

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
&
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 1797/KOL/2024
Assessment Year: 2018-19

Tamal Kundu 40A, W.C. Banerjee Street, Girish Park, Kolkata-700006, West Bengal [PAN : ALQPK8796A]	Vs	Income Tax Officer, National E-Assessment Centre, Delhi, ACIT, Circle-37, 3, government place, (West), Kolkata-700001, West Bengal
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Anup Sinha, AR
Revenue by :	Shri P.P. Barman, Addl. CIT

सुनवाई की तारीख/**Date of Hearing** : 24.10.2024
घोषणा की तारीख /**Date of Pronouncement** : 20.11.2024

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 2nd August, 2024 of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the 'ld. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 ('Act').

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts and circumstances of case and in law, the Ld. CIT(A) and the Ld. AO ought to have applied the provision of section 56(2)(x) of Income-tax Act, 1961 (hereinafter referred to as 'the Act') in respect of purchase of immovable property by the appellant in the previous year relevant to the assessment year 2017- 18 and not in the previous year relevant to assessment year 2018-19.

2. That on the facts and circumstances of case and in law, the orders passed by the Ld. CIT(A) and the Ld. AO are unsustainable and bad in law and hence, the same may kindly be struck down.

3. That on the facts and circumstances of case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in charging interest under section 234A and 234B of the Act.”

3. Apart from this, assessee has raised following additional grounds of appeal:-

“1. That on facts and circumstances of the case and in law, the Ld. CIT(A) erred in passing the order under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') without considering the stamp duty value as on date of agreement as per first proviso to section 56(2)(x) of the Act on the alleged ground that the agreement to sell is not registered without appreciating the fact that there is no mandate under the first proviso to section 56(2)(x) of the Act to register the agreement fixing the amount of consideration for transfer of immovable property.

2. That the appellant craves leave to add to and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of appeal.”

4. Brief facts of the case are that the assessee purchased a rice mill vide registered sale deed dated 21st March, 2018, for a consideration of ₹86 lacs. However, the ld. Assessing Officer (in short 'ld. AO'), during the assessment proceedings, noticed that the stamp duty value of the property was much higher. He therefore, invoking the provisions of Section 56(2)(X) of the Income-tax Act, 1961 (the Act), added the differential amount of ₹1,05,84,328/- into the income of the assessee. The ld. CIT (A) confirmed the addition made by the ld. AO.

5. Before us, ld. Counsel for the assessee has stated that the agreement for sale of the aforesaid property was entered into on 30.12.2016 and that the possession of the property was also handed over by the assessee to the vendor on the same date. He, inviting our attention to the said unregistered agreement, stated that in fact the transfer of the property was complete on the date of execution of agreement itself, and that the registration of sale deed

was rendered as a mere formality, which was done in the next year. He, in this respect has referred to the decision of the coordinate Bench of the Tribunal in the case of “Income Tax Officer vs. Rekha Agarwal (Jabalpur)” in I.T.A. No. 94/JAB/2018 dated 27th February, 2020 and further referring to the decision of the Hon'ble Supreme Court in the case of “Sh. Sanjeev Lal Etc. Etc vs Commissioner Of Income Tax dated 1st July, 2014 (2014) 365 ITR 389 and further, decision of the Hon'ble Supreme Court in the case of ‘CIT vs. Balbir Singh Maini and Ors. (2017) 398 ITR 531 (SC)’, wherein para 21 & 22 of the said order, it has been held as under: -

“21. However, the High Court has held that Section 2(47)(vi) will not apply for the reason that there was no change in membership of the society, as contemplated. We are afraid that we cannot agree with the High Court on this score. Under Section 2(47)(vi), any transaction which has the effect of transferring or enabling the enjoyment of any immovable property would come within its purview. The High Court has not adverted to the expression “or in any other manner whatsoever” in sub-clause (vi), which would show that it is not necessary that the transaction refers to the membership of a cooperative society. We have, therefore, to see whether the impugned transaction can fall within this provision.

22. The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression “enabling the enjoyment of” takes color from the earlier expression “transferring”, so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof. 1 The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.”

6. The Id. Counsel for the assessee has submitted that the transfer of property u/s 2(47) of the Act was complete on the date of execution of the agreement and therefore, the addition, if any, was to be made u/s 56(2)(x) of the Act, that could have been made by the AO into the income of the assessee for A.Y. 2017-18 and not in the A.Y. 2018-19.

7. We have considered the above submission of the Id. Counsel for the assessee and gone through the documents and the copy of the agreement which has been placed at page no. 1-4 of the Paper Book. We have gone through the said agreement and perusal of the

said agreement would reveal that it is mere an agreement to sale and in our view cannot be termed as 'sale deed' for transfer of property, either under the provisions of transfer of property Act, or under the Provisions of Section 2(47) of the Income Tax Act. It is clearly mentioned in the heading of the document that it is an 'agreement for sale' and hence it was not a transfer deed of property. The contents of the said agreement are reproduced below:-

“AGREEMENT FOR SALE BETWEEN

Nureman Ansary, son of late Anasri Ansary, Muslim by faith resident of village Rangamati, Tola Pattar, P.O. Rangamati, P.S. Arsha, District Purulia, hereinafter referred to as First Party.

AND

Tamal Kundu, son of Tarapada Kundu, Hindu by faith, business by occupation resident of 40/A W.C. Banerjee street, Kolkata 700006 hereinafter referred to as Second Party.

WHEREAS the First party is the owner of Preeti Rice Mill, sim tuated in Arsha, District Purulia. And owing to certain legal necessity he intend to sell the said Rice Mill fully described in the Schedule below:-

AND

WHEREAS the Second Party hearing of the Offer have accepte the proposal of the First Party.

AND NOW IT IS AGREED BETWEEN BOTH THE PARTIES THE SALE WILL BE CONDUCTED AS PER FOLLOWING TERMS & CONDITIONS:

- 1. That the Second party shall pay sum of Rs. 86,00,000/- (Eighty Six lakhs) as full & final payment for sale of Preeti Rice Mill along with factory plant & machinery.*
- 2. That, the Second party will have to pay the said amount within 30.12.2016.*
- 3. That the First party will be bound to execute sale Deed within 2 years of receipt of the entire consideration money of Rs. 86,00,000/-.*
- 4. That the First party on receive of the said amount will immediately deliver possession of the Factory premises to the Second party.*
- 5. That, the Second party shall have right to take electric connection, Trade License, Govt. Permit and all other necessary licenses to run the Rice Mill and the First Party will not give any Objection against the Second party before any authority of law or Govt. office.*
- 6. That, on payment of Rs. 86,00,000/- on 30.12.2016. the Second party shall have right to run business in the factory premises.*

*SCHEDULE*

District Purulia, Mouza Nanpur, J.L. no. 41, P.S. Arsha, under Sub-Registry Office at Purulia, Gram Panchayat-Arshe. RS, Khata 144, 154, 191, 84/4, 77/79, corresponding to R.S. plot no. 197 sold area 155 decimals. R.S. Khata-125, corresponding R.S. plot no. 238, sole area 14 decimals,

Total sold area 169 Decimals Along with factory Tin Shed measuring an area of 28216 Sq. f and Plant & Machinery fixed in the factory premises.

IN THE WITNESS WHEREOF BOTH the parties put their signature on 30.12.2016.

Sd/-
Signature of First Party

8. Perusal of the aforesaid agreement would reveal that it is not a transfer deed. In the heading of the agreement, the words mentioned are 'Agreement for sale'. Further, in clause 1 of the agreement, it has been written that the second party will pay ₹86 lacs, as full and final payment for sale of the property, which shows that no money was transferred at the time of execution of agreement. Though the sale consideration was to be paid on the same date i.e. on 30th December, 2016, however, Clause 3 of the agreement shows that the first party will be bound to execute the sale deed within two years of receipt of entire sale consideration, which shows that the transfer was dependent upon the execution of the sale deed. Though, in clause 4 of the agreement, it has been written that the first party on receipt of sale consideration, will deliver the possession of the premisses of the said property to second party, however, that does not imply, in any manner that mere delivery of possession will complete the transfer of the property, which in fact, was dependent upon execution of the registration of the sale deed in favour of the purchasers. As per clause 5, it has been mentioned that purchaser will have the right to take electric connection and other licenses and permission for running the business. However, the contents of the aforesaid clause, itself, show that all permissions were subject to the

approval of the seller. Under the circumstances, and a complete reading of the said agreement shows that the transfer of the sale of the property was not complete on the execution of agreement rather the same was dependent on future actions. The Id. Counsel for the assessee stated that the agreement was executed on 30th December, 2016 itself, and that the entire sale consideration was paid on the said date itself. However, as discussed above, on perusal of the clauses of the agreement would show that it was not a transfer deed in itself. Even in the light of the provision of Section 2(47)(vi) of the Act, in our view, the transfer was not complete on the said date as there is no mention in the agreement that the first party will enjoy the property on the execution of the agreement as owner and that the transferor from the said date will not have any right or interest left in the said property. Transfer was dependent upon future action of registration of sale deed. The copy of the registered sale deed has been placed at page 5 of the paper book which is dated 28th March, 2018. A perusal of the said sale deed would also reflect that the rights in the property have been transferred, on the date of execution of the sale deed. There is no mention in the sale deed that, in fact, the property was transferred on an earlier date, or that, the sale deed has been executed as formality on a subsequent date. All the rights in the said property were transferred as per the contents of the sale deed on the date of the execution/ registration of the sale deed. Under these circumstances, we are not convinced with the arguments of the Id. Counsel for the assessee that the transfer was complete on the date of execution of the sale agreement.

8.1 So far as reliance of the Id. Counsel for the assessee on the case laws (supra) is concerned, the facts of the case in hand are quite distinguishable. So far as reliance of the Id. Counsel for the

assessee on the decision of Hon'ble Supreme Court in the case of '*Balbir Singh Maini and Ors.*' (*supra*), is concerned, we note that even the said decision of the Hon'ble Supreme Court is not applicable to the facts of the case in hand. The Hon'ble Supreme Court in the said case, while considering the provisions of Section 2(47)(vi) of the Act, has observed that the idea is to bring within the tax net a de facto transfer of any immovable property, where though title may not be transferred in law, there is, in substance, a transfer of title, in fact. However, in the case in hand, as observed above, there is no transfer of title in this case on mere execution of the agreement. Moreover, the object & purpose of the said provision, as held by the Hon'ble Supreme Court also, is to bring to the tax net the capital gains on de facto transfer, and that an assessee may not defer the payment of taxes pleading that the transfer deed is not registered. However, the said provision cannot be allowed to be misused by a defaulting assessee, who himself concealed the execution of unregistered agreement in the year in which it was executed and there was no information available to the AO that any such transfer of property has taken place. The assessee, otherwise, cannot be allowed to take the benefit of his own wrong. Under the circumstances, the case laws relied upon by the Id. Counsel for the assessee in the facts and circumstances of the case in hand, are not applicable.

9. The Id. Counsel for the assessee, at this stage, has taken an alternative ground that the sale consideration was settled on the date of the agreement i.e. 30th December, 2016 and that all the amount was paid on the said date. He therefore, has contended that the collector rate/ circle rate as on the date of execution of the agreement should be taken for the purpose of making any addition u/s 56(vi)(2) of the Act. Though, this ground has been taken by the



ld. Counsel for the assessee as an additional ground, however, we find force in the same in view of the provisions of Section 56(2)(X) read with First proviso and Second proviso. As per first and second Proviso to Section 56(2)(X) of the Act, where, the date of agreement, fixing the amount of consideration, is prior to the date of the registration deed and the amount of consideration or part thereto as per the said agreement has been paid by the purchaser through banking channel, then the stamp duty value/ circle date as mentioned on the date of agreement is to be taken for the purpose of Section 56(2)(x) of the Act. Since, in this case the entire payment of ₹86 lacs was transferred by the assessee through banking channel on 30th December, 2016, therefore, the ld. AO is directed to calculate the amount as per the circle rate as applicable on 30th December, 2016. The ld. AO shall call upon for information in this regard from the circle officer/ collector and thereafter, apply the said rates for the purpose of computing the income of the assessee while invoking the provisions of Section 56(2)(x) of the Act.

10. The appeal of the assessee stands partly allowed.

Order pronounced in the Court on 20th November, 2024 at Kolkata.

Sd/-

(SANJAY AWASTHI)
ACCOUNTANT MEMBER

Kolkata, Dated 20.11.2024

*SS, Sr.Ps

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata