

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.9690/Del/2019
Assessment Year: 2011-12

Smt. Nilofer Singh, 607, Sarvapriya Apartments, Sarvapriya Vihar, New Delhi	Vs.	Income Tax Officer, Ward 24(2), New Delhi
PAN :AARPS4022P		
(Appellant)		(Respondent)

Assessee by	Sh. Sanjiv Rai Mehra, FCA
Department by	Sh. B.S. Anand, Sr. DR

Date of hearing	26.11.2024
Date of pronouncement	18.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2011-12, arises against the Commissioner of Income Tax (Appeals)-31 [in short, the "CIT(A)"], New Delhi's order dated 27.07.2018 in case 21/17-18/369/13-14 involving proceedings under section 147 r.w.s. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case file perused.

3. Learned counsel submits during the course of hearing that both the lower authorities herein have erred in law and on facts in refusing her deduction claim of Rs. 50,00,000/- in computation of long term capital gains arising from transfer of corresponding capital assets, namely, three plots situated in DLF area at Gurgaon. We are taken to the CIT(A)'s lower appellate discussion affirming the assessment findings to this effect as under:

"5.4. I have considered the facts at hand. This is a case where the appellant says that it had paid a sum of Rs. 50 lac to one Sh. Sukhbir Singh who had occupied the aforesaid 4 plots. The said amount of Rs. 50 lacs was claimed to have been paid in F.Y. 2009-10 and 2010-11. I find that the 4 plots in question were acquired by the appellant in around the period 1994-95. These plots are not joined together but are separate plots and not contiguous. Upon being required, the appellant produced before me copies of documents through which these 4 plots were acquired. The purchase documents (being sale agreements through which the appellant acquired these plots) clearly lay down that the seller has full and absolute control on the plots and has transferred the actual physical possession of the plots to the buyer who in this case is the appellant before me. To this effect, relevant portion of one of the purchase document (for plot 456/22 of DLF Qutab Enclave Complex) filed before me, being paras 3, 4 and 5, are produce below.

"3. That the Vendor has assured the Vender that he is the sole exclusive and absolute owner of the said plot and no one else besides the Vendor has any right, claim, lien, interest on concern whatsoever on the above said plot and the Vendor has full and absolute authority to transfer/sell the same to the Vendor and has assured the Vendor that he has not entered into any Agreement to sell or any other commitment in respect of the said plot with any person and persons and has also undertaken that he will not enter into any other Agreement to sell or any other commitment or transaction with any other person(s) in respect of the said plot.

4. That the Vendee shall abide by all the terms and conditions laid by M/s DLF Universal Ltd.

5. That the said Vendor has delivered the actual, physical possession of the said plot to the said Vendee and has also handed over all the concerned papers, documents of the said plot to the said Vendee and the said Vendee has become the absolute owner of the said plot. "

I also find the appellant never took any police measures or any civil litigation to get the so-called encumbrances removed. This, to my mind, defies all rational logic.

The aforesaid analysis leads to me to an inference that the payment of dis Rs. 50 lacs as money paid for evicting the occupant from these 4 different and disjointed plots is not allowable as cost of improvement. The purchase document of these plots does not speak of any encumbrance or any 'Kabja' on this plot. In fact the claim of the appellant is patently bogus and not allowable."

2.1 Learned counsel further invites our attention to the assessee's additional ground that the corresponding three plots nos. U67/51; U56/22 & U14/12 had in fact been sold by their original allottees through general power of attorney and sale proceeds thereof. Learned counsel vehemently argues that the assessee's impugned claim ought to have been accepted by both the lower authorities as the encroacher herein Sh. Sukhbir Singh had refused to vacate the premises, which made her to pay the amount in question of Rs.50 lakhs.

3. We find no merit in the assessee's instant main as well as additional substantive grounds, once it has come on record that she has failed to prove the recipient herein, Sh. Sukhbir Singh as having acquired the possession of the corresponding plots, which

has been sold/transferred in the relevant previous year followed by the consequential long term capital gains computation.

4. Faced with this situation, learned counsel seeks to buttress the points that the assessee had in fact made the corresponding investments through the actual owner, namely, Sh. Chacko and once the recipient has threatened the latter's title and possession, she chose to settle the issue. We are of the considered view that all these assessee's oral assertions are hardly acceptable once Sh. Sukhbir Singh has not proved to have threatened her rights in the capital aspects by any means, whatsoever. We thus see no reason to accept the assessee's instant sole substantive ground. Both the lower authorities' action making the impugned disallowance stands upheld.

5. This assessee's appeal is dismissed.

Order pronounced in the open court on 18th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 18th December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi