

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH : NAGOOR

[THROUGH VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.236/NAG./2022
Assessment Year 2012-2013

Shri Rajendra Gargishankar Mishra, 17A, Palm Road, Civil Lines, Nagpur. PIN – 440 001. Maharashtra. PAN ABAPM6343D	vs.	The Income Tax Officer, Ward-2(1), Aayakar Bhavan, Civil Lines, Nagpur – 440 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Abhay Agrawal, Advocate
For Revenue :	Shri Abhay Y. Marathe, Sr. DR
Date of Hearing :	19.03.2024
Date of Pronouncement :	19.04.2024

ORDER

This assessee’s appeal for assessment year 2012-2013 arise against the National Faceless Appeal Centre [in short the “NFAC”] Delhi’s Din and Order No.ITBA/NFAC/S/250/2022-23/1043411014(1) dated 13.06.2022, involving proceedings u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“Whether in the facts and circumstances, the order passed by the learned AO is bad in law.*

2. *Whether in the facts and circumstances, the learned AO erred in issuing notice under section 148 without satisfying the prerequisite conditions.*
3. *Whether in the facts and circumstances, the learned CIT(A) erred in confirming addition of Rs.36,07,594 made by learned AO towards long term capital gains.*
4. *Whether in the facts and circumstances, the learned CIT(A) and learned AO erred in not appreciating the fact that, the sale transaction was completed at the time of entering into agreement to sell, receipt of sale consideration and handing over of possession, in the financial year 2010-11.*
5. *Whether in the facts and circumstances, the learned CIT(A) and learned AO erred in not appreciating that, the transaction was completed in AY 2011-12 and the resultant share of capital gains was shown by the assessee in his return of income for AY 2011-12.*
6. *Whether in the facts and circumstances, the learned CIT(A) and learned AO erred in not appreciating the fact that, long term capital gains on subsequent sale transaction evidenced by sale deed dated 09/02/2012 was duly shown by the power of attorney holders in their respective return of income filed for AY 2012-13. That the same transaction could not be taxed in the hands of two persons, which would lead to double taxation.*
7. *Whether in the facts and circumstances, the learned CIT(A) erred in not granting an opportunity of being heard and VC*

facility request was not enabled on the IT portal thereby, breaching the principles of natural justice.

8. *Whether in the facts and circumstances, without prejudice to other Grounds, the learned CIT(A) and learned AO erred in not waiting for valuation report from the DVO and confirming the addition in a hurried manner.*

9. *The Appellant prays leave of the Hon'ble Tribunal to add, amend, alter any of the Grounds of Appeal."*

3. Both the learned representatives first of all invited my attention to the NFAC's detailed discussion upholding the impugned assessment findings as under :

5. FINDINGS & DECISION

As seen from the AO's order and from the submissions of the appellant, the crux of the case is whether the transaction was completed in F Y 2010-11 pertaining to A Y 2011-12 or in the F Y 2011-12 pertaining to A Y 2012-13. Since the grounds of appeals are with regard to the addition of Rs. 36,07,594/- as undisclosed long term capital gain, the grounds are taken together and decided in the following manner.

5.1 The appellant claimed that, alongwith other family member, they have sold a disputed land property at Chunna Batti, Bhopal in the FY 2010-11 to Devesh Shukla, Avnees Sabherwal and 3 others by way of general power of attorney on 10-02-2011. The appellant stated that the consideration received of Rs. 2,50,000 on 10-02-2011 was already disclosed by him in the return of income for the AY 2011-12. Subsequently, the purchasers/Power of Attorney holders sold the land to M/s Raksha Builders by using the name, PAN, & Phone number of the appellant and family members. The Appellant claimed that the amount of Rs. 1,00,00,000 was received by the Power of Attorney in their bank accounts. The contention of the appellant is that he has already sold and given possession of the land property to the Power of Attorney holders on 10-02-2011 and the consideration received was declared in the return of income in AY 2011-12 and he has nothing to do with the transaction that was entered on 09-02-2012.

5.2 The Assessing Officer did not accept the validity of the Possession Letter (Taba Patra) as this was made on a plain piece of paper, not registered by any stamp duty authority and not notarized. The signatures appearing on the paper also do not bear any date. The Assessing Officer concluded that the appellant received an amount of Rs. 2,50,000 at the time of Agreement to sale on 10-02-2011 and on 09-02-2012 sold the property to M/s Raksha Builders. The Assessing Officer has invoked the provision of sections 50C and referred the valuation of this to the

Valuation Officer. However, the Assessing Officer stated that the valuation of the property could not be completed by the Valuation Officer during the pendency of the assessment proceedings. The Assessing Officer considered the FMV of the property at Rs. 2,89,00,000, subject to modification (if any) on the basis of receipt of Valuation Report on a later date.

5.3 The assessment order and the submissions of the appellant have been examined and considered. It is seen from the findings of the Assessing Officer that the general power of attorney dated 10.02.2011 was made on a stamp paper of Rs.100. The general power of attorney dated 10-02-2011 appears to be registered with the sub-registrar, Bhopal with Stamp and signature on 14-02-2011 (Regn.No.3397). However, the initial agreement executed between the appellant and Mr. Devesh Shukla and Others was made on a white paper without any signatory mentioning the date on which it took place and thereby, creating a suspicion on genuineness of the same. It is also seen that Mrs. Devesh Shukla and 4 others have sold the property using the Power of Attorney that was executed earlier on 10-02-2011.

Having considered the submissions of the appellant, I am of the opinion that the agreement to sale and possession letter was just an arrangement. The actual sale of the property was made 09-02-2012. The appellant's claim that the property was sold by him and others to the Power of Attorney holders on 10-02-2011 for only Rs. 17,50,000 and this was sold by the power of attorney holders for Rs. 1,00,00,000 within a year is difficult to believe. There was no instance of the land being developed by the Power Attorney holders and there was no reason that the value of the land would increase by more than 5 times within a year. Had the property been sold to the power attorney holders on 10-02-2011, what prevented them to register the property in their names. The fact that the land has been sold to M/s Raksha Builders using the names, PANs and phone numbers of the appellant and family members on 09-02-2012 also pointed to the fact that the appellant and others were in possession of the land property till the date of sale to M/s Raksha Builders. Therefore, I am agreement with the findings of the Assessing Officer that the sale of land property was made in the relevant to the AY 2012-13. I also do not find any infirmity in the action of the Assessing Officer referring the property to the Valuation Officer as per the provisions of section 50C of the Income Tax Act, 1961.

In view of the above, I do not find reason to interfere in the findings of the assessing officer and the grounds of appeal are dismissed.

6. Accordingly, the appeal of the Appellant for AY 2012-13 stands **"dismissed"**

This leaves the assessee aggrieved.

4. Learned counsel is fair enough in not pressing for assessee's challenge to validity of sec.148 proceedings. Rejected accordingly.

5. Next comes the sole issue on merits regarding long term capital gains addition made in assessee's hands of Rs.36,07,594/-. Learned counsel vehemently argued that both the lower authorities have erred in law and on facts in assessing the impugned long term capital gains in assessee's hands despite the fact that he; along with other co-vendors, had already executed the transfer agreement way-back on 10.02.2011 which also indeed delivery of possession.

6. The Revenue has drawn strong support from both the learned lower authorities action rejecting the assessee's arguments as per the NFAC's detailed discussion.

7. I have given my thoughtful consideration to assessee's instant first and foremost argument and find no merit therein. It is made clear that the assessee claims to have first executed a general power of attorney on a stamp paper of Rs.100/- on 10.02.2011 which followed the sale deed in issue dated 09.02.2012 in the relevant previous year. There is no material in the case file that the assessee has ever clarified about any such agreement dated 10.02.2011 in the impugned sale deed which could lead to acceptance of his stand. For the reasons best known to him, he has not placed on record the said sale deed even in the instant case file

as well. Faced with this situation, I hereby quote the relevant procedure in Chapter-X containing secs.47 to 50, in the Registration Act, 1908 that all registered documents override such oral agreements. The assessee's substantive ground(s) to this effect stand declined, therefore. The lower appellate findings are upheld.

8. Next comes equally important aspect of computation of the impugned long term capital gains u/sec.50C of the Act. A perusal of the assessment order dated 23.12.2019 clarifies that the Assessing Officer had made a reference to the DVO for determining the fair market value and framed the impugned assessment being a "time barred" case despite the fact that no such report came from the DVO's end. There is no detailed discussion *qua* this clinching fact even in the NFAC's lower appellate discussion as well. Faced with this situation, I deem it appropriate to restore the instant latter issue back to the learned Assessing Officer for his afresh appropriate adjudication, preferably within three effective opportunities of hearing to the assessee, in consequential proceedings. Ordered accordingly.

9. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open Court on 19.04.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 19th April, 2024
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "Nagpur-SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.