

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.9088/Del/2019
Assessment Year: 2011-12

Shakuntala,
1/13, Nehru Nagar-03,
Ghaziabad.

Vs Income Tax Officer,
Ward - 2(3),
Ghaziabad.

PAN: CGYPS5999A

(Appellant)

(Respondent)

Assessee by	: Shri Rohit Tiwari, Ms Tanya & Ms Shivani, Advocates
Revenue by	: Shri Anuj Garg, Sr. DR
Date of Hearing	: 04.07.2024
Date of Pronouncement	: 27.08.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 30.09.2019 of the Commissioner of Income Tax (Appeals), Ghaziabad (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.407295981100119 arising out of the appeal before it against the order dated 28.11.2018 passed u/s 147/143(3) of the Income Tax Act, 1961

(hereinafter referred as 'the Act'), by ITO, Ward 2(3), Ghaziabad (hereinafter referred to as the Ld. AO).

2. On the basis of the AIR information that the assessee had purchased immovable property for a sale consideration of Rs.65,70,000/- in AY 2010-11, relevant to the present AY 2011-12, a notice u/s 148 of the Act was issued on 28.03.2018. In response, the assessee had not filed ITR. The AO called for necessary information and documents by issuing notice u/s 142(1) of the Act and the assessee had claimed that her husband had transferred her property in her name without any sale consideration and no payment was made to him. However, the AO was not satisfied and made the addition of the consideration amount of Rs.65,70,000/- and the stamp duty of Rs.4,50,000/- and other expenses of Rs.10,040, totaling to Rs.70,30,040/-. The appeal of the assessee was dismissed by the CIT(A) and, accordingly, the assessee is in appeal raising the following grounds:-

“1. That on the facts & in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] is wrong and bad in law.

2. That the Ld. CIT (A) and Ld. AO erred both on facts and circumstances of the case and in law, on facts and in surrounding circumstances in making huge impugned addition of Rs. 70,30,040 towards so called unexplained investment u/s 69 of I.T. Act in an arbitrary and cursory manner on the basis of assumption and presumption.

3. That the Ld. CIT (A) and Ld. AO erred both on facts and circumstances of the case and in law, on facts and in surrounding circumstances in failing to appreciate that so called purchase consideration amounting to Rs. 65,70,000, has in fact never been paid by

the appellant to her husband who has executed the sale deed as per legal advice in the capacity of power of attorney holder.

4. That the Ld. CIT (A) and Ld. AO erred both on facts and circumstances of the case and in law, on facts and in surrounding circumstances in failing to appreciate that the case of the appellant is based on circumstantial evidence duly disclosed in her written submission.

5. That the Ld. CIT (A) and Ld. AO erred both on facts and circumstances of the case and in law, on facts and in surrounding circumstances in failing to probe into the contents of affidavits of the appellant and her husband and bank accounts to arrive at a legal conclusion.

6. That without prejudice to the above, the impugned notice u/s 148 of I.T Act dated 28-03-2018 in the shape of bank Performa has got no legal sanctity and the impugned assessment order is also quite silent about valid sendee of the said notice, as per law, is a mandatory pre-condition for proceedings U/S147 of I.T Act.

7. That without prejudice to above, even the Ld. CIT (A) and Ld. AO erred both on facts and circumstances of the case and in law, on facts and in surrounding circumstances in failing to appreciate that valid service of notice, as per law, is a mandatory pre-condition for proceeding u/s 147 of I.T. Act.

8. That application for additional evidence U/s 46A of I.T. Rules and application for additional ground will be filed at the time of hearing of appeal after obtaining certified copy of reasons and order sheet.

9. That on the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld. Assessing Officer (“Ld. AO”) of passing order u/s 147 Income Tax Act, 1961 (The Act’). The said order passed by the Ld AO is void ab-initio on, inter alia, the grounds that:

- a) that the reasons recorded by the Ld. AO are not valid;*
- b) the notice under section 148 was not served on the Appellant and*
- c) It is based on factually erroneous premises and built upon surmises and conjectures.*

10. The appellant craves leave to add, alter, amend and/or modify any of the ground ground(s) during or before the hearing of the appeal.”

3. The ld. counsel for the assessee has primarily submitted that the assessee is a housewife and had no source of income and not even a bank account. The

property was purchased by the father-in-law of the assessee Late Shri Mangat Ram from Shri Vijay Shankar, but, the said property was not registered and was a mere transaction on the basis of a Power of Attorney and a Will dated 23.06.1998 wherein consideration of Rs.1,65,000/- was paid. The assessee was residing with her husband Mohan Lal and her father-in-law Shri Mangat Ram who had died on 16th January, 1992 and, accordingly, the sale deed was executed by Shri Mohan Lal as son of Shri Mangat Ram in favour of the assessee. It was submitted that this sale deed was executed merely for the purpose of registration of the document in favour of the family members and there was no inflow or outflow of cash between the two parties. It was submitted that the assessee and Shri Mohan Lal both had filed affidavits that there was no money transaction. However, the AO had not taken the same into consideration.

4. On the other hand, the ld. DR has relied the orders of the ld. tax authorities below.

5. After giving thoughtful consideration to the material on record and the submissions, we find that after execution of the sale deed, a corrigendum/rectification document was got executed between the two parties, the copy of which is placed at pages 56-59 of the paper book. This rectification mentions the facts as to how the property coming from her father in law has

been transferred in the name of the assessee. The copies of affidavits of the assessee and her husband are also available at pages 60-63 of the paper book. The sum and substance of this document is that the parties to the sale deed admit the fact that there was actually no transaction of payment of money. We find that the CIT(A) has failed to appreciate these documents and affidavits. When the onus is on a person to establish the source of payment and an affidavit is filed that that person has no taxable income and, therefore, the return of income is not filed and the person to whom allegedly the payment is made also makes the deposition on oath that no money was received, the AO who is bestowed under the law with investigative powers cannot refuse to accept the affidavits outrightly without rebutting the deposition of facts on the basis of some sort of evidence. The person who puts himself under the risk of being prosecuted for perjury for filing false affidavit before a public servant should be trusted unless there is some evidence to rebut the facts deposed on oath. The nature of transaction between the assessee and her husband is in the background of certain documents and a transaction wherein the property seems to have been acquired by the family long back without a valid title and there is every possibility that this transaction as got perfected in the form of a sale deed through a sham transaction of consideration passing from wife to husband. In case of spouses such a transaction is quite justified as, for the purpose of registration of the document creating a valid title by way of sale deed only the title would have vested in the family. In the sale deed executed by the assessee,

it is specifically mentioned that the vendor Shri Mohan Lal, her husband has derived the title on the basis of a power of attorney dated 09.06.1988 of Vijay Shankar Singh. The tax authorities being quasi judicial authorities are supposed to be circumspect to the transactions and merely on the basis of certain recitals in the sale deed cannot draw conclusive presumption of transaction of payment being actually effected. Thus, we are inclined to allow the grounds No.2 to 5. The remaining grounds become academic and are left open.

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

Order pronounced in the open court on 27.08.2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 27th August, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi