

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 564/Ind/2016

निर्धारण वर्ष /Assessment Year: 2010-11

Asstt. Commr. of Income Tax 1(1),

Bhopal

:: अपीलार्थी /Appellant

Vs

Shri Ashok Gupta

Bhopal

PAN – ABOPG – 0204H

:: प्रत्यर्थी /Respondent

राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
निर्धारिती की ओर से/Assessee by	Shri Ashish Goyal and Shri N.D. Patwa
सुनवाई की तारीख Date of hearing	22.2.2017
उद्घोषणा की तारीख Date of pronouncement	28.2.2017

आदेश /O R D E R

PER SHRI C.M. GARG, JM

This appeal has been filed by the Revenue against the order of the learned CIT(A)-I, Bhopal, dated 25.2.2016 in

First Appeal No. CIT(A)-1/BPL/IT-177/13-14 for the assessment year 2010-11.

2. The sole effective ground raised by the Revenue-appellant reads as follows :-

“On the facts and in the circumstances of the case, the CIT(Appeal) has erred in –

1. Whether, on the facts and circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.42,00,000/- whereas the assessee has not discharged his onus of proving that the sale transaction does not pertain to him since the assessee has not furnished any document of the alleged sellers as to where the income from capital gains has been reflected.”

3. The facts, in nutshell, are that the assessee is engaged in trading of Offset Printing Press. The assessee filed the return of income on 4.10.2010 showing total income of Rs. 44,93,640/-. Notice u/s 143(2) of the Act was issued on 7.9.2011. In the profit and loss account, the assessee had shown gross receipts of Rs.6,15,50,128/- with net profit of Rs. 45,47,048/-. In addition, the assessee has also earned interest income of Rs.97,033/- and claimed loss of Rs.50,447/- under the head ‘House Property’ against self occupied residential house. The assessee was asked to furnish details of purchase and sale of immovable property in

response to which the assessee submitted that on 18.12.2009 he has made only one sale transaction in the capacity of partner of M/s Drishti Builders and Developers. However, as per AIR information, during the year, the assessee had entered into two transactions of sale of immovable property. One of them pertains to the sale of property on behalf of the firm in which the assessee is a partner, whereas on 30.9.2009, the assessee has sold another property at Rs. 42,00,000/- which he has not mentioned anywhere. Vide his reply dated 18.3.2013 the assessee again reiterated that *“the assessee has neither purchased nor sold the pieces of land in his individual capacity”*. However, the assessee contended before the Assessing Officer that the assessee's PAN is also quoted in another sale deed dated 30.9.2009 in favour of Smt. Vibha Gupta w/o Shri Ashok Gupta in which the assessee had signed on behalf of registered owner and seller by obtaining a general power of attorney from the owners of the land. However, the assessee has not discharged the onus of proving that the sale transaction does not pertain to him since the assessee has not furnished any document of the alleged sellers as to where the income from capital gain has been reflected. The Assessing Officer observed that

the assessee has also not shown any income from capital gains in the computation of income. In the wake of these facts, the Assessing Officer added Rs. 42,00,000/- on account of sale of immovable property to the total income of the assessee as undisclosed income.

4. Being aggrieved with the above action of the Assessing Officer, the assessee preferred first appeal before the learned CIT(A). During the course of hearing before the learned CIT(A), the assessee filed an application under Rule 46A submitting additional evidence in the form of agreement to sell which was forwarded by the learned CIT(A) to the Assessing Officer calling for his remand report. In response, the Assessing Officer submitted the remand report on 12.1.2016 . After considering the facts of the case, submissions of the assessee and the remand report of the Assessing Officer, the learned CIT(A) observed as under :-

“10. Looking to the facts of the case and the submission, it is seen that the appellant in this case has acted as the power of attorney holder for the sellers Smt. Kanti Rghu and Smt. Santosh Mehrotra. The buyer was Smt. Vibha Gupta, who is the wife of the appellant. At the time of the registration of the

property, the PAN of the power of attorney holder i.e. the appellant was mentioned in the sale deed which was picked up by the AIR transactions and was subsequently reported to the department. However, as the appellant had not sold the property, therefore, the addition made by the A.O. of Rs.42,00,000/- in the assessment order holding that this amount is on account of sale of immovable property by the appellant is not correct and the addition made in the assessment order is therefore deleted. The ground of appeal is allowed and the appellant gets relief on this account.”

In view of the above findings, the learned CIT(A) deleted the addition made by the Assessing Officer.

5. Felt aggrieved, the Revenue has come up in appeal before the Tribunal.

6. We have heard the arguments of both the sides and carefully perused the relevant material placed on record of the Tribunal, inter-alia, assessment order, impugned first appellate order, paper book filed by the assessee spread over 42 pages and other relevant material placed on record of the Tribunal.

7. The learned DR supporting the action of the Assessing Officer submitted that the learned CIT(A) has erred in deleting the addition of Rs. 42 lacs whereas the assessee has not discharged his onus of proving that the sale transaction does not pertain to him. The learned DR vehemently contended that since the assessee has not furnished any document of the alleged sellers as to wherefrom the income as capital gains has been reflected then the addition made by the Assessing Officer on sole grounds cannot be dismissed. Drawing our attention to para 4 of the assessment order, the learned DR submitted that the computation of income furnished by the assessee does not contain any income from capital gains whereas the AIR information received by the Assessing Officer clearly shows that during the year the assessee has entered into two transactions of sale of immovable properties out of which one pertained to the sale of the property on behalf of the firm in which the assessee is a partner and the assessee has also sold another property at Rs.42 lacs on 30.9.2009, which the assessee has not shown anywhere including the computation of income.

8. The learned DR submitted that the learned CIT(A) has granted relief to the assessee without any justification and reasoning.

Therefore, the same may be set aside by restoring the order of the Assessing Officer.

9. Replying to the above, the learned counsel for the assessee contended that before the Assessing Officer the assessee vide reply dated 18.3.2013 submitted that the assessee has neither purchased nor sold the pieces of land in his individual capacity and the assessee only executed the sale deed in favour of Smt. Vibha Gupta on behalf of the registered owner by obtaining a general power of attorney from the owners of the land. Therefore, no long term capital gain or any other income can be alleged in the hands of the assessee for making the addition.

10. The learned counsel for the assessee further drew our attention towards paras 6 to 10 of the first appellate order and submitted that the assessee filed all relevant papers as additional evidence before the learned CIT(A) under the provisions of Rule 46A of the Income Tax Rules, 1962 and after obtaining the remand report and considering the rejoinder of the assessee to the remand report, the learned CIT(A) rightly held that the assessee has acted as a power of attorney holder for the seller Smt. Kanti Raghu and Smt. Santosh Mehrotra and at the time of registration of sale deed,

PAN of power of attorney holder i.e. the assessee was mentioned in the sale deed which was wrongly picked up by AIR information and reported to the Assessing Officer. The learned counsel for the assessee vehemently pointed out that the Assessing Officer without applying his mind to the information and the material, proceeded to make the addition without any basis which was rightly deleted by the learned CIT(A), hence the first appellate order may kindly be upheld.

11. On careful consideration of the above submissions and from a careful reading of the first appellate order, we observe that neither the Assessing Officer nor the learned DR during the course of arguments, could controvert this fact that the assessee merely acted as power of attorney holder of the sellers - Smt. Kanti Raghu and Smt. Santosh Mehrotra – and at the time of execution and registration of the sale deed, the assessee mentioned his PAN perhaps as per the requirements of the registration department and this created a doubt in the mind of the Assessing Officer which resulted into impugned addition. Obviously, when the assessee is neither the owner of the land nor beneficiary of the sale consideration and he merely acted on behalf of the sellers under the

power of attorney then it cannot be alleged against the assessee that the assessee has earned the income on sale of such property and the entire sale consideration is the income of the assessee. In our considered opinion, the view taken by the learned CIT(A) on the basis of evidence placed before him, remand report of the Assessing Officer and the rejoinder of the assessee, is quite justified and sustainable and we are unable to see any valid reason to interfere with the same. Accordingly, the sole ground of the revenue, being de void of any merit, is dismissed.

12. In the result, the appeal of the revenue stands dismissed.

The order has been pronounced in open Court on 28th February, 2017.

Sd/-

लेखा सदस्य
(O.P.Meena)
Accountant Member

sd/-

न्यायिक सदस्य
(C.M. Garg)
Judicial Member

February 28th , 2017.

Dn/