

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 511/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2010-11)

Shri Katta Praveen Kumar, Vs. Income Tax Officer
Hyderabad Ward 7(2)
PAN:CEPPK8923P Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Sashank Dundu, Advocate
राजस्व द्वारा/Revenue by: Shri M Naveen Kumar, DR

सुनवाई की तारीख/Date of hearing: 13/06/2024
घोषणा की तारीख/Pronouncement on: 05 /07/2024

आदेश / ORDER

Aggrieved by the order dated 02/04/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Katta Praveen Kumar ("the assessee") for the assessment year 2010-11, assessee preferred this appeal.

2. Assessee is an individual. According to the learned Assessing Officer he along with his mother and brother sold the property admeasuring 540 sq. yards under document No. 2036/2009, dated 25/6/2009 for a consideration of Rs. 50 Lacs whereas even as per the sale deed, the value of the property sold as per the state registration authorities was Rs. 86.70 Lacs. Since the assessee did not file any return of income, learned Assessing Officer issued notice under section 148 of the Income Tax Act, 1961 (for short "the Act"). Since notice could not be served, learned

Assessing Officer got it affixed. He issued notice under section 143(1) of the Act. Assessee appeared and informed the learned Assessing Officer that there has never been any property as scheduled in the sale deed in existence. and one Smt. Naseema Farhat Begum fabricated document with a view to occupying an area earmarked for park by the Municipal Corporation of Hyderabad and obtained the signatures of the assessee, his mother and brother. Assessee informed the learned Assessing Officer that there was no transaction as evidenced by the sale deed, but it is only a sham and nominal document fabricated for ulterior purposes by Smt. Naseema Farhat Begum. Assessee also informed the learned Assessing Officer that in a suit filed by the said buyer in respect of such property, the competent court, namely, IX Additional Junior Civil Judge, City Civil Court, Hyderabad held that there is no property in existence as mentioned in the sale deed.

3. Learned Assessing Officer deputed the Inspector attached to his office to verify the allegations levelled by the assessee and came to know that the GHMC displayed a board claiming ownership of the property in question, and the same thing is evidenced by the encumbrance certificate extracted from the government website. Based on this learned Assessing Officer accepted the contention of the assessee that there is no capital gain that had arisen from the transaction. Learned Assessing Officer, however, observed that still the assessee cannot be absolved from taxing the amount of consideration he received along with other executants of the fake document because the assessee failed to provide the confirmation letter from the buyer of the property about the sale consideration as to whether it was really passed or not. According to the learned Assessing Officer, since the document was executed before the sub registrar and in the presence of two witnesses, though the document is a fake one, the consideration must have been passed. On this premise learned Assessing Officer sought to tax a sum of Rs. 16, 66, 660/-towards the assessee is a share of consideration.

4. Aggrieved assessee preferred appeal before the learned CIT(A) and pleaded the same thing as he did before the learned Assessing Officer. In addition to that the assessee also produced a copy of the judgement of the competent court where the court declared the registration of the property in question itself as null and void and such judgement evidences that it was rendered after contest. learned CIT(A) further noted that the assessee also provided the order of the court and provided the certificate issued by the registrar cancelling the sale deed. Assessee further pleaded that in order to reach a conclusion that consideration has passed, it shall be established that there was a property worth conveying and in the face of the regulations made by competent courts, it is clear that there has never been any such property in existence.

5. learned AR pleaded that the mother of the assessee is an illiterate woman eking out the livelihood as a housemaid in a few houses and taking advantage of their innocence, the alleged buyer fabricated the documents with an ulterior motive, and having held that the sale is a sham and nominal transaction, sale deed is a fake document and that there has never been the property in question in existence, the learned Assessing Officer should have understood that in such transaction no consideration would be passed. Passing consideration of Rs. 50 Lacs under a sham and nominal transaction and a fake document is contrary to ordinary course of human conduct.

6. Per contra, learned DR argued that as rightly observed by the learned CIT(A) no bank statement of the relevant period was provided by the assessee and thereby the assessee did not discharge the onus whether any income accrued to him are not by means of the said the sale transaction. According to the learned DR, any consideration received even under a fake document is liable to be taxed.

7. I have gone through the record in the light of the submissions made on either side. I have also perused the copies of the judgements in OS

5395/2009 on the file of the IX Junior Civil Judge, City Civil Court Hyderabad and OS 962/2017 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad wherein a clear finding was returned by the courts that there was a mischief done by the alleged buyer in creating the documents and as a matter of fact there has never been any property so mentioned in the sale deed nor the purchaser under the sale deed was ever in possession thereof. For that matter, there is no dispute in respect of these findings returned by the competent courts. The authorities insisted that the assessee must prove that he never received the sale consideration. According to the assessee, sale consideration that was never received could not be proved.

8. Law does not require proof for everything. Admissions, confessions, judicial notice, presumptions etc., do not call for proof in respect of certain matters covered by them. In a case where there is no property at all a document is fabricated for the purpose of appropriating a community property and in that design an illiterate lady with her children are implicated, it would be too much to expect that the consideration of Rs. 50 Lacs should have passed under such a transaction. It is not as though everything is depending upon the self-serving oral testimony of the assessee himself. The competent court declared these facts and even the Revenue does not dispute the same. In this sort of situation, it may be presumed that, regard being had to the common course of natural events, human conduct, it is quite unlikely likely that the buyer should have paid Rs. 50 Lacs to assessee, his mother and his brother.

9. Apart from this fact the assessment order reads that the assessee requested the learned Assessing Officer to summon the buyer of the property in question, namely, Smt. Naseem begum or send a notice to her for verification. In spite of the same, the learned Assessing Officer did not think it proper to make some inquiries with the so-called buyer also as to whether she really parted with such huge amount in connection with a fake

document, or her source or capacity to pay such huge amount. Unless someone pays, the other cannot receive.

10. Having regard to all these facts and circumstances of the considered opinion that the view taken by the authorities is not proper and correct, and probabilities of the case are that in connection with a fake document no huge consideration should have been parted with by the buyer nor the assessee and his family members could have received Rs. 50 lakhs for subscribing a sham document. Learned Assessing Officer believed the assessee that no capital gains have arisen because of the sham and nominal transaction under a fake document. Except this there is no possibility of assessee receiving any amount from anyone. If the learned Assessing Officer does not believe the capital gains, there is no scope for adding any amount. I, therefore, accept the contention of the assessee and direct the learned Assessing Officer to delete the addition made. Grounds of appeal are answered accordingly.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 5th July, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 05/07/2024
Pvv/SPS

Copy forwarded to:

- 1 Shri Katta Praveen Kumar, 13-3-1050/21/14, New Ganganagar,
Ziaguda Hyderabad 500006
- 2 Income Tax Officer Ward 7(2) IT Towers, AC Guards, Hyderabad
- 3 Pr. CIT - Hyderabad
- 4 DR, ITAT Hyderabad Benches
- 5 Guard File

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ITAT, HYDERABAD