

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

**Before Dr. B. R. R. Kumar, Accountant Member
Ms. Astha Chandra, Judicial Member**

ITA No. 9724/Del/2019 : Asstt. Year : 2009-10

Rajni Dua, W-108, G.K., Part-II, New Delhi-110048	Vs	ACIT, Circle-30(1), New Delhi-110010
(APPELLANT)		(RESPONDENT)
PAN No. ADQPD8133Q		

**Assessee by : Sh. Tarun, CA
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 12.02.2024	Date of Pronouncement: 16.04.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-33, New Delhi dated 28.08.2019.

2. Following grounds have been raised by the assessee:

"(1) The Ld. Commissioner of Income Tax -Appeal-33 and Asstt. Commissioner of Income Tax, Circle-30 (1), and New-Delhi failed to appreciate that the Appellant had appeared on all dates fixed for hearing and provided requisite details. The appellant complied with the terms of the notice issued under section 143(2) of the Income Tax Act, 1961.

(2) The appellant prays that the Ld. CIT-Appeal order and assessment framed under section 143(3) of the Act be amended since it is not based on facts.

(3) Appellant has not received any intimation or notices under section 148 of the Income Tax Act, 1961 dt. 07.03.16 which have mentioned by AO in his order.

(4) AO has passed the order on 30th Dec -16 without giving the proper opportunity which was getting time Bared on 31st December 2016.

(5) *Assessing Authority erred in disregarding the basic conditions prescribed for making an assessment under section 143(3) & Ld. CIT-Appeal judgment and in particular the following:*

- (a) *The relevant order is not based on material available with the A.O;*
- (b) *No proper & sufficient opportunity was given of being heard before issue of this Assessment Order for expressing his true position as envisaged under principle of natural justice.*
- (c) *Arbitrary determination of income at Rs.93,38,735.00 and added of income Rs.56,38,905.00 without considering the facts presented by appellant.*

(6) *Without prejudice to Ground (1) & (3) the ACIT erred in making addition amounting to Rs.56,38,905.00 to the income of Rs.36,99,830.00 declared by the Appellant.*

(7) *He failed to appreciate and ought to have held that:*

- (a) *Allottee Mr. Rajveer Singh has sold said plot to M/s Life Time Buildwell Pvt. Ltd. through Director Mrs. Rajni Dua. Copy of Agreement to Sell submitted during the proceedings.*
- (b) *A.O. has made the addition of Rs.56,38,905.00 u/s 68 of the Income Tax Act, 1961 at an ad hoc basis i.e. sale value of Rs.72.60 lacs considered taken in the name of appellant. Whereas she has neither purchased nor sold Residential plot no.B-190, Sector-108, Noida. Said property was purchased by M/s Life Time Buildwell Pvt. Ltd. and the same has been accounted for there. Our contention is that provisions of section 50C (1) Tax Treatment in the hands of the seller and Section 56(2)(vii) of the Income Tax Act, 1961 will not attract in the said transaction.*

A.O. has absolutely ignored the above position and despite having certain material on his records, proceeded to make the present assessment without reference to material available with him.

- (c) *Appellant was director in M/s Life Time Buildwell Pvt. Ltd. during the A. Year 2009-10. Copy of Memorandum and Article of Association of M/s Life Time Buildwell Pvt. Ltd. has already been submitted. Residential plot no.B-190, Sector- 108, Noida not purchased by Mrs. Rajni Dua. It was purchased by M/s Life Time Buildwell Pvt. Ltd. with a value of Rs. 16,21,095/- and the same has been reflected in the Audited Balance Sheet for the A. Year 2009-10 under the head of "Current Assets Loan & Advances Schedule-4 (refer to page -26) ". The said*

amount is included under "Advance for plot" Rs.52,67,126/-. Copy of the Audited Balance Sheet are attached along with ledger account in Annexure-5 (refer page 30 to 35).

(d) Allottee Mr. Rajveer Singh has sold said plot to M/s Life Time Buildwell Pvt. Ltd. through Director Mrs. Rajni Dua. Copy of Agreement to Sell has submitted in both proceedings.

(e) As per New Okhla Industrial Development Authority, the circle rate was higher than market value. Therefore, stamp duty was paid as per new circle rate.

(8) Appellant has also furnished Bank ledger accounts of M/s Life Time Buildwell Pvt. Ltd. for establishing the payment made by the Life Time Buildwell Pvt. Ltd. not Mrs. Rajni Dua. Ld. CIT-Appeal and AO has neither understand the transaction through "General Power Of Attorney nor ready to verify the deed from Registrar office".

A.O. has made the addition of Rs.56,38,905.00 u/s 68 of the Income Tax Act, 1961 at on ad hoc basis i.e. sale value of Rs.72.60lacs considered taken in the name of appellant. Whereas she has neither purchased nor sold Residential plot no.B-190, Sector-108, Noida. Said property was purchased by M/s Life Time Buildwell Pvt. Ltd. and the same has been accounted for there. Our contention is that provisions of section 50C, 50C(1) Tax Treatment in the hands of the seller and Section 56 (2) (vii) of the Income Tax Act,1961 will not attract in the said transaction.

A.O. has absolutely ignored the above position and despite having certain material on his records, proceeded to make the present assessment without reference to material available with him.

Therefore, we want to clarify that assessee has neither purchased nor sold Residential plot no.B-190, Sector-108, Noida. Our contention is that provisions of section 50C Tax Treatment in the hands of the seller and Section 56 (2) (vii) of the Income Tax Act, 1961 will not attract in said transaction. Ld. CIT-Appeal and AO has ignored the above facts and treated as taxable income.

9. The appellant humbly submits that the additions of Rs.56,38,905.00 made by the ACIT by disregarding the Income as are unjustified & unwarranted and accordingly, the said additions should be deleted.

10. The appellant prays that the said addition of Rs.56,38,905.00 be deleted."

3. As per the statement of facts filed by the assessee on 24.11.2019 before the Tribunal, the assessee is dealing in the business of manufacturing and sale of Agarbatti, Dhoopbatti and Soap and filed return of income on 30.09.2009 declaring income of Rs.36,99,830/-. The assessee duly attended all the notices of hearing issued u/s 143(2) of the Income Tax Act, 1961.

The issue:

4. The property Plot No. B-190, Sector-108, Noida admeasuring 300 square meters has been transferred as per Registered Transfer Deed of Lease Hold Rights. As per registered deed Smt. Rajni Dua is the transferor being the General Power of Attorney Holder of the Property and it has been transferred to M/s Life Time Buildwell Pvt. Ltd. through its Director, Sh. Sehdev Kumar Gupta i.e. the Transferee. Smt. Raini Dua's PAN has been quoted in the Registered Sale/Transfer Deed in the capacity of **transferor** and not in the capacity of Director of M/s Life time Buildwell Pvt. Ltd. The sale consideration mentioned in the registered Sale/Transfer Deed dated 28.11.2008 is Rs.16,21,095/-. The circle rate of the property fixed by the Local Authorities is Rs. 72,60,000/- as mentioned in the Registered Sale/Transfer Deed dated 28.11.2016. As per assessee's own admission Smt. Rajni Dua is also one of the Director of M/s Life Time Buildwell Pvt. Ltd. Before the Assessing Officer, Smt. Rajni Dua has not filed any reply to substantiate that she has not sold any property including Plot No. B-190, Sector-108, Noida. Since, the sale value of the property sold by Smt. Rajni Dua is taken at consideration cost of Rs.72,60,000/- i.e. the circle rate of the

property fixed by Local Authorities/State Government in accordance with the provisions of Section 50C(1) of the Income Tax Act, 1961. Owing to the difference of registered value/sale consideration and the circle value as per the stamp duty authorities a sum of Rs.56,38,905/- being the difference of the stamp duty value of Rs.72,60,000/- and the sale consideration of Rs.16,21,095/- is added to the income of the assessee on account of sale of vacant plot No. B-190, Sector-108, Noida.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A).

Ld. CIT(A):

6. Before the Id. CIT(A), the assessee submitted that a person named Sh. Rajveer Sing has sold the plot to M/s Life Time Buildwell Pvt. Ltd. through Director Smt. Rajni Dua, the assessee. It was submitted that the assessee has neither purchased nor sold the plot and the said property was purchased by M/s Life Time Buildwell Pvt. Ltd. It was submitted that the said plot was reflected in the balance sheet of M/s Life Time Buildwell Pvt. Ltd. It was submitted that the payment was made by M/s Life Time Buildwell Pvt. Ltd. After considering the arguments, the Id. CIT(A) held as under:

"8.3 I have considered the facts of the case and submission of the Appellant. The main contention of the Appellant is that the property in question was purchased by Lifetime Buildwell Pvt. Ltd., though the PAN of Mrs. Rajni Dua was used as she was the director of the company. It has been stated that the payment was made by the company only. I have gone through the evidences produced by the Appellant but I do not find the bank statement of the company

reflecting the payment made to Mr. Rajveer Singh (original owner).

8.4 I have perused Schedule 3 of balance sheet as on 31.03.2018 showing advance of Rs.28,95,698/- against the plot. But the amount in this case was only Rs. 16,21,095/- which does not match with the figures in the breakup of 'Current Assets Loans & Advances'. This amount increased to Rs.52,67,126/- as on 31.03.2009 reflecting another mismatch. The payment for the property was made by M/s Lifetime Buildwell Pvt. Ltd., is not proved by any other evidence. I have also perused the so called bank ledger of Lifetime Buildwell Pvt. Ltd. through which it has been claimed that the payment for the purchase of the property was made by this company. As per this ledger, the opening balance was Rs.15,84,801/-. Thereafter, there are additions during FY 2008-09 and the debit balance as on 31.03.2009 became Rs.33,17,408/-. It may be seen that this figure also does not match with the claimed amount of purchase of the plot.

8.5 To verify the facts, I perused the transfer deed of lease hold rights in respect of the plot in question. As per this document, the transfer deed has been executed on 28th November, 2008 in which Smt. Rajni Dua is a transferor and M/s Lifetime Buildwell Pvt. Ltd. is transferee. On the basis of this document, it may be stated that the contention of the Appellant is not correct that the property was actually purchased by Lifetime Buildwell Pvt. Ltd. On page 7 of the transfer deed, the said property has been agreed to be transferred in favour of the Lifetime Buildwell Pvt. Ltd. for the consideration of Rs.16,21,095/-. On page 9 & 10 of the deed, the details about the payment have been mentioned.

The Appellant was paid cheque dated 03.03.2006 of Rs.10,50,000/-. The transferee directly paid Rs.4,89,510/- to Noida Authority. Rs.81,585/- was to be paid by the transferee directly to the Noida Authority. These details proved beyond doubt the property in question was transferred at agreed consideration. Therefore, the Appellant's contention that she was not the owner of the property cannot be accepted. Once it is established that the property in question was transferred by the Appellant at some agreed consideration, the provisions of section 50C come into play. The AO, therefore, rightly invoked the provisions of section 50C and took the deemed consideration of the property at Rs. 72,60,000/-. The addition was made after subtracting Rs. 16,21,095/- from the deemed sale consideration. Accordingly, the addition made by the AO is confirmed and the grounds of appeal taken by the Appellant are dismissed.

7. Aggrieved, the assessee filed appeal before the Tribunal.

8. The Id. AR argued that the assessee has not purchased the plot and never sold. Smt. Rajni Dua was a director in the M/s Life Time Buildwell Pvt. Ltd. during the A.Y. 2009-10. A Copy of the Memorandum and Article of the Association of M/s Life Time Buildwell Pvt. Ltd. was submitted before the revenue authorities. Infact, the plot was purchased by M/s Life Time Buildwell Pvt. Ltd. with a value of Rs.16,21,095/- and the same has been reflected in the Audited Balance Sheet for the A.Y. 2009-10 under the head of "Current Assets Schedule-4". The facts of the case are clear from the records that the property was transferred by Sh. Rajveer Singh to M/s Life Time Buildwell Pvt. Ltd. through its director Smt. Rajni Dua which is clearly

mentioned in the Agreement to sell dated 10th April 2006. The agreement to sell is signed by Sh. Rajveer Singh in the capacity of Transferor and by Smt. Rajni Dua as director of M/s. Life Time Build well Pvt. Ltd. in the capacity of Transferee.

9. At this juncture, the Id. DR pointed out that Sh. Rajveer Singh passed his will dated 10th April 2006 relating to the said property that Smt. Rajni Dua will be the owner of the property after his death. Sh. Rajveer Singh signed the General Power of Attorney dated 10th April 2006 in the name of Smt. Rajni Dua to perform the various transactions/activities as mentioned in the General Power of Attorney. Later, the Transfer Deed of Leasehold Rights was executed dated 28th November 2008 by Sh. Rajveer Singh through his GPA holder Smt. Rajni Dua to the M/s Life Time Buildwell Pvt. Ltd. through its Director Sh. Sahdev Kumar Gupta. The will of Sh. Rajveer Singh clearly states that Smt. Rajni Dua will be the owner of the property after his death. Sh. Rajveer Singh was alive when the Transfer Deed of Leasehold Right & Transfer Memorandum were executed through the Power of Attorney. Since Sh. Rajveer Singh was alive at the time of the execution of the Transfer Deed of Leasehold Rights & Transfer Memorandum, and the owner of the property was Sh. Rajveer Singh not Smt. Rajni Dua as per his will. The Id. DR has also relied on the transfer deed of lease hold rights dated 28.11.2008. It was also argued that Smt. Rajni Dua was paid vide cheque dated 03.03.2006 of Rs.10,50,000/-.

10. The above entire events prove that the core issue of ownership, acquisition of lease hold rights and subsequent sale of property/lease hold rights have not been examined by the

revenue nor the assessee has furnished the relevant explanation as to why and how the amounts have been received by the assessee if the property is not owned by her. Hence, in the interest of justice, we remand the matter to the file of the Assessing Officer for examination of the issue and completion of the assessment *denovo*. The assessee shall not misuse the opportunity given and shall endeavour to furnish all the relevant documents which she rely upon before the revenue authorities.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 16/04/2024.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 16/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR