

आयकर अपीलीय अधिकरण “डी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1825/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO Non-Corporate Ward-3(5) Chennai.	बनम/ Vs.	Late Smt. Lakshmi Selvaraj Rep. by Shri A.S. Ashwin Kumar New No.40, Old No.12, 2B, Jeyam Murray’s Gate Road, Teynampet, Chennai-600 018.
स्थायी लेखासं./जीआइआरसं./PAN/TAN No. AAIPS-8030-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri D. Anand (Advocate) – Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Krishna Kumar (JCIT) -Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	06-01-2025
घोषणाकीतारीख / Date of Pronouncement	:	22-01-2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-4, Chennai [CIT(A)] dated 18-02-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Act on 19-12-2018. The grounds taken by the revenue read as under: -

1. The order of the Id CIT(A) is contrary to law and facts and circumstances of the case.

2.1 The Id CIT(A) erred in deleting the addition made by the AO u/s 56(2)(vii)(b) of the Income Tax Act, 1961, assessing in the hands of the assessee as income from other sources, the value of the property purchased in the name of the assessee through the alleged loan from the firm where she is the partner.

2.2 The Id CIT(A) ought to have noted that the claim that it is a loan transaction between the firm and the assessee is not reflected in the balance sheet of the firm and that neither the capital account nor the current account of the assessee in the books of the firm in which the assessee is a partner is debited accordingly to support the assessee's claim.

2.3 The Id CIT(A) failed to appreciate that the books of the firm have been audited and the subsequent modification done on account of the supposed error in the accounting head was only made to suit the needs of the assessee.

2.4 The Id CIT(A) erred in deleting the disallowance overlooking the facts that there is no debit entry in the books of the firm in the current / capital account of the assessee or reflection of loan transaction in the balance sheet of the firm and accordingly the provisions of sec. 56(2)(vii)(b) of the Act in the case is rightly invoked.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the

Assessing Officer restored.

As is evident, the sole issue that arises for our consideration is addition made by Ld. AO invoking the provisions of Sec. 56(2)(vii)(b).

2. The Ld. Sr. DR advanced arguments and supported the findings of Ld. AO whereas Ld. AR referred to the findings of Ld. CIT(A) in the impugned order. It has been stated that the property actually belonged to the partnership firm and the funds of the firm have been utilized. The written submissions have also been filed. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee has expired on 31-12-2020. Shri A.S. Ashwin Kumar act as legal representative for deceased assessee.

3. Assessment Proceedings

3.1 An assessment was framed against the assessee u/s 143(3) wherein income was determined at Rs.7.10 Lacs as against returned income of Rs.2.80 Lacs. The addition to total income was on account of

taxation of benefit arising from purchase of property at Adyar by the assessee. The addition as made u/s 56(2)(vii)(b) was for Rs.4.41 Lacs. On the basis of the same, an opinion was formed by Ld. AO that the property belonged to the assessee though the investment was sourced by the partnership firm M/s Krepton India Granites in which the assessee acted as a partner. Since the assessee became title holder and beneficial owner of the property worth Rs.582.31 Lacs which was funded by the partnership firm, the entire benefit thus accruing to the assessee was to be taxed u/s 56(2)(vii)(b). Accordingly, the case was reopened and notice u/s 148 was issued to the assessee on 16-03-2018 wherein the aforesaid benefit as accruing to the assessee was proposed to be brought to tax.

3.2 The assessee stated that the transactions were in the nature of gift from the firm to the assessee. The source of funds emanates from firm. The Ld. AO confronted the same on the ground that the capital account of the partner in the firm had not undergone change and the value of investment was not debited to the capital account of the assessee in the books of the firm. The assessee became the beneficial owner of the property. Thus, the assessee received property worth Rs.567.05 Lacs as gift from the firm. The aforesaid income was brought to tax as income from other sources u/s 56(2)(vii)(b) and the assessment was finalized.

Appellate Proceedings

4. The assessee challenged the validity of reassessment proceedings which was dismissed by Ld. CIT(A). On merits, it was observed by Ld. CIT(A) that Ld. AO clearly stated that the property was shown in the firm's financial statement and purchased out of the funds of the firm. In such a case, no benefit could be said to have accrued to the assessee.

Alternatively, even if the property was purchased in the name of the partner out of the firm's funds, then the capital account of the partner would have been debited which implies that the partner's capital account should be reduced and the property would not be required to be shown in the books of the firm. However, as noted by Ld. AO, the property was shown in the books of the firm as an asset and there was no reduction in the capital account of the partner. Accordingly, it could not be concluded that the said property was either gifted or transferred without any consideration leading to impugned addition in the hands of the assessee. Therefore, the impugned addition was deleted against which the revenue is in further appeal before us.

Our findings and Adjudication

5. Upon perusal of documents on record, it could be seen that the assessee is a partner in M/s Krepton India Granites. As rightly noted by Ld. AO, there is no debit to assessee's capital account in this year towards purchase of impugned property. The sum paid by the firm for Rs.582.05 Lacs has been debited under the head 'property at Chennai-20'. The property has been purchased out of funds of the firm which is evident from its bank statements as kept on record. The property has been reflected as asset in the Balance Sheet of the firm. On the basis of these facts, it could be said that the property in question was purchased by the assessee-firm using its own funds and the same was for the benefit of the firm. Therefore, there would be no occasion to invoke the provisions of Sec. 56(2)(vii)(b) against the assessee who acted as a partner in the firm. These provisions would apply only if there is gift from firm to the partner. Merely because the property was held in the name of the partner, the same could not be held to be gift considering the fact

that the property was reflected as an asset in the Balance Sheet. In terms of Sec.14 of Indian Partnership Act, 1932, the partnership property includes all property and rights originally brought into the firm or acquired by or for the firm. The property has been acquired by the partnership-firm using its own funds. The firm's treatment of the property as an asset reinforces that no personal gift or transfer without consideration has occurred. The co-ordinate bench, in the case of **Smt. Chandrasekaran Valarmathi, ITA No.652/Chny/2022 dated 29-11-2023**, considering the provisions of Sec.14 of Indian Partnership Act, 1932, under similar circumstances, held that the property is deemed to have been acquired by the firm and not by individual partners. The same supports the adjudication of Ld. CIT(A).

6. Even otherwise, the transaction, at the most be considered as loan by the firm to the partner but the same cannot be treated as gift in the hands of the assessee. The same is also supported by the fact that necessary rectification for classification of the property has been carried out by the firm in subsequent financial year 2017-18. Therefore, the provisions of Sec. 56(2)(vii)(b) could not be applied in this situation also. Lastly, it could also be ascertained that the partnership firm was constituted by the assessee and her relatives only. Applying the doctrine of substance over form, it could be concluded that even if there was a gift, the same has happened within the relatives and such transactions are excluded from the purview of Sec.56 (2)(vii)(b). This view is supported by the decision of co-ordinate bench in the case of **Ms. Anitha Kumaran, ITA No.1164/Chny/2019 dated 07-09-2022**.

7. Considering the above facts and circumstances of the case, the adjudication by Ld. CIT(A) could not be faulted with. We order so.

8. The appeal stands dismissed.

Order pronounced on 22nd January, 2025

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :22-01-2025
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF