Ld. CIT(A) has elaborately considered the legal position as well as factual aspects. We have not found any infirmity therein. The Ld. DR also could not point out any infirmity in the same. Accordingly, we uphold the well reasoned order passed by the Ld. CIT(A).

8. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on 14th December, 2023.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Delhi; 14.12.2023.

Shekhar,

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi