



आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA No.1849/PUN/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Mrs. Beena Shammi Chaudhary,
B/3-302, Silver Oak, Florian Estates,
Kalyani, Maharashtra.

..... अपीलार्थी /
Appellant

PAN : ADYPC5109R.

बनाम v/s

The Income Tax Officer,
Ward – 6(4), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri V.L. Jain.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 29.01.2019	घोषणा की तारीख / Date of Pronouncement: 16.04.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A), Pune – 5, Pune dated 27.09.2018 for the assessment year 2009-10.

2. The relevant facts as culled out from the material on record are as under :-

2.1. Assessee is an individual stated to be having rental income and income from other sources. Assessee filed her original return of income for A.Y 2009-10 on 15.06.2009 declaring total income of Rs.1,38,174/-. The return of income was initially processed u/s 143(1) of the Act on 20.11.2010. Thereafter the case was reopened by issuing notice u/s 148 of the Act dated 30.03.2011 which was served

on the assessee. In response to notice u/s 148 of the Act, assessee filed return of income declaring the same income that was filed originally. Thereafter, the case was taken for scrutiny and assessment was framed u/s 143(3) r.w.s 147 of the Act vide order dated 30.11.2011 and the total income was determined at Rs. 21,31,889/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dt.27.09.2018 (in appeal No.PN/CIT(A)-5/ITO Wd-6(4), Pune/850/2017-18) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following effective ground :

“The Ld.CIT(A) has erred in confirming the addition of Rs.19,72,489/- on account of long term capital gain alleged to be not reflected in the return.”

3. On the basis of information available with the AO it was noticed by him that assessee had sold property for a consideration of Rs.26 lacs during F.Y 2008-09 but had not included the capital gains arising on the sale in the return of income. AO accordingly issued notice u/s 148 of the Act. During the course of reassessment proceedings, AO asked the assessee to justify as to why the income on sale of land was not disclosed by her in the return of income to which the assessee submitted that since the transaction of sale was cancelled and the part of the amount was returned by the assessee to the purchaser, the transaction of sale was incomplete and therefore no capital gains arose. The submissions of the assessee were not found acceptable in view of the fact that assessee had executed the sale deed, registered it, had paid stamp duty and assessee had also given the possession of the property. AO therefore worked out the

taxable capital gains at Rs.19,72,489/- and added to the total income. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under:

“7 I have perused carefully the material on record and the contention of the Appellant. There are few undisputed facts which arise that, the Appellant had sold House property for a consideration of Rs.26,00,000/- and payment was received by her. The Assessee had also executed a Sale Deed, registered it and had paid the Stamp Duty. She had also received a sale consideration and has also given the possession of the property. During the course of Appellate proceedings it has been claimed that, only Rs. 12,00,000/- was received against the Total consideration of Rs. 26,00,000/-. It was also claimed that, the transaction was actually cancelled as two cheques dated 30.07.2008 and 30.09.2008 of Rs. 7,00,000/- each were not honoured. The mode of cancellation was claimed to be the returning of two cheques of Rs. 1,00,000/- each on 30.06.2009. It has also been contended that, there was an understanding that the balance amount would be repaid on formally registering the cancellation Deed. The Appellant has contended that, the Sale Deed though registered but not acted upon would not give rise to transfer as contemplated as per Sec. 2(47)(a) of the I. T. Act.

7.1 I find this contention of the Appellant lack strength. In the Appellant's case, it is claimed that there is a non receipt of substantial part of consideration, though it is surprising that possession has been handed over, sale deed registered and payment received. It is also a fact that, Capital Gains have not been shown by the Appellant in her Return of Income. In fact, the cancellation Deed, as claimed by the Appellant is unregistered and only a very miniscule part of the alleged payment of Rs. 12,00,000/- received, has been shown to be returned back by cheque. In the given facts and circumstances of the case, the cancellation part smirks of an afterthought and cannot be accepted. The contention of the Appellant of the transaction not being completed is devoid of merit. All the procedures of registering the Sale Deed, receiving payment, handing over possession have been given effect to. The claim now that, the transaction is incomplete cannot be accepted. The cancellation deed, the very basis of the claim of incomplete transaction has not even been registered. The amount shown as returned is very miniscule compared to the total amount. Therefore, in view of the above, the Assessing Officer has correctly held that, the Appellant is liable to pay Long Term Capital Gains. The addition made on this account of Long Term Capital Gains is sustained. The Appellant fails in this Ground of Appeal which is accordingly dismissed.”

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

4. Before me, Ld AR reiterated the submissions made before lower authorities and further submitted that assessee had executed a

registered sale deed on 15.12.2007 for sale of land for a consideration of Rs.26 lacs. The sale deed was registered with the registration authorities on 17.04.2008. As against the agreed sale consideration of Rs.26 lacs, assessee received Rs.5 lacs (Rs 1 lac vide cheque dated 06.03.2008 and Rs 4 lacs in cash on the date of execution of sale deed). Assessee also received 3 post dated cheques of Rs.7 lacs each dated 30.05.2008, 30.07.2008 & 30.09.2008. As against the 3 post dated cheques of Rs.7 lacs each, 2 post dated cheque of Rs.7 lacs were not honoured and thus assessee had received only Rs.12 lacs against the agreed consideration of Rs.26 lacs. He submitted that it was agreed that out of Rs.12 lacs received by the assessee, Rs.10 lacs would be refunded to the purchaser at the time of registration of cancellation of sale deed. He pointing to the copy of translated copy of the sale deed which is placed in paper book submitted that the perusal of the sale deed clearly reveals that the honouring of the post dated cheques was an integral condition of sale deed and since the post dated cheques have not been honoured, no sale can be said to have taken place and thereby capital gains could not be said to have arisen in the hands of the assessee. He further submitted that since the sale deed was executed on 15.12.2007, if at all the transfer is considered to have taken place, it has taken place in A.Y 2008-09 and not in A.Y 2009-10 though the registration was done on 17.04.2008. He further submitted that the observation of Ld.CIT(A) that the cancellation of the deed smirks of an afterthought is factually incorrect as the part refund of Rs.2 lacs to the purchaser by cheques is reflected in the bank statements of the assessee. He further submitted that the registration of the sale deed can only have

evidentiary value but is not conclusive of the actual sale when the assessee is able to prove that the entire consideration has not been received and in fact a part of the consideration has already been refunded. He also placed reliance on the following decisions :

- Pritam Laxman Walvekar Vs ITO (ITA No 755/PUN/2013).
- Hira Lal Ram Dayal vs CIT (122 ITR 461 (P&H).
- Smt Raj Rajni Devi Ramna Vs CIT 201 ITR 1032 (Pat).

5. Ld DR on the other hand supported the order of lower authorities and placed reliance on the decisions in the case of ITO Vs. Indira Shete (2012) 25 taxmann.com 511 (Mum), Oikos Apartments (P) Ltd Vs ITO (2018) 95 taxmann.com 44 (Bang) and K.K.Srinath Vs. ACIT (2004) 141 taxman 268 (Mad).

6. I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to taxability of capital gains. The copy of the sale deed of land which is placed in the paper book reveals that assessee had entered into sale deed on 15.12.2007 for sale of land for a total consideration of Rs.26 lacs. The sale deed was registered with the authorities on 17.04.2008 by payment of necessary registration fees. The sale consideration as per clause 10 of the sale agreement reveals that assessee had received Rs.1 lac by cheque dated 06.03.2008, which as per the copy of the bank statement was credited to the account of the assessee on 08.03.2008. As per the terms of sale deed, assessee was to receive Rs.4 lac on date of execution of sale deed. There is no dispute with respect to the aforesaid receipt of Rs.4 lacs. As per the sale deed, assessee had received 3 post dated cheques of Rs.7 lacs each dated

30.05.2008, 30.07.2008 and 30.09.2008. It is assessee's contention that out of the aforesaid 3 post dated cheques, 2 cheques of Rs.7 lacs each, aggregating to Rs. 14 lacs was not honoured by the purchaser of the land and further out of Rs.12 lacs received by the assessee, assessee had already refunded Rs.2 lacs and balance Rs.12 lacs was to be refunded on completion of the cancellation deed, which has not been completed by the seller. It is therefore assessee's contention that since the terms of sale agreement has not been complied with, there is no sale and therefore no capital gains. At the moment it will be useful to refer to the following clauses of the agreement.

Clause 3 of the sale deed states "... As agreed between the parties, on receipt of such consideration, the said deed is executed and registered in the name of the party of the first part (i.e. purchaser) and **possession of the property is transferred** pursuant to this deed to the party of the first part". (emphasis supplied)

Clause No.4 of the sale deed states "vide this deed **the party of the first part (i.e. purchaser) has become a legal owner of the property** described in clause 1. **He now enjoys the right in the property. The property is at the complete disposal of the party of the first part.** In case of any financial losses incurred by the party of the first part on account of any nuisances caused because of the party of the second part (i.e. Assessee) or her heirs or descendents, the party of the second

part will be responsible towards such losses.... (emphasis supplied)

Clause 6 of the sales deed states that the party of the second part (i.e. the assessee) hereby agrees to sign all documents, etc to give effect to such transfer in government records, 7/12 extracts, records of rights etc....

Clause 9 of the sale deed states **“henceforth none of the heirs, creditors etc of the vendor shall have any right, title, possession, easement etc in the property. Vide this deed, the purchaser has become the complete owner of this property and enjoys his rights in the land. None of the descendants of the vendor shall challenge the ownership of the right of the buyer as owner henceforth.”** (emphasis supplied).

7. The perusal of the clauses cited hereinabove clearly show that the rights, title and possession of the property has been transferred by the assessee in favour of the purchaser. Before me, it is assessee’s contention that since the post dated cheques were not honoured by the purchaser, it could not be stated that the sale is complete. Before me, no material has been placed by the assessee to demonstrate that the post dated cheques given by the purchasers were deposited by the assessee and thereafter it were returned unpaid by the bank. I further find that the contention of the Ld.CIT(A) that the deed of cancellation has not been registered has not been controverted by the assessee. During the course of hearing, a query was raised about the position of the cancellation deed to

which it was submitted that cancellation deed has not been executed till date and therefore the amount of Rs.10 lacs has also not been refunded. Further the decisions relied upon by assessee are distinguishable on facts and are not applicable to the present case as in none of those cases, it was case where the possession and complete ownership was transferred. Considering the totality of the aforesaid facts, I find no reason to interfere with the order of Ld.CIT(A). **Thus, the ground of assessee is dismissed.**

8. In the result, the appeal of assessee is dismissed.

Order pronounced on the 16th day of April, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 16th April, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-5, Pune.
4. Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.