



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK
(through virtual hearing)**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No.06/CTK/2018

Assessment Year : 2013-14

Sri Digamber Rath, Muktadeipur Sasan, Dhenkanal	Vs.	Income Tax Officer, Dhenkanal Ward, Dhenkanal
PAN/GIR No.AFNPR 2588 E		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, Adv
Revenue by : Shri Charan Das, Sr. DR

Date of Hearing : 28/11/2023
Date of Pronouncement : 28/11/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A)-2, Bhubaneswar, dated 16.10.2017 in Appeal No.0014/2016-17 for the assessment year 2013-14.

2. Shri P.R.Mohanty, Id AR appeared for the assessee and Shri Charan Das, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual. It was the submission that the assessee's father Shri Ravinarayan Rath owned large tracts of land. On 15.12.2012, 18.12.2012, 19.12.2012 and 20.12.201, the father of the assessee executed various sale deeds by which various properties were transferred to the assessee and his four brothers. Id AR drew our attention to copies of various sale deeds executed by Shri Rabinarayan Rath. The English translation of one of the documents which is registered as 5011207663 dt 15.12.2012 being a sample reads as follows:

"NAME OF THE VENDOR/SALER & ADDRESS

Rabinarayan Rath, aged about 81 Years,
S/o- Late Lokanath Rath
Caste : Brahmin, Occupation : Cultivation,
At-Dhenkanal Town, Muktadeipur Sasan,
P.S.-Town, P.O./Dist.-Dhenkanal.

NAME OF THE VENDEE & ADDRESS

1) Ganeswar Rath, aged about 61 Years,
2) Sashimouli Rath, aged about 55 Years,
3) Digambar Rath, aged about 52 Years,
4) Dillip Kumar Rath, aged about 48 Years,
5) Sanjib Rath, aged about 37 Years,
S/o-Rabinarayan Rath
Caste : Brahmin, Occupation : Business & Agriculture.
At-Dhenkanal Town, Muktadeipur Sasan,
P.S.-Town, P.O./Dist.-Dhenkanal
1st Vendee PAN : ADRAH25Q
2nd Vendee PAN : AKK17350
3rd Vendee PAN : AFNPR2588E
4th Vendee PAN : AGMPR5939G
5th Vendee PAN : AHZPR0285Q

TYPE OF DEED : LAND SALE DEED

Valuation of Properties : Rs. 94,25,000/- (Nighy Four Lakhs Twenty Five Thousand Only)

Land Revenue Right of Land : Ac.3.770 Dec.(Three Acre Seven Hundred Seventy Decimal)

Rent Deposit: Rs. 1.00 Right-Rayati, Part of Holding and plot.

Description :- That due to absolute Requirement of Money for my family expenditure & maintenance, No other way o the vendor out of Land recorded in my name below as under my physical possession as given in the schedule sold to the vendee at the above mention rate & on the receipt on the property earlier & delivering the possession of the land to the Vendee. I completely divested their from today.

This land under single, free from all types of dues from today the purchaser have got the possession of the landed property under the sale and shall enjoy the property generation together and mutate the lands under shall in his name in all department office. For this, I or any of my successors shall not put any claim or objection over this landed property if claim is made then it will be discarded by all court of law.

Hence, I being in slow mind and balanced brain without any ill advise executed this sale deed that will come in aid when necessary dt. 15.12.2012 (Two Thousand Twelve Years December Month Fifteen Date).

SCHEDULE OF PROPERTY

District - Dhenkanal, under Jurisdiction of Dhenkanal Sub-Registrar

Tahasil - Sadar, No. 3; P.S.- Sadar, No. 3

Mouza - Badasathiabatia (O.T.P.)

Hal Khata No. 549 (Five Hundred Forty Nine)

Hal Plot No. - 1182 (One Thousand One Hundred Eighty Two)

Kissam -Sarad-2. Area Ac.0.182 Dec. (One Hundred Eighty Two Dec)

N : Self, S : Self,

Hal Plot No. - 1183 (One Thousand One Hundred Eighty Three)

Kissam - Sarad-2. Area Ac.0.400 Dec. (Four Hundred Dec)

N : Self, S : Self,

Hal Plot No. - 1184 (One Thousand One Hundred Eighty Four)

Kissam - Sarad-2. Area Ac.0.210 Dec. (Two Hundred Ten Dec)

N : Self, S : Self,

Hal Plot No. -1186 (One Thousand One Hundred Eighty Six)

Kissam - Sarad-2. Area Ac.1.720 Dec. (One Acre Seven Hundred Twenty Dec)

N : Self, S : Self,

Hal Plot No. -1232 (One Thousand Two Hundred Thirty Two)
Kissam - Sarad-2. Area Ac.0.500 Dec. (Five Hundred Dec)
N : Self, S : Self,
Hal Plot No. - 1233 (One Thousand Two Hundred Thirty Three)
Kissam -Sarad-2. Area Ac.0.390 Dec. (Three Hundrec Ninety Dec)
N : Self, S : Self,
Hal Plot No. - 1236 (One Thousand Two Hundred Thirty Six)
Kissam - Sarad-2. Area Ac.0.220 Dec. (Two Hundred ^twenty Dec)
N : Self, S : Self,
Hal Plot No. - 1787 (One Thousand Seven Hundred Eighty Seven)
Kissam - Sarad-2. Area Ac.0.070 Dec. (Seventy Dec)
N : Self, S : Self,
Hal Plot No. - 1793 (One Thousand Seven Hundred Ninety Three)
Kissam - Sarad-2. Area Ac.0.080 Dec. (Eighty Dec)
N : Self, S : Self,
Total Area Ac.3.770 Dec. (Three Acre Seven Hundred Seventy
Decimals)
Sketch Map will Red Color (Part Sale) property.
Total: 1.00, own title, Part of Khata & Plot.

We the vendor and the vendee declare that there is no Construction or House in this land. If any proof is available then the documents is declare as invalid.

We seller Declare that : we are responsible of any wrong information is given or suppressed regarding transfer of property under transfer.

We purchaser declare that we are responsible if any wrong information is given in the deed cheated to Vendor.

We the vendor and vendee declare that we execute this sale deed volunteering without any influence or any presser for purchase and sale purpose read over and explained the contents of this deed to the vendor and vendee who admit then to be correct and sign below.

We the vendor is Brahmin by Caste and the Vendee is Brahmin by caste and do not belongs to S.C. or S.T. the sale property is not coming O.L.R. under the Act 6 (A).

I the vendor declare that the sale property is not a public property nor of any religion institution. We also declare that the schedule property is not donated from any land donation by any property.

Rabinarayan Rath
Dt. 15.12.12

Ganeswar Rath
Sashimouli Rath
Digamber Rath
Dillip Kumar Rath
Sanjib Rath
Dt. 15.12.12

Signature of Vendor Signature of Vendee

WITNESS :

1. Banabihari Roul, S/o- Gobinda Chandra Roul
Meena Bazar, Kumbhar Sahi, Dhenkanal, Dt. 15.12.12
2. Ganeswar Senapati, S/o- Ashok Senapati, At-Gudianali,
Dist. Dhenkanal, Dt. 15.12.12

Drafted & prepared and computerized in my office to my direction as per instruction of parties.

Advocate
Pradeep Kumar Panda
Dhenkanal"

4. It was the submission that the said Rabinarayan Rath died on 8.1.2013. It was the submission that said Rabinarayan Rath had also executed a Will in respect of various other properties to the assessee and his four brothers. It was the submission that no money on consideration had changed hands on account of sale deeds and sale deeds had been executed by the assessee's father only for the purpose of giving clear title to the assessee and his four brothers. The sale deed also does not talk of any consideration having been passed though the property has been valued for the purpose of stamp duty. It was the submission that the Assessing officer on the ground that the assessee has purchased the said lands, adopted 1/5th sale consideration and 1/5th of stamp duty as also 1/5th of the total registration expenses as unexplained investment of the assessee. It

was the submission that the fact remains that no money or consideration has changed hands and in view of the decisions of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More (1971) 82 ITR540 (SC), in the case of Sumati Dayal vs CIT(1995) 214 ITR 801(SC) and in the case of CIT vs Smt. P.K.Noorjahan (1999) 237 ITR 570(SC), the preponderance of probabilities as also the test of human probabilities was to be applied and it would clearly show that the sale deed was only prepared for giving better title and for no other purposes. It was the submission that there was no other reason for the sale deed to be executed. It was the prayer that as no consideration has been passed, the addition as made by the Assessing Officer and as confirmed by the Id CIT(A) is liable to be deleted.

5. In reply, Id Sr DR vehemently supported the order of the Assessing Officer and Id CIT(A).

6. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the sale deed has been executed. The sale deed is not only executed but it is also registered. The registration would not be possible unless registration charges are paid. The sale deed cannot be registered without the necessary registration expenses and stamp duty being paid. A perusal of the sale deed also shows that the seller being the father of the assessee has also categorically mentioned that the sale was on account of requirement of money for family expenses and maintenance. The sale deed also mentions that " on the receipt of the

property earlier”, which is basically the consideration. These sale documents have also not been challenged by any party to the transaction as being without consideration. The assessee has also not been able to produce any evidence which could lead this Tribunal to even draw a presumption that what is purported to be the sale deed is not a sale deed. We are alive to the fact that when a father is transferring the properties to the children, it could be even through gift deed having much less stamp value for documentation purpose. The assessee has been unable to show us as to why the sale deed has been executed and the consideration has not been paid. In these circumstances, the preponderance of probabilities in fact stands against the claim of the assessee. As the assessee has been unable to prove that the actual sale has not taken place, the findings of the Assessing Officer and Id CIT(A) on the issue stands confirmed.

7. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 28/11/2023.

sd/-
(Girish Agrawal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 28/11/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Sri Digamber Rath,
Muktadeipur Sasan, Dhenkanal
2. The respondent: Income Tax Officer,
Dhenkanal Ward, Dhenkanal
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack