

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.362 /Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2014-15)

Mallesh Manthri Hyderabad [PAN :AKDPM3296M]	Vs.	Income Tax Officer Ward-15(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:		
राजस्व द्वारा / Revenue by:		
सुनवाई की तारीख / Date of hearing:		
घोषणा की तारीख / Date of Pronouncement:		

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order dated 13.02.2024 of the learned Commissioner of Income Tax (Appeals) [Ld.CIT(A)], National Faceless Appeal Centre, Delhi, pertaining to A.Y.2014-15 on the following grounds :

- 1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.*
- 2. The learned Commissioner erred in confirming an addition of Rs.95,54,666/-, which was made by invoking the provisions of section 56(2)(vii)(b) of the IT Act.*

3. *The learned Commissioner ought to have appreciated that the assessee is only a Power of Attorney holder of Kasulanandam and two others who have executed GPA on 24.02.2014, to do certain activities on behalf of the owners, therefore, erred in confirming the addition of Rs.95,54,666/- u/s 56(2)(vii)(b) of the IT Act.*
4. *The learned Commissioner ought to have appreciated that the assessee filed original return of income on 16.01.2015 which is processed u/s 143(1) of the IT Act, as the notice u/s 148 is issued with an assumption that the assessee has not filed return of income, ignoring the fact that return is filed u/s 139 of the IT Act, therefore, the notice u/s 148 should have been held as null and void.*
5. *The learned Commissioner ought to have appreciated that notice u/s 148 is not served on the assessee, therefore, the order u/s 147 r.w.s.144 is to be held as null and void, as the same is completed without serving notice u/s 148 of the IT Act.*
6. *The learned Commissioner ought to have appreciated that no notice u/s 143(2) was served on the assessee after filing of the return of income on 06.04.2021, therefore, the order u/s 147 r.w.s. 144 is to be held as null and void for violating the provisions of section 143(2) of the IT Act.*
7. *The appellant craves leave to add to, amend or modify he above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.*

2. The brief facts of the case are that the assessee is an individual and filed his return of income for the A.Y.2014-15 on 02.01.2015, declaring total income of Rs.2,62,580/-. The case has been subsequently reopened u/s 147 of the Income tax Act, 1961 ("the Act"), 1961, for the reasons recorded, as per which,

the income chargeable to tax had escaped assessment. As per the Assessing Officer, the appellant during the previous year, relevant to the A.Y.2014-15 executed sale deeds in document Nos.696/2014 and 699/2014 dated 24.02.2014 for various plots with SRO, Shameerpet, Hyderabad for a total consideration of Rs.17,99,334/-, whereas, the chargeable value of the said properties are at Rs.1,13,54,000/-. As the assessee has not filed return of income for the A.Y.2014-15, even though his total income for the previous year exceeded the maximum amount, which is not chargeable to income tax, notice u/s 148 of the Act was issued and served on the assessee on 30.03.2021. In response, the assessee filed return of income on 06.04.2021, admitting total income of Rs.2,62,580/-. The case was selected for scrutiny and notice u/s 142(1) of the Act dated 14.12.2021 was issued and called upon the assessee to furnish certain information, with regard to sale deeds executed on 24.02.2014. Since the assessee has not responded to the notice u/s 142(1) of the Act, the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act and determined total income at Rs.98,17,246/- by making addition of Rs.95,54,666/- towards the difference in value of property u/s 56(2)(vii)(b) of the Act.

3. Being aggrieved, the assessee preferred an appeal before the CIT(A). Before the Ld.CIT(A), the assessee challenged the additions made by the Assessing Officer towards difference in value of property u/s 56(2)(vii)(b) of the Act and submitted that during the previous year, relevant to the assessment year under consideration, the assessee neither purchased nor sold any

property and thus the question of paying consideration as stated by the Assessing Officer and the difference in fair market value of the property as on the date of registration does not arise and therefore, the question of invoking the provisions of section 56(2)(vii)(b) of the Act does not arise. The Ld.CIT(A), after considering the submissions of the assessee and also taking note of various facts brought on record by the Assessing Officer, dismissed the appeal filed by the assessee and upheld the additions made by the Assessing Officer u/s 56(2)(vii)(b) of the Act, on the ground that the appellant has not established the reason for low valuation of the property, even though the market value of the property as per General Power of Attorney ("GPA") is Rs.1,13,54,000/-. Therefore, held that there is no error in the reasons given by the Assessing Officer to make additions u/s 56(2)(vii)(b) of the Act.

4. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

5. The Ld.Counsel for the assessee, Mohd.Afzal, referring to two documents considered by the Assessing Officer, for making additions u/s 56(2)(vii)(b) of the Act, submitted that the appellant has not purchased any property, to invoke provisions of section 56(2)(vii)(b) of the Act. Further, if we go by the document No.696/2014 and 699/2014 dated 24.02.2014, the appellant has been appointed as Attorney by Shri Kasula Nandam, Shri Kasula Rakesh Kumar and others and authorized the appellant to act as per the directions issued in the GPA,

in respect of certain properties referred to therein. However, the assessee has neither purchased any property nor paid any consideration as stated by the Assessing Officer. Therefore, the question of making addition u/s 56(2)(vii)(b) of the Act does not arise. Therefore, he submitted that the additions made by the Assessing Officer should be deleted.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that as per the GPA, market value of the property has been determined at Rs.1,13,54,000/-, on which the appellant has paid the stamp duty. Although, there is no consideration payment as per the GPA, but going by the general conditions, referred to therein, it is presumed that the appellant has purchased the property and therefore, the Assessing Officer has rightly made additions towards difference in the value of the property u/s 56(2)(vii)(b) of the Act and their order should be upheld.

7. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. Although, the Assessing Officer claims that the appellant has executed the sale deeds vide document No.699/2014 and 696/2014 dated 24.02.2014, but as per the details submitted by the assessee, including the relevant documents referred to by the Assessing Officer, we find that those two documents are GPA executed by Shri Kasula Nandam and others and

appointed the appellant as their lawful attorney to deal with certain properties. As per the said GPA, there is no reference to any payment of consideration for purchase of property. Although the property value has been determined for the purpose of payment of stamp duty to register GPA, the same cannot be considered as consideration of the property paid by the appellant for purchase of the properties. Further, if we go by the general clauses of power of attorney, the assessee has been appointed as lawful attorney, to deal with the property including sale, lease, gift and mortgage the properties referred to therein and also to submit relevant accounts to the principals, in respect of transactions with the properties. From the recitals of the GPA, we find that, nowhere, any reference of sale or transfer of the properties referred to therein and payment of consideration by the appellant to the property owners. The Assessing Officer, without considering or understanding the relevant documents, simply presumed that the appellant has purchased the property by way of GPA and paid consideration of Rs.17,99,34/-, even though, there is no reference to any kind of consideration paid as claimed by the Assessing Officer. Further, we could not ascertain, as to how the Assessing Officer has arrived at Rs.17,99,334/- in respect of those properties. Therefore, in the absence of any evidence as to purchase of properties by the appellant from the property owners and also payment of consideration as claimed by the Assessing Officer, in our considered view, no additions

can be made u/s 56(2)(vii)(b) of the Act on the basis of value of the property, determined for the purpose of payment of stamp duty, for registration of GPA. In our considered view, the provisions of section 56(2)(vii)(b) would come into operation only in cases, where, any individual or HUF receive in any previous year, from any person or persons, any immovable property, without consideration or for a consideration, which is less than the stamp duty value of the property, by an amount exceeding Rs.50,000/-, then the difference between the value of the property as referred to therein and the value for the purpose of stamp duty shall be treated as income u/s 56(2)(vii)(b) of the Act. In the present case, the assessee neither purchased the property as claimed by the Assessing Officer, nor paid any consideration, which is less than the fair market value of the property, therefore, in our considered view, the provisions of section 56(2)(vii)(b) cannot be pressed into service. The Assessing Officer, without appreciating the relevant facts, simply made additions u/s 56(2)(vii)(b) of the Act. The Ld.CIT(A), although in principle, agreed that in the GPA, market value of the property is mentioned at Rs.1,13,54,000/-, the value taken at Rs.17,99,334/- is not mentioned anywhere, but, erred in sustaining the addition made by the Assessing Officer u/s 56(2)(vii)(b) of the Act. Thus, we set aside the order of the Ld.CIT(A) and direct the Assessing Officer to delete the additions made u/s 56(2)(vii)(b) of the Act for Rs.95,54,666/-.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 17th December, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA G.) ACCOUNTANT MEMBER
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Hyderabad,

Dated 17th December, 2024

L.Rama, SPS

Copy to:

S.No	Addresses
1	Shri Mallesh Manthri, 1-7-171/1, Kamala Nagar, ECIL X Road, ECIL Post, Hyderabad
2	The Income Tax Officer, Ward-15(1), Hyderabad
3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order