

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 959/JP/2024
निर्धारण वर्ष/Assessment Year : 2012-13

M/s.Megha Colonizers Pvt Ltd. C-9, Barwara House Colony, Ajmer Road Jaipur	बनाम Vs.	The ITO Ward 6 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJPPJ 3646 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 18/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 19/09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 11-06-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 raising therein following grounds of appeal.

“1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the initiation of proceedings u/s 148 by AO and the consequent order passed by him u/s 147 of the Act.

2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.20,61,169/- made by AO as undisclosed receipt by making various incorrect & irrelevant observations without holistically appreciating the nature of transaction.

3. The Ld. CIT(A), NFAC has erred on facts and in law in not considering the set off of business loss and unabsorbed depreciation of Rs.9,07,019/- and MAT Credit of Rs.4,96,031/- while upholding the addition made by the AO.”

2.1 As per the facts of the present case the assessee is engaged in real estate construction activities. Assessment in the present case was completed under section 143(3) read with section 147 of the Income Tax Act, thereby making additions on account of undisclosed receipts of Rs. 20,61,169/-.

2.2 This order of assessment was challenged by the appellant, but remained unsuccessful as the appeal was dismissed by Ld. CIT (A)

2.3 Aggrieved by the order of dismissal, the Appellant preferred the present appeal before me on the grounds mentioned here in above.

2.4 Ground No. 1 and 2 raised by the Appellant are interrelated and interconnected and relates to challenging the order of Ld. CIT (A) in confirming the additions made by the AO and also challenged the initiation proceedings under

section 148 of the Income Tax Act by the AO. Since both the grounds are interrelated and interconnected therefore, I have decided to dispose off these ground through the present common order.

2.5 Ld. AR appearing on behalf of the appellant reiterated the same arguments as were raised by him before the revenue authorities and also relied upon its written submissions. The contents of which are reproduced here in below.

‘Submission:

1. At the outset it is submitted that there is no dispute as to the fact that the shop under consideration is the business stock of assessee. According to the information with the AO the shop was sold in the year under consideration and difference between the actual consideration and the stamp duty value of Rs.20,61,169 is the income which has escaped assessment. However, before issuing notice u/s 148, the AO has not considered the fact that section 43CA which is a special provision for considering the stamp duty value as full value of consideration for transfer of asset other than capital asset has been introduced in the Statute by FA, 2013 from AY 2014-15 and thus not applicable in the year under consideration. No evidence is brought on record by the lower authorities that assessee has actually received Rs.20.61.169/- over and above the sales consideration recorded in the sale deed. Thus in the absence of any material that the difference is the on money received by the assessee, the notice issued u/s 148 and the consequent order passed w's 147 is legal & bat in law

2. From Para 2.8, Pg 9 of the assessment order it can be noted that the AO presumed that the property was sold at Rs.27,69,729/-, being DLC/stamp value but since assessee has already received and booked sales at Rs.7,08,560/- in the name of Sh. Sunil Makhwana in FY 2005-06, the balance Rs.20,61.169/- is treated as received by the assessee as increased appreciation amount on the sale from the new purchaser during the year under consideration. For making such presumptions, the lower authorities have not brought on record any evidence that Rs.20.61.16/- was received by the assessee from the new purchaser of the property. No enquiry was made from M/s Manglam Computech Ltd. even when specifically requested vide letter dt. 13.12.2019 (PB 32). It is a settled law that unless it is proved that the sales consideration has been understated by the assessee, the sale consideration cannot be substituted by a higher amount. For this reliance is placed on the decision of Hon'ble Supreme Court in case of K.P. Varghese Vs. ITO 131 ITR 597 where at Para 18 it was held as under

18. We must therefore, hold that sub-section (2) of s. 32 can be invoked only where the consideration for the transfer has been understated by the assessee or in other words the consideration actually received by the assessee is more than what is declared or disclosed by him and the burden of proving such an understatement or concealment is on the Revenue. This burden may be discharged by the Revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is an understatement or concealment of the consideration in respect of the transfer. Sub-section (2) has no application in the case of an honest and bona fide transaction where the consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the consideration. We find that in the present case, it was not the contention of the Revenue that the property was sold by the assessee to his daughter-in-law and five of his children for consideration which was more than the sum of Rs. 16,500 shown to be the consideration for the property in the instrument of transfer and there was an understatement or concealment of the consideration in respect of the transfer. It was common ground between the parties and that was a finding of fact reached by the IT authorities that the transfer of the property by the assessee was a perfectly honest and bona fide transaction where the full value of the consideration received by the assessee was correctly disclosed at the figure of Rs 16,500. Therefore, on the construction placed by us, sub-section (2) had no application to the present case and the ITO could have no reason to believe that any part of the income of the assessee had escaped assessment so as to justify the issue of a notice under s. 148. The order of reassessment made by the ITO pursuant to the notice issued under s 148 was accordingly without jurisdiction and the majority judges of the Full Bench were in error in refusing to quash it.

Therefore, in the absence of any evidence that the assessee received Rs.20,61,169/- as increased appreciation amount on the sale from the new purchaser, the addition made is unlawful & unjustified.

3. Without prejudice to above, it is submitted that assessee has booked the sale of said shop on 31.03.2006 as evident from the sale account for FY 2005-06 placed at PB 10-11. This fact has been accepted by the AO in Para 2.8 of the order. It is a fact on record that sale deed was not executed at that point of time but the consideration was received during FY 2004-05 to 2006-07 (PB 8). Therefore, on request of Sunil Makhwana dt. 09.02.2012 (PB 12), the assessee executed the sale deed on 15.03.2012 in favour of M/s Manglam Computech Ltd. for Rs.7,08,560/- and the amount received from them was paid back to Sunil Makhwana. In these circumstances, when the sale is already recorded in AY 2006- 07, the alleged

differential amount cannot be added in the year under consideration and hence addition confirmed by CIT(A) is unwarranted and be deleted.”

2.6 On the other hand Id DR relied upon the orders passed by the revenue authorities

2.7 I have heard the Counsel for both the parties and also perused the material place on record, judgements cited before me and also the orders passed by the revenue authorities. From the records I noticed that the assessee is engaged in real estate construction activities and according to the assessee the impugned property i. e. Shop number 212 was sold to Sunil Makwana for Rs.7,08,560/- during F.Y. 2005-06 for which the sales was recorded on 31-03-2006 (PB 8 & 10). Thereafter, Shri Sunil Makhwana has sold this shop to M/s Manglam Computech Ltd. for which the sale deed was executed by the assessee on 15-12-2012 for Rs.7,08,560/- (PB 13-31) but the stamp authorities have adopted the value of property for the purpose of levy of stamp duty at Rs.27,69,729/-. However the AO held that in the sale deed it is nowhere mentioned that the shop is sold on behalf of Sh. Sunil Makhwana. No evidence in form of sale agreement of shop between Sh. Sunil Makhwana and M/s Manglam Computech Ltd. was filed. Sh. Sunil Makhwana has not received any sale proceeds from M/s Manglam Computech Ltd. The time limit for reopening the case of Sh. Sunil Makhwana has elapsed and since shop is sold directly by assessee to M/s Manglam Computech Ltd. on 15.03.2012, the difference between the assessed value and actual consideration of Rs 20,61,169/-

was added to the income of assessee. In order to substantiate its stand, Assessee submitted that shop in question is business stock of assessee and AO failed to consider that section 43 CA is a special provision for considering the stamp duty value as full value of consideration for transfer of asset other than Capital Asset has been introduced in the Statute by FA. 2013 from AY 2014-15 and thus not applicable in the year under consideration. No evidence is brought on record by the lower authorities that assessee has actually received Rs.20,61,169/- over and above the sales consideration recorded in the sale deed. Thus in the absence of any material that the difference is the on money received by the assessee, the notice issued u/s 148 and the consequent order passed u/s 147 is legal & bat in law. After analysing the entire facts and circumstances, I am of the view that as per law any immovable property whose value is more than hundred rupees can only be transferred through a registered document. And as per the submissions of the assessee that the property in question was sold during the financial year 2005-2006 to Sunil Makwana for amount of Rs.7,08,560/- cannot be relied upon as the assessee has miserably failed to prove and nothing has been brought on record in the shape of agreement or registered sale deed in the name of Sunil Makwana. Moreover nothing has been placed on record to prove that subsequently Sunil sold the property to Mangalam rather on the contrary I noticed that The Sale deed which is registered on 15.03.2012 is between the appellant M/s. Megha Colonizers

(P) Ltd. and M/s. Manglam Computech Ltd. but nowhere mentions the name of Mr. Sunil Makwana. The appellant has claimed to have received sale proceeds from M/s. Manglam Computech Ltd on 01-03-2012 but the same has been transferred to Mr. Sushil and not Mr. Sunil Makwana as per bank statement of the appellant as verified by the AO. No argument regarding impugned property between Mr. Sunil Makwana and M/s. Manglam Computech Ltd was submitted and further Shri Sunil Makwana has not received anyb sale proceeds from M/s. Manglam Computech Ltd from 31-03-2006 to 15-03-2012. Therefore the claim of sale made to Sunil in FY 2005-2006 is not found to be correct more particularly in terms of the provisions of law of evidence. As per the provisions of section 92 of Indian Evidence Act, the oral evidence is excluded for contradicting the terms of a contract, where the deed is proved. Here in the present case, all the terms and conditions for transfer of shop in question has been reduced into writing and registered in the shape of sale. Thus No orall evidence contradicting the terms and conditions reduced into writing are admissible as per law. Therefore, it was rightly held by the revenue authorities that the property was sold at DLC/ stamp value of Rs.27,69,729/- by the assessee to M/S Manglam and the assessee has received balance amount of is Rs. 20,61,169/- as consideration amount on sale from the purchaser.

2.8 After appreciating the entire facts, I am also of the view that as per record it is noted that the registered sale deed dated 15.03.2012 mentions M/s. Megha Colonizer (P) Ltd as the owner and the party of the first part and records M/s. Manglam Computek Ltd. as the buyer and party of second part. The brief history of the property regarding ownership details are mentioned as per official records and has been recorded that the property was purchased by the appellant on 28.09.2002 and the appellant decided to construct a multistory building on the said plot of the land. The plan of the appellant to construct the multistory commercial complex building on the said plot was approved by JDA vide letter dated 12.09.2003. The appellant being party of the first part constructed the multistory building called popularly as apex mall on the said plot of land. It is clearly recorded that the appellant is an absolute owner of the premise being shop no. 212 admeasuring 293 Sq. Ft. of the first floor of the complex and the appellant as per this sale deed had sold the impugned property for Rs.7,08,560/- has been clearly mentioned in the deed that the appellant is exclusively empowered to state the ownership rights in the said premises without there being any right to encumbrances of any other party. From the above, it is clear that as per official records and as certified by the appellant in this registered sale deed, it is the exclusive owner and there is no right to encumbrance by any other party. Therefore, the claim of Mr. Sunil Makwana being the alleged purchaser in A.Y.

2005-06 totally incorrect and not backed by any supporting documents etc. and not acknowledged in this registered deed. The claim of possession given Mr. Sunil Makwana is also not proved. Hence the claims made by the appellant are totally unsubstantiated and the appellant had adopted a device to evade the unaccounted receipts by adopting the above modus operandi. Thus, the appellant has finally denied the ownership of impugned property and at the same time sought to exclude itself from the provisions of section 50C and section 43CA of the Act. These claims of the appellant are self-serving in nature. However, these transactions and unaccounted receipts are in the nature of undisclosed income and cannot be considered as regular business income or capital gains income but it is in the nature of unaccounted income to be assessed as income from other sources. The AO has rightly added the impugned amount of Rs.20,61,169/- as undisclosed receipts of the appellant. Apart from my above discussion, I am also of the view that the appellant has not discharged its burden by giving any justification as to why the property has been sold below DLC rates. Further the assessee has not placed on record any other sale deed of the same area where any other property was sold at a lower rate than that of DLC. Therefore considering the totality of facts and circumstances as discussed by me above, I am of the considered view that Id. CIT (A) has passed well-reasoned speaking order and the assessee has not been able to bring on record any new material or to controvert or rebut the lawful findings so

recorded by Ld CIT (A). Therefore, I see no reasons to interfere or to deviate from the well reasoned findings recorded by Ld CIT(A). Hence these Grounds raised by the appellant stands dismissed and the orders of the ld CIT(A) stands upheld.

3.0 As regards the Ground No. 3 of the assessee, the Bench noted that the assessee has not advanced any submission and thus the same is not adjudicated.

4.0 In the result, the Appeal of the appellant stands dismissed with no orders as to cost.

Order pronounced in the open court on 19 /09/2024.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/09/2024

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Megha Colonizers Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(2), Jaipur
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 959/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar