

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

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. No. 2490/Del/2016  
(Assessment Year : 2010-11)**

Mr. Charan Singh B-33-34, Sector-Gamma-I, G. Noida, UP	Vs.	ITO Ward – 1(2), Noida
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**PAN: ARIPS 7397 H**

**(Appellant) .. (Respondent)**

<b>Appellant by</b>	<b>:</b>	Shri Manoj Gupta, C.A.
<b>Respondent by</b>	<b>:</b>	Ms. Parul Singh, Sr. D.R.

<b>Date of Hearing</b>	02.07.2024
<b>Date of Pronouncement</b>	18.07.2024

ORDER

**PER MS. MADHUMITA ROY – JUDICIAL MEMBER :**

The instant appeal filed by the assessee is directed against the order dated 29.02.2016 passed by the Ld. Commissioner of Income Tax (Appeals) – I, Noida under section 250 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the order dated 13.03.2015 passed by the Income Tax Officer, Ward-1(2), Noida under Section 147 read with Section 143(3) of the Act whereby and whereunder the addition to the tune of Rs.1,22,99,181/- on account of Long Term

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Capital Gain (LTCG) in relation to a sale of a property by the assessee has been confirmed for Assessment Year 2010-11.

2. The brief fact leading to the case is this that during the course of assessment proceedings, it was found that a residential property laying and situated at plot No.13C, Phase-III, Village-Tugalpur Haldauna, Greater Noida admeasuring 1420.80 sq. mtr. was allotted to the assessee upon making consideration of Rs.1,93,700/- by Greater Noida Industrial Development Authority under 5% Kisan Abadi Scheme on 01.09.2001. Assessee transferred the said plot of land to his niece namely Mrs. Arvinder Kaur for a consideration of Rs.4,00,000/-, the valuation whereof as on that day i.e. on 23.03.2010 under Section 50C of the Act was of Rs.1,27,88,000/-. The assessee took the plea that the property was gifted by him to his niece on 15.04.2009 and subsequently, the same was sold through the constituted attorney namely Shri Ravinder Singh by virtue of registered power of attorney on 13.05.2009. There was also a Will executed by the appellant in respect of the same property in favour of the niece in the month of March, 2009. Relevant to mention that the said Will was also not probated. It is the case of the assessee that the property was transferred by gift deed dated 15.04.2009 being the first document of a voluntary transfer of interest in immovable property without consideration and the other documents either in the form of the Will or execution of a transfer deed dated 23.03.2010 was for abundant caution. On the other hand, the case of the Revenue is this that the property was sold and not gifted by the assessee (Rs.1,00,000/- received

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in cash on 13.05.2009 and Rs.3,00,000/- through cheque dated 22.03.2010).

3. The contention of the assessee that the assessee has gifted the said property to Mrs. Arvinder Kaur is a concocted story and an afterthought, in order to avoid capital gain arose on the sale of property in question and applying the provisions of Section 56(2)(vii)(b) of the Act, capital gain to the tune of Rs.1,22,99,181/- was determined by Learned AO which stood confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. At the time of hearing of the appeal, Learned Counsel appearing for the assessee submitted before us that the case of the donee of the property in question i.e. niece of the assessee namely Arvinder Kaur has been decided by the Co-ordinate Bench holding that the right, title, interest of the property has been conferred upon by the assessee before us by virtue of a deed of gift and neither Will nor by way of a sale deed. While doing so, the Learned Bench was pleased to rely upon the judgment passed by the Hon'ble Apex Court in the case of Suraj Lamp and Industries Pvt. Ltd. vs. The State of Haryana and Ors., reported in (2012) 1 SCC, 565. It was further held that series of documents as were executed between that assessee and her maternal uncle (the assessee before us) indicated that the transaction was a Gift only and had completed on 01.10.2009. In that view of the matter, the application of Section 56(2)(vii)(b) of the Act as introduced by the Finance Act, 2010

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on 01.10.2009 having no retrospective effect was wrongly applied in the case in hand. The Learned DR has not been able to controvert such submissions made by Learned AR or could show any judgment in support of the case made by the authorities below.

5. We have heard the rival contentions made by the respective parties, we have also perused the relevant materials available on record. We have further considered the judgment passed by the Co-ordinate Bench of Tribunal in ITA No.2491/Del2016 for A.Y.2010-11 in the matter of Mrs. Arvinder Kaur. While dealing with this particular aspect of the matter, the Learned Bench has been pleased to observe as follows:

7. *Arguing the case for assessee in regard to ground no. 1 to 3, the Ld. Counsel for the assessee took the Bench through the documents executed between the assessee and her maternal uncle, to contend that the Ld. Revenue authorities below have erred in invoking the provisions Section 56(2)(vii)(b) of Act which was effective from 01.10.2009 only, while documents of transfer in the form of gift deed was executed on 25.03.2009 followed by registered Will dated 13.05.2009, registered agreement to sell (without possession) and a registered GPA on 13.05.2009. Thus, all these documents were prior to 01.10.2009 i.e. date from which amendment of 2010 became effective retrospectively from 01.10.2009. It was contended that out of ill advise and due to some confusion created by registration authorities documents of all sorts were executed to protect the interest of assessee while it was a simple gift with effect from 25.03.2009. It was submitted that the ld. Revenue authorities below wrongly considered the transfer deed executed on 23.10.2010 to be determinative document and considered transaction to be a deemed gift for the purpose of Section 56(2)(vii)(b) of the Act while the relevant document was executed on 25.03.2009 or 13.05.2009. He relied the judgment of Hon'ble Supreme Court of India in Suraj Lamp and Industries Pvt. Ltd. vs. The state of Haryana and Ors. (2012) 1 SCC, 565 and referred to para no. 26 to contend that the documents executed in favour of the assessee like Will/ POA have been recognized*

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*to be valid documents as they have been executed prior to 11.10.2011 and it is only after 11.10.2011 such documents have become insignificant to claim a right to immovable property after judgment of Hon'ble Supreme Court of India in Suraj Lamp and Industries Pvt. Ltd. case (Supra). Nothing was contended specifically for ground no. 4.*

8. *On the other hand the Ld. Sr. DR defended the orders of Revenue Authorities. GROUND NO. 1, 2 & 3*

9. *Giving thoughtful consideration to contention and matter on record it can be observed that the first document executed was (page no. 33 of PB), a gift deed dated 15.04.2009 on stamp paper of Rs. 10 bearing signatures of donor Sh. Charan Singh only. It is an unregistered gift but duly notarized. One unregistered Will dated 25.03.2009 by testator Sh. Charan Singh in ITA No. 2491/Del/2016 Mrs. Arvinder kaur 6 favour of the assessee (page no. 40 of the PB). There is a registered Will (page 34 of PB) dated 13.05.2009 of Sh. Charan Singh in favour of the assessee. There is a registered agreement to sell (without giving possession) dated 13.05.2009 (page no. 41 of the PB). In this sale consideration has been shown to be Rs. 4,00,000/-. The recital shows payment of Rs. 1,00,000/- as part payment made in cash. This agreement also mentions possession will be transferred at the time of execution of sale deed/ transfer deed. A general power of attorney was executed on 13.05.2009 by Sh. Charan Singh in favour of the Ravinder Singh, son of Bhag Singh. The same is on record at page no. 146 of the PB. 0000. Then lastly there is Transfer Deed of lease hold rights executed and registered on 23.10.2010.*

10. *Thus, what can be concluded is that the gift document of 15.04.2009 was the first document of a voluntary transfer of interest in immovable property without consideration and other documents like Will agreement to sell or GPA were executed subsequently on precautionary basis. The judgment relied by the Ld AR in Suraj Lamp and Industries Pvt. Ltd. (supra) protected documents like Gift, GPA and Will if they were executed before 11/10/2011 and aforesaid documents have to be considered as part of one transaction. In the case in hand the same was of the nature of Gift only.*

11. *The Ld. AO has erred in observing that the transaction is one of the nature where assessee has "received" immovable property for a*

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*consideration, which is less than the stamp duty value and thus considered it to be deemed gift/ income in the hands of assessee. In the context of "deemed gift" on the basis of inadequate consideration, the series of documents executed between the assessee and her maternal uncle indicate that the transaction was Gift only and had completed before 01.10.2009. So the provisions of Section 56(2)(vii)(b) of the Act which were introduced in the Act by Finance Act, 2010, with retrospective effect from 01.10.2009 are wrongly applied. Transfer Deed of lease hold rights executed and registered on 23.10.2010 was merely documents whose execution became necessary for creating a legal title. Assessee cannot be put to disadvantage on basis of this documents dated 23/10/2010, so as to say that there was transfer of interest on this date only. All the previous documents once duly protected by Suraj Lamp and Industries Pvt. Ltd. Case (supra) deserved to be taken into consideration, which Ld. Tax Authorities below failed to do.*

*12. As with regard to ground no. 4 the Ld.Tax Authorities below have fallen in error to not take into consideration the series of documents. Since the transaction is proved to be a gift, there is no question of any consideration being passed. The reference to consideration in agreement seems to be out of wrong advise parties may have received as they were advised to execute all sorts of documents with only intention to protect any contingency. However, the primary document of transfer of interest being the gift deed only."*

6. Thus having regard to this judgment passed by the Co-ordinate Bench which has already took into consideration the issue involved in the matter and decided that the right, title interest of the property was transferred to the niece of the assessee only by way of execution of a deed of gift and neither will nor by a sale deed, we do not find any reason to deviate from the stand taken therein and thus, respectfully relying upon the same, considering the transfer of property by way of a deed gift, the capital gain so determined by the Learned AO confirmed by the First

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Appellate Authority is found to be not sustainable. The addition, therefore, made on that basis is found to be erroneous, bad in law and thus, deleted.

7. In the result, appeal filed by the assessee is allowed.

**This Order pronounced in Open Court on 18/07/2024**

Sd/-  
(G. S. PANNU)  
VICE PRESIDENT

Sd/-  
(Ms. MADHUMITA ROY)  
JUDICIAL MEMBER

Dated 18/07/2024

*Priti Yadav, Sr.PS\**

**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI