

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM**

ITA No. 3066/Mum/2023
(Assessment Year: 2015-16)

Income tax officer
Room No. 312, ITO 22(1)(1)
Piramal Chambers,
Lal Baug, Parel,
Mumbai-400 012

(Appellant)

Mrs. Gita Govind Bajaj
Unit No. 312, Kamla Spaces,
Vs. S.V. Road, Santacruz (West),
Mumbai-400 054

(Respondent)

PAN No. AEBPB3162R

Assessee by : None
Revenue by : Shri Dr. Kishor Dhule, CIT DR

Date of hearing: 03.05.2024
Date of pronouncement : 03-05-2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Income Tax Officer, ward (1)(1), Mumbai, against the order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2015-16, dated 21st July, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 29th December 2017, was allowed.

Therefore, the learned Assessing Officer is aggrieved and has raised following grounds of appeal:-

"1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to delete the addition of Rs. 16,00,00,000/- which is taxable of the Income Tax Act, 1961 as assessee has not proved source of it"

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that assessee is holding the property and got registered the property on her name"

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that only on receipt of full payment from assessee one crore and from one Govind Bajaj fifteen crore, thereafter seller entered into a deed of conveyance with Geeta Govind Bajaj and stamp duty on the same plot of land was paid"

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that assessee has not even proved the source of payment of one crore given to seller and also not substantiate that why Mr. Govind Bajaj has paid Rs. 15 crore to seller"

5. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the



fact that all the sum invested by assessee being payment to seller who has acknowledged receipt of Rs. 16,00,00,000/- and assessee has not proved her source of income"

6. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

7. The appellant prays that the order of the National Faceless Appeal Centre (NFAC) Delhi on the above grounds be reversed and that of the Assessing Officer be restored."

02. The fact of the case shows that assessee is an individual engaged in the business of builder and developer, filed return of income on 27th March, 2017, at a total income of ₹4,91,294/-. The case of the assessee was selected for scrutiny by issue of notice under Section 143(2) of the Act on 18th September, 2017. As the assessee is engaged in the business of building and developing, during assessment proceedings it was known that assessee has purchased a plot of land at Mumbai admeasuring 2628.6 sq. mtr. for purchase consideration of ₹16 crores from Cyprian Louis D'souza by paying 3 cheques dated 4th February, 2015, of ₹79,00,029/-, on 25th February, 2015 of ₹1 crore on 5th February, 2015 for ₹14 crores. Assessee was asked to show the sources of the above fund. Summons was issued to the assessee. A letter was also sent to ICICI bank on 28th November, 2017, 4th December, 2017 and 11th December, 2017, wherein it has come to the notice that the assessee has closed the account and bank does not have relevant record after 5th April, 2014. Assessee has also paid a stamp duty of ₹1,22,41,500/- on 3rd February, 2015 and registration charges of ₹30,000/- on 4th



February, 2015. With respect to the payment of cheque, the enquiry was made and it was found that sum of ₹15 crores involved in the above cheques were not at all encashed by the seller as sums were not come to the seller. The buyer was also issued a summons under Section 131 of the Act. His statement was recorded and asked about the receipt of consideration. He submitted that he has received the cheque but not deposited in his account and further, with respect to the other cheque of ₹14 crores as it did not contain any date but same was not deposited. Therefore, the cheques issued by the assessee were not deposited. He was further asked whether the transaction between him and the assessee are completed to which he submitted that same are not completed. It was also asked that how the documents is registered without consideration to which he replied that he signed the document before Registrar as he was assured that the balance amount would be paid by them. Thus, the learned Assessing Officer noted that assessee has paid only ₹1 crores from her account and all the balance payment were given by one Mr. Govind Bajaj but the seller has not received. The letter dated 24th August, 2017, was written by the assessee to the Jt. Commissioner of Police, Economic Offence Wing, Mumbai against the seller stating that he has duped the assessee. The learned Assessing Officer held that as the buyer has acknowledged the receipt of ₹16 crores and stamp duty and other charges have been paid same were required to be added to the total income of the assessee. Accordingly, the learned Assessing Officer made an addition of ₹16 crores and did not add stamp duty and other charges and passed an assessment order determining the total income at ₹16,04,91,291/- under Section 143(3) of the Act on 29th December, 2017.



03. Assessee challenged the same before the learned Commissioner of Income-tax (Appeals). The learned CIT (A) deleted the addition holding that taking into the account the admission of the seller and the fact of the sum payments through cheques not having been realized the addition made of ₹16 crores do not stand the test of scrutiny and the learned Assessing Officer is not justified in making the addition wherein he has put the remark that as the police force has not registered the First Information Report and therefore, her submission in absence of FIR copy the addition was made. He further held that the learned Assessing Officer has made the addition in absence of the copy of the FIR; he deleted the addition without any basis. He submits that merely because of the cheques are not encashed by the buyer the addition cannot be deleted.
04. Despite notice on 21st of March 2024 , none appeared on behalf of the assessee and therefore, the appeal was once again for fixed on 3/5/2024 by issuing notice to the assessee by email, registered post acknowledged and informing on mobile phone mentioned in form number 36. It also did not evoke any response from the assessee. The appeal was heard on the merits of the case as per information available on record.
05. The brief facts were considered along with the arguments of the learned CIT Departmental Representative and the reasons in the order of the lower authorities. The fact shows that assessee is a builder and developer has entered into purchase of a plot of land for consideration of ₹16 crores from Mr. L D'Souza. The assessee has handed over first Cheque of ₹1 crore on 25th February, 2015. The assessee has also issued a cheque of ₹14 crores on 5th February, 2015, to the buyer. The assessee was asked about the source of

income of ₹16 crores. Enquiry was made from the ICICI Bank which did not have relevant records. It is also the fact that assessee has paid Stamp Duty of ₹1,22,41,500/- on 3rd February, 2015 and registration charges of ₹30,000/- on 4th February, 2015. The buyer was summoned and examined, who categorically confirmed that the transactions between the assessee and the buyer were not completed as no payment has been encashed by him. It is also a fact that on 24th August, 2017, the assessee submitted a letter to the Jt. Commissioner of Police, Economic offence Wing, Mumbai wherein a complaint against the seller was made. However, the copy of the First Information Report was not furnished before the learned Assessing Officer therefore, the learned Assessing Officer stated that he has left with no other alternative to bring to tax the amount of investment by the assessee of ₹16 crores as income. The learned CIT (A) noted that the learned Assessing Officer did not make any addition on account of stamp duty registration charges for the reason that those were paid by one Shri Govind Bajaj and the assessee. It is also the fact that there is no adverse observation by the lower authorities with respect to the payment of ₹1 crores, however, the learned Assessing Officer made the addition of ₹16 crores. It is not clear that the conveyance deed was executed in the name of the appellant or not. The learned CIT (A) deleted the addition holding that as the payments have not been made by the assessee, and cheques have not been encashed, there is no question of source by those payments. The categorical finding of the learned CIT (A) is as under:-

“6. The assessee is involved in the business of a Builder and Developer. The assessee e-filed the Return of Income

for A. Y. 2015-16 on 27.03.2017 belatedly declaring total income of Rs.4,91,294/-. Subsequently, the case was selected for scrutiny and accordingly a Notice u/s. 143(2) dated 18.09.2017 was issued and was validly served on assessee. During the relevant previous year, assessee has purchased a plot of land bearing no. C.T.S. No 6500-A /1, of Village, Kole Kalyan Taluka, Andheri-MSD at Kalina, Santacruz (East), Mumbai-400098. Admeasuring 2628.6 sq. meter for a purchase consideration of Rs16,00,00,000/-from one Cyprian Louis D'souza (Residing at 3A,Koloverly Village, Kalina, Santacruz (East), Mumbai400098) by making payments as under:

1. Cheque No 037817 dated 25.02.2015 for Rs. 1,00,00,000/-
2. Cheque No. 037819 dated 04.02.2015 for purchase consideration Rs.79,29,000/-
- 3 Cheque No. 037818 dated 05.02.2015 for Rs. 14,00,00,000/-.

The assessee was also sent a communication on 20.11.2017 and "requesting her to bring a letter from ICICI Bank that payments for 16,00,00,000/- have been issued by cheque with numbers in confirmation". Also, assessee was asked to prove the source of having earned income of 16,00,00, 000. The assessee personally attended on 15.12.2017 in response to the Summons and



letter issued for time to time. In this connection, a letter was sent to ICICI bank Ltd, S.V. Road, Khar (west) Mumbai on 28.11.2017, 04.12.2017 and 11.12.2017. The ICICI Bank official Kanchan (DBM) has complied with details and it is also reliably learnt that the assessee has closed the account and the bank does not have any relevant records after 05.04.2014. In letter dated 04.12.2017 and more particularly in Paragraph 9 being explanation for large investment in property wherein stamp duty valuation was estimated at Rs. 24,28,26,000/- the assessee has paid stamp duty of Rs. 1,22,41,500/- on 03.02.2015 and 04.02.2015 and Registration charges Rs. 30,000/- on 04.02.2015. In this connection I am reproducing sub-Paragraph (d). Out of the balance Rs. 15.00 Crores, the assessee gave one cheque for Rs. 1.00 Crores vide cheque no. 037817 dated 25.02.2015, which is not encashed till date and another cheque for Rs. 14.00 Crores no. 037818 dated 05.02.2015, which was not given to the Seller at all till date. The copy of the cheque for Rs. 14.00 Crores is attached herein for your ready reference and records and the Original can be produced anytime for your verification. In this connection Shri. Cyprian Louise D'souza was issued summons u/s 131 of I.T.Act 1961. To appear before undersigned on 22.12.2017 on 3.30 pm and on 22.12.2017 when Cyprian Louse D'souza responded with the terms of summons issued to him and his statement on oath was recorded by undersigned in the office room. He was asked that on 25.02.2015 a cheque was drawn on ICICI Bank G.1 Abede Villa 99, S.V.Road,



Mumbai A/c No. 102605500343 and he said he received the cheque, but not deposited in his A/c, similarly another cheque for Rs. 4 Crore was drawn on Canara Bank Khar (West) Cheque No. 049074 and because there was no date on cheque he has not deposited it. Similarly, another cheque no. 049075 for Rs.4 crore drawn on Canara Bank Khar (West) was also received and because there was no date on cheque he has not deposited it. Similarly another cheque no. 049076 for Rs.1 crore was also received and it was also not deposited, as there was no date on cheque. similarly another cheque no. 049072 for Rs. 2 crore was received by him and because there was no date on cheque he was not deposited it. Lastly another cheque no. 049073 for Rs.3 Crore was received by him and it was also not deposited because there was no date on cheque. Shri. Cyprian Louise D'souza was specifically asked "whether the transaction between him and Geeta Govind Bajaj is completed ?". He said transaction not completed. Then he was asked "How you registered the sale document". Cyprian Louise D'souza having received 1 crore as token amount, I have signed the document before registrar of stamp duty as he was assumed the balance amount should be paid be them.

RECIPT

Received from Gita Govind Bajaj, the purchaser herein total consideration amount of 16,00,00,000/- (Sixteen

Crores only) as mentioned above. I say received signature on stamp Cyprian Louise D'souza Vendor Witness in Hindi. 1) Pravesh kumar Shapp. 2) Ratan Bajaj.

The faux Pass in the case was created not only by my assessee Geeta Govind Bajaj, who gave only Rs. 1,00,00,000/- from her account in ICICI bank Khar (West), branch, S.V.Road, Mumbai and all the balance payments were given by one Govind Bajaj, C/o Bajaj Developers and the above receipt by Cyprian Louis D'souza inter-alia means that Cyprian Louis D'souza "has got payment of Rs. 15 crore and thereafter entered into a deed of conveyance with Geeta Govind Bajaj and stamp duty on the same plot of land was paid post -- facto". In the letter dated 24.08.2017 from Geeta Govind Bajaj addressed to the Hon'ble, Joint Commissioner of Police, Economic Offence Wing, Crawford Market, and Mumbai. A reference was made against the said Cyprian Louis D'souza of having duped Geeta Govind Bajaj and thus started a different prelude to this property situated at Santacruz (East) and as on today, the Police force have not even registered an First Information Report (FIR) and Geeta Govind Bajaj had promised to obtain a copy of the First Information Report against Cyprian Louis D'souza, so that the undersigned can trust her submission in toto. In its absence, I am "left with no other alternative, but to bring to tax all the sum of money invested by Geeta Govind Bajaj being payments to Cyprian Louis D'souza

who has acknowledged receipt of Rs. 16,00,00,000/-" and land records duty being stamp duty paid and other incidental expenses, will be added back to the Returned income of Geeta Govind Bajaj and penalty proceeding u/s 274 r.w.s 271(1)(c) for having furnished inaccurate particulars of income and expenditure and thereby concealing the income" as determined above.

7. In this case, the appellant did not choose to adduce any additional evidence under Rule 46A. The AO made an addition of Rs.16 crores in the hands of the appellant on the basis of the receipt issued by the owner of the property, one (1) D'souza. The AO did not make any addition on account of stamp duty and registration charges for the reason that they have not been met by the appellant but by one Sri Govind Bajaj, C/o Bajaj Developers. What is the relationship between the appellant and the said Sri Govind Bajaj also does not find mention in the assessment order. The AO sought confirmation of the payment of Rs.16 crores. The AO has recorded that "assessee Geeta Govind Bajaj, gave only Rs. 1,00,00,000/- from her account in ICICI bank Khar (West), branch, S.V.Road, Mumbai. all the balance payments were given by one Govind Bajaj, C/o Bajaj Developers and the above receipt by Cyprian Louis D'souza inter-alia means that Cyprian Louis D'souza "has got payment of Rs. 15 crore and thereafter entered into a deed of conveyance with Geeta Govind Bajaj and stamp duty on the same plot of land was paid post -- facto". The

AO did not discredit the source of payment of Rs. 1 crore by the assessee by mentioning anything adverse, except stating that the assessee paid only Rs.1 crore from her account in ICICI bank, Khar West branch, S.V.Road, Mumbai. However, strangely he did not exclude this amount while making the addition of Rs. 16 crores. It is also not brought on record whether the conveyance deed was executed in the name of the appellant. What were the contents of the petition submitted to Economic offences wing of the Police authorities of Crawford market and how the appellant was duped by the said D'Souza were also not brought on records which are relevant circumstantial evidence. AO accepted that the appellant did not make any payment other than Rs. 1 Crore and all the other payments were made by Govind Bajaj.

Decision:

Taking into account the admission of D' Souza and the fact of the said payments through Cheques not having been realised, the addition made of Rs. 16 crores do not stand the test of scrutiny and the AO is not justified in making the addition with the remark, "as on today, the Police force have not even registered an First Information Report (FIR) and Geeta Govind Bajaj had promised to obtain a copy of the First Information Report against Cyprian Louis D'souza, so that the undersigned can trust her submission in toto. In its absence, I am "left with no other alternative, but to bring to tax all the sum of money invested by Geeta Govind Bajaj being payments to



*Cyprian Louis D'souza who has acknowledged receipt of
Rs. 16,00,00,000/-”*

06. In view of the above facts that There is no payment made by the assessee of ₹15 crores, because the cheques are not encashed, information from the bank was also not available , neither the copy of first information report was available on record, nor the status of the transaction is known. As learned CIT – A has deleted addition only on the basis that cheques have not been encashed. However, merely because the cheques have not been encashed it cannot be said that the transaction is incomplete because assessee has paid stamp duty and registration fees and there is no finding what happened to the land, and also whether the above cheques issued by the assessee are subsequently encashed or not. It is also not known how these subsequently parties have acted upon. In view of this, we set-aside the whole issue back to the file of the learned assessing officer with a direction to enquire, when and whether the transaction is completed or not. The learned AO may given opportunity to the assessee and make necessary enquiries in this regard and decide issue afresh.
07. In the result, the appeal filed by the learned Assessing Officer is allowed to that extent.

Order pronounced in the open court on 03.05.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 03.05.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :



1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai