

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA No. 67/Ahd/2019
Assessment Year 2015-16**

Ramnijklal R. Bhadra D-202, 15, Address, Opp. ISRO Colony, B/h Big Bazar, Ahmedabad 380058 PAN: AANPB1475H (Appellant)	Vs	Asst. Commissioner of Income Tax, Circle-3(3), Ahmedabad (Respondent)
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**Assessee Represented: Shri Tushar Hemani, Sr. Adv. &
Shri Parimalsinh B. Parmar, A.R.**

Revenue Represented: Shri H. Phani Raju, CIT-DR

Date of hearing : 21-08-2024

Date of pronouncement : 29 -10-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 30.11.2018 passed by the Commissioner of Income Tax (Appeals)-3, Ahmedabad arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. Brief facts of the case is that the assessee is an individual having Income from House Property, Salary from Partnership Firm and Long Term Capital Gain [LTCG]. The assessee filed his Return of

Income for the Asst. Year 2015-16 on 29-03-2016 declaring income of Rs.41,18,810/-. The case was selected for limited scrutiny as the value of property transferred as reported in AIR is higher than the value of property transferred as reported in Return of Income and the sale consideration of property in ITR is less than sale consideration reported in Form 26QB. The assessee sold an immovable property namely "Rudravatika" which was jointly owned with his son named Sri. Ilesh Bhadra for a total consideration of Rs.3,02,00,000/- namely Rs.1,79,00,000/- by the assessee and Rs.1,23,00,000/- by his son. The assessee offered Long Term Capital Gain of Rs.31,09,733/- on sale of Rudravatika and also claiming exemption u/s. 54F of the Act.

2.2. The Ld. AO issued show cause notice dated 07.12.2017 as to why the difference of Rs.70,15,000/- should not be taxed as LTCG in the hands of the assessee when the property in question was acquired by assessee and his son Mr. Ilesh on 19.09.2007 for a total sum of Rs.40,00,000/- out of which, a sum of Rs.33,00,000/- was paid by the assessee. In the absence of any proportion mentioned in the Sale Deed, share of the assessee in the property in question was worked out by AO at 82.5% (i.e. Rs.33,00,000 - Rs.40,00,000/100), as the share of the assessee in the total sale consideration of Rs.3,02,00,000/-. Thus the transfer of property in question was worked out at Rs.2,49,15,000/- whereas the sale consideration of Rs.1,79,00,000/- declared by the assessee.

3. In response the Assessee furnished a detailed reply dated 15.12.2017 wherein the assessee clarified that on one hand, AO is

relying upon 'payment' made by assessee for purchasing the property in question for the purpose of determining share of assessee in the property in question and on the other hand, AO is not considering the amount actually 'received' by the assessee on the transfer of the property in question. More particularly assessee's son Mr. Ilesh has already declared capital gain by adopting sale consideration at Rs.1,23,00,000/- in his Return of Income. Thus, the total sale consideration of Rs.3,02,00,000/- has already been offered for LTCG by the co-owners [i.e. by Assessee Rs.1,79,00,000/- and his son Mr. Ilesh Rs.1,23,00,000/-]. In the above circumstances, no additional notional income can be considered as LTCG in the hands of the assessee on account of sale of property in question.

3.1. Ld. AO was not satisfied with the submissions and documentary evidences furnished by the assessee, thereby adopted sale consideration of Assessee's share at Rs.2,49,15,000/- instead of Rs.1,79,00,000/-. Consequently, exemption u/s.54F of the Act was reworked and LTCG taxed in the hands of the assessee at Rs.71,78,943/-. Since assessee had already offered LTCG of Rs.31,09,733/- in his Return of Income, the Ld. AO made the difference of Rs.40,69,210/- as addition in the assessment order and demanded tax thereon.

4. On appeal against the assessment order, Ld CIT[A] confirmed the addition made by the AO. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal.

1. The learned CIT(A) has erred in law and on facts in confirming Rs.2,49,15,000/- and not Rs.1,79,00,000/- as the share of consideration from sale of original asset in the hands of the assessee for the purpose of Section 54F of the Act and the consequent addition of Rs.40,69,210/- as long term capital gain.
2. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. A.O. in levying interest u/s.234A/B/C of the Act.
3. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. A.O. in initiating penalty u/s.271(1)(c) of the Act.
4. The appellant craves leave to add, amend, alter edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.
5. Ld. Senior Counsel Shri Tushar Hemani appearing for the assessee at the outset submitted that assessee's son Shri. Ilesh (i.e co-owner of property in question) had declared LTCG by adopting his share in the sale consideration at Rs.1,23,00,000/- as is evident from his Income Tax Return and Statement of Total Income which are placed at Page nos.14-22 of the Paper Book. It is relevant to note the case of Ilesh was selected for scrutiny assessment and LTCG declared by him was accepted by ITO while framing the assessment u/s. 143(3) vide order dated 29.09.17, which are placed at Page nos. 23-24 of the Paper Book. Our attention is also invited to following aspects emanating from the Assessment Order of Ilesh which was selected for "limited scrutiny assessment under the process of cass" and the reasons for scrutiny were as follows:

- Value of property transferred as reported in AIR is higher than value of property transferred as reported in return of income.
- Sale consideration of property in ITR is less than the sale consideration reported in Form 26QB.
- Large deduction claimed under section 54B, 54C, 54D, 54G & 54GA of the Act.
- Ilesh was specifically called upon to comply with reasons for selecting the case for scrutiny. In response thereto, Ilesh has furnished the required documents along with requisite clarifications.
- Ilesh had produced books of accounts, bank statements. P&L Account, Balance Sheet, sale / purchase deed & Income Tax Return. Such documentary evidences were verified on test check basis and placed on record.

5.1. Assessment orders u/s 143(3) in the case of the "assessee" and "Ilesh" have been passed by the following authorities:

- Assessee: The ACIT, Circle 3(3), Ahmedabad.
- Ilesh : The ITO, Ward 3(3)(2), Ahmedabad

Thus, Assessing Officer of the assessee and Ilesh fall in the same assessment Range. Whereas the AO of Ilesh accepted LTCG declared based on his share in sale consideration (Rs.1,23,00,000/-) but the AO of the assessee disputed the LTCG declared based on his share in sale consideration (Rs.1,79,00,000/-). Thus two different Assessing officers of the Income-tax Department cannot adopt different share in sale consideration in relation to transfer of the same property in the hands of two different co-owners. Since the Income-tax Department has accepted LTCG in relation to property in question in the case of "Ilesh" (i.e. co-owner) based on his share in property in question

while framing assessment, after threadbare scrutiny assessment order passed u/s.143(3) of the Act. Thus Income-tax Department cannot take contrary stand in the hands of the assessee being the other co-owner.

5.2. Ld. Senior Counsel for the assessee further drawn our attention to the notices issued u/s.143[2], replies filed by the assessee with documentary evidences forming part of the record and placed in the Paper book. Further the AO has not brought on record any cogent material so to even remotely demonstrate that the assessee has received any sum over and above his share of Rs.1,79,00,000/- in sale consideration. Thus the action of the AO in taxing "notional income" in the hands of the assessee is merely on the basis of assumptions, conjectures and surmises. It is well settled that only Real income can be taxed by the Revenue and not notional income. Reliance is placed on the judgement of Hon'ble Apex Court in case of Godhra Electricity Co. Ltd. -Vs- CIT reported in 225 ITR 746 (SC).

5.3. In any case, the amount paid by the assessee at the time of purchasing property in question cannot be the guiding factor for determining share of assessee in the property in question. In a given case, it might be possible that shares of co-owners are different but the entire payment has been made by a single co-owner which could be on account of internal arrangement between the co-owners. Thus, the very approach adopted by AO is fallacious. But for such approach, there is nothing on record to even remotely demonstrate that the assessee has received anything

over and above Rs. 1,79,00,000/-. Further the observations of the Ld. CIT(A) as to higher investment by Ilesh and this arrangement being a colorable device, it is submitted that such observations are misconceived in the light of elaborate discussion made hereinabove. The very fact that Income-tax Department has accepted LTCG as well as claim of exemption u/s 54F of the Act in the hands of Ilesh (co-owner) shows that this is not at all a case of colorable device. Thus, findings of Ld. CIT(A) are absolutely out of context and it is further evident that CIT(A) has failed to appreciate facts of the case in the correct perspective. In view of the above, the lower Authorities are not justified in making the impugned addition on notional basis, the same are deserves to be deleted. Alternatively, in the absence of share-holding between co-owners being explicitly defined in the Conveyance Deed, it must be presumed that co-owners had equal share. Reliance is placed on the decision in the case of Smt. Shivani Madan -Vs- ACIT in ITA 1642/Del/2020.

6. Per contra Ld. CIT DR Shri H. Phani Raju appearing for the Revenue supported the orders passed by the lower authorities and requested to uphold the same and pleaded to the dismiss the assessee appeal.

7. We have given our thoughtful consideration and perused the materials available on record including the paper books and case laws filed by the assessee. The assessee alongwith his son Ilesh R. Bhadra purchased an immovable property "Rudravatika" by way of Sale Deed dated 19-09-2007 for a consideration of Rs.40 lakhs, wherein the sale consideration was paid by two cheque payments

namely Rs. 33 lakhs dated 14-08-2007 and Rs. 7 lakhs dated 04-09-2007 drawn on Vijya Bank, Ambawadi Branch. However, the above Sale Deed is totally silent about exact share of the properties between the assessee and his son. Whereas the Assessing Officer during the assessment proceedings held as follows:

“The said property was acquired, held and sold in joint ownership by the assessee with his son Shri Ilesh R Bhadra Upon further verification, it has been found that this property was acquired by the assessee on 19/09/2007 at a total cost of Rs. 40,00,000/-. The assessee claimed to have paid Rs. 33,00,000/- out of the Rs. 40,00,000/- to acquire the said property and the fact is also evident from the payment schedule mentioned in the agreement. Since, there is no mention of proportion of ownership in the purchase deed, the assessee's share works out to 82.50% as per the payment borne by him. The said property i.e. Rudravatika has been sold on 27/11/2014 for a total consideration of Rs 3,02,00,000/- and the assessee had shown his share of sale consideration at Rs. 1,79,00,000/- instead of Rs. 2,49,15,000/- [82.50% of Rs 3,02,00,000/-].”

7.1. The Assessing Officer himself admits there was no mention of ratio of ownership as per the above Sale Deed, but he determines the share of the assessee at 82.5% based on the payment of Rs. 33 lakhs made in the above Sale Deed. Thus the Ld. A.O. applied the same ratio when the assessee alongwith his son sold the above immovable property on 27-11-2014 for a total consideration of Rs.3.02 crores. On perusal of the above, Sale Deed dated 27-11-2014 the payments received by the assessee and his son are as follows:

Rs. 45,00,000/-	By cheque no. 37 dtd. 18/7/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 21 dtd. 12/9/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 76 dtd. 13/9/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken
Rs. 12,50,000/-	By cheque no. 27 dtd. 14/9/2014 drawn on HDFC

	Bank in the name of Ramniklal Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 78 dtd. 15/9/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 80 dtd. 9/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 15,00,000/-	By cheque no. 84 dtd. 9/10/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 81 dtd. 11/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 82 dtd. 14/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 83 dtd. 17/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 12,50,000/-	By cheque no. 897 dtd. 17/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 15,00,000/-	By cheque no. 97 dtd. 29/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 15,00,000/-	By cheque no. 100 dtd. 29/10/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 15,00,000/-	By cheque no. 98 dtd. 31/10/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 15,00,000/-	By cheque no. 99 dtd. 31/10/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 20,00,000/-	By cheque no. 93 dtd. 3/11/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 20,00,000/-	By cheque no. 96 dtd. 3/11/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 21,00,000	By cheque no. 103 dtd. 25/11/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 77,000/-	By Draft No.008410 dtd. 26/11/2014 drawn on HDFC Bank in the name of Ilesh Bhadra is taken.
Rs. 17,21,000/-	By Draft No. 008411 dtd. 26/11/2014 drawn on HDFC Bank in the name of Ramniklal Bhadra is taken.
Rs. 1,23,000/-	To be paid by you the purchaser of TDS in the name of Ilesh Bhadra, which is settle in sale consideration.
Rs. 1,79,000/-	To be paid by you the purchaser of TDS in the name of Ramniklal Bhadra, which is settle in sale consideration.
Rs. 3,02,00,000/-	In words Rupees Three Crores Two Lakhs only

7.2. Thus in assessee's hand TDS of Rs. 1,79,000/- and in his son Ilesh R. Bhadra of Rs. 1,23,000/- were deducted as TDS by the Purchaser of the property. As per the above Sale Deed, the assessee

has received Rs. 1.79 crores and his son received Rs. 1.23 crores and offered for taxation and also paid appropriate tax by filing Return of Income both the assessee and his son accordingly. The assessee's son case was taken for scrutiny assessment by ITO, Ward-3(3)(2), Ahmedabad and passed the assessment order dated 29-09-2017 accepting the returned income including LTCG filed by the Ilesh R. Bhadra. Whereas in the case of assessee, assessment order is passed by ACIT, Circle-3(3), Ahmedabad disputing the share of ownership of the immovable property and suo-moto determined the share of the assessee at 82.5% and alleging the assessee ought to have shown the Long Term Capital Gain for Rs. 2,49,15,000/- instead of Rs.1,79,00,000/- offered by the assessee. Further the Ld. A.O. denied the benefit of claim of exemption u/s. 54F and demanded capital gain of Rs.40,69,210/-.

7.3. On perusal of the sale Deed dated 27-12-2014 here also the share in the property by the assessee and his son is silent. Whereas the assessee received Rs. 1.79 crores by various cheques payments and similarly his son received Rs. 1.23 crores as enumerated in the above table at Para 7.1. When assessee's son Returned Income being accepted by passing regular assessment order, there is no question of making different stand or share of income in the case of the assessee and demanding tax, when the registered Sale Deed is silent about the share of ownership between the assessee and his son.

7.4. Alternatively, since both the assessee and his son are assessed in the same Assessment Circle both the cases ought to have been

taken and appropriate assessment orders ought to have been passed in the respective hands, which is not being done in the above case. Thus the Assessing Officer suo moto action of determining the assessee's share as 82.5% is without any basis, more particularly when the registered Sale Deed clearly enumerate the consideration received by the assessee and his son as Rs.1.79 crores and Rs. 1.23 crores respectively. Thus, we do not find any good reason by making the assessment by the assessing officer and demanding tax thereon. Further the registered Sale Deed clearly exhibits that the assessee received Rs. 1.79 crores against which TDS of Rs. 1.79 lakhs was made by the Purchaser of the property. Thus the addition made by the Assessing Officer on a wrong premises which was confirmed by Ld. CIT(A) and is liable to be deleted.

8. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 29 -10-2024

Sd/-

(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 29/10/2024

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद