

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGOOR

[THROUGH VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
Dr. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.72/NAG./2023
Assessment Year 2012-2013

Smt. Kumudini Narendra Mishra, 1-Karode Bhavan, Medical College Square, Hanuman Nagar, Nagpur. PIN – 440 009. Maharashtra. PAN ABXPM3590R	vs.	The Asst. Commissioner of Income Tax, Circle-4, Room No.301, 3 rd Floor, Saraf Chambers, Sadar, Nagpur. PIN – 440 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Abhay Agrawal, Advocate
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	28.03.2024
Date of Pronouncement :	22.04.2024

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/250/2022-23/1049064425(1) dated 24.01.2023, 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 of the case, the learned AO erred in issuing notice under section 148 of the Act.

2. *Whether in the facts and circumstances of the case, the learned AO erred in making an addition of Rs.36,07,594 towards long term capital gains in the hands of the assessee and the learned CIT(A) erred in upholding same without appreciating the fact that, property situated in Bhopal was sold by power of attorney holders to third-party on 09/02/2012 and the sale consideration was received by the power of attorney holders and corresponding capital gains were shown in their respective returns of income.*
3. *Whether in the facts and circumstances of the case, the learned AO erred in not appreciating the fact that, the assessee had sold property situated at Bhopal vide sale agreement entered on 10/02/2011, also handed over the possession on same date and received the consideration of 2.5 lakhs which was duly disclosed in the return of income filed for AY 2011-12. That the transfer of property qua assessee stood completed in the year AY 2011-12.*
4. *Whether in the facts and circumstances of the case, the learned CIT(A) erred in not considering appellate [CIT(A)] orders passed in the case of co-owners wherein identical addition has been deleted in the case of Mahendra Kumar Mishra and Sanjay Yogendra Mishra for AY 2012-13.*
5. *Whether on the facts and circumstances of the case, the learned CIT(A) erred in not appreciating the submissions, documents, CIT(A) order in co-owners case which were filed during appellate proceedings. The learned CIT(A) erred in deciding the*

appeal without providing proper opportunity of being heard thereby, breaching principles of natural justice.

6. *Whether in the facts and circumstances of the case, the learned CIT(A) erred in disallowing indexed cost of improvement of Rs.22,53,021 claimed in respect of sale of property situated at Nagpur.*

7. *The assessee craves leave to add or amend any ground of appeal, if required.”*

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

Ground No. 1 to 6:-The assessee is a joint owner of a family property located on ChunaBhatti, Bhopal, that was jointly sold by the assessee and the other co-owners. The assessee executed the sale through a power of attorney which is registered on 10.02.2011 in the office of sub-registrar, Bhopal on 14.02.2011(Registration No.3397). Subsequently, the power of attorney holders sold the property to M/s Raksha Builders, Bhopal on 09.02.2012. The assessee claims that her share of consideration amounting to Rs.2,50,000/- was received on 10.02.2011 that is during the F.Y.2010-11 pertaining to A.Y.2011-12. But actually the power of attorney holders sold the property to M/s Raksha Builders on 09.02.2012 i.e. in F.Y.2011-12 pertaining to A.Y.2012-13 which is under consideration. The A.O has observed that the actual sale deed was executed between the assessee at the capacity of seller to M/s Raksha Builders. The Power of attorney holders are just mere executors of the deed by virtue of the power of attorney. Power of attorney is a legal authorisation that gives at designated person the power to act for someone else. As such POA gives the agent the authority to act on behalf of the principal. While the subject of the Power of attorney is the principal, the agent can have broad legal authority or limited authority to make decisions on behalf of the principal. This is often used when the principal cannot be present to sign necessary legal documents for a financial transaction. In such situation, the POA holder just represents the principal in the concerned matter. Even in the document executed to the ultimate buyer, name of the assessee has been reflected as seller of the property and hence all the sale consideration must be assessed in the hands of the assessee in proportion to the ownership ratio. Considering the facts of the case and the legal possession of power of attorney I am in complete agreement with the Assessing Officer that the assessee is liable to disclose income from capital gain on the transfer of property as it is the assessee who is the vendor and transferor. As far as the issue of Fair Market Value as per provisions of section 50C is considered it is necessary to go through the provision of section 50C which reads as under:

“Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed (or assessable) by any authority of the State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed (or assessable) shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer”

Plain reading of the above provision will convey that the registered value of the

property will be deemed to be the self consideration for the purpose of computing Capital Gains and there is no ambiguity in it. The A.O has rightly invoked the provision of section 50C and computed the Capital Gain accordingly. The assessee has placed reliance on the decision of High Court of Bombay in the case of ChaturbhujDwarkadasKapadia vs CIT. Facts of this case are completely different from the facts of the assessee case. In the case laws relied on by the assessee, the assessee had entered into a joint development agreement with the builders which was considered as part performance whereas in the case of the assessee which is under consideration, no involvement of joint development agreement document has been executed mentioning name of the assessee as seller. Hence, case law relied on by the assessee stands distinguished. From the note appended as a part of the assessment order it is observed that reference has been made to the valuation officer u/s 50C and the outcome of which has not been mentioned by the assessee anywhere. Hence, the registered value of the property is considered as sale consideration. Grounds of appeal raised by the assessee stand 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. We 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, we 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.

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. Lastly the assessee's 6th substantive ground claiming cost of improvement of Rs.22,53,021/- in respect of the relevant capital asset herein. Learned counsel could hardly dispute that not only the assessee could not substantiate her impugned claim all along in the course of assessment as well as before the NFAC but also there is no clarification as to how she alone incurred this much expenditure being a co-sharer. That being the case, we find no merit in the assessee's instant last substantive ground for want of relevant supporting evidence. Rejected accordingly.

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

Order pronounced in the open Court on 22.04.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER
Pune, Dated 22nd April, 2024
VBP/-
Copy to

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

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.