

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.652/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

Smt. Chandrasekaran Valarmathi No.76-77, Raja Street, Townhall, Coimbatore-641 001.	बनाम / Vs.	ITO Non-Corporate Ward-I(3), Coimbatore.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ADCPV-6888-Q		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./ ITA No.653/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

Smt. Rajasekaran Vasanthamalli No.76,77, Raja Street, Townhall, Coimbatore-641 001.	बनाम / Vs.	ITO Non-Corporate Ward-I(4), Coimbatore.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ABVPV-6121-B		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri K.G. Raghunath (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri P.Sajit Kumar (JCIT) –Ld. Sr. DR
सुनवाई की तारीख/Date of Hearing	:	26-09-2023
घोषणा की तारीख /Date of Pronouncement	:	29-11-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by different assesseees for Assessment Year (AY) 2014-15 arise out of separate orders of learned First Appellate Authority. However, the facts as well as issues are identical in both the

appeals. For the purpose of adjudication, ITA No.652/Chny/2022 has been taken to be the lead case. This appeal arises out of the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 30-05-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 29-11-2019. The grounds taken by the assessee read as under:

“1. The order of the learned Commissioner of Income-Tax (Appeals) [‘CIT(A)’] is erroneous and bad in law.

Invoking of Section 56(2)(vii) of the Income-tax Act, 1961 ('the Act') is void-ab-initio

2.The learned CIT(A) failed to appreciate that since Section 56(2)(vii) is an anti-abuse provision, the facts should be analysed having regard to the intention of the section (being prevention of tax avoidance) before concluding about its applicability.

Given that the transaction is between the firm (through its partners) and an unrelated third party, there is clearly no intention of tax avoidance. Accordingly, invoking of Section 56(2)(vii) of the Act by the learned CIT(A) is void-ab-initio.

Principle of purposive construction to be followed

3.The learned CIT(A) failed to appreciate the judicial principle as laid down by **CIT Vs Kamal Wahal (2013) 351 ITR 4 (Delhi)** that *purposive construction* is to be preferred as against a literal construction.

In our current facts, though the acquirer is the Appellant, the repayment of the loan is made by the firm M/S Chandran Steels. Accordingly, by preferring the principle of purposive construction as against literal construction, it is clearly evident that the Property is purchased only by the firm M/S Chandran Steels through its partners. Given the Property in substance is purchased by the firm MIS Chandran Steels, invoking of section 56(2)(vii) of the Act is invalid and bad in law.

Look at Principle to be applied

4.The learned CIT(A) failed to appreciate the legal principle laid by Supreme Court in the landmark ruling of **Vodafone International Holdings B.V. vs UOI and Anr (247 CTR 1)** wherein it has been held that the tax authorities must look at the legal nature of the transaction and while doing so, a **'look at' principle** needs to be applied, wherein the entire transaction would need to be looked at as a whole, without dissecting it.

In the facts of the case, if the transaction is looked as **whole without dissecting**, it is clearly evident that the transaction, for all intents and purposes is between the firm M/S Chandran Steels (through its partners) and the independent unrelated third party. Hence, 56(2)(vii) of the Act shall not be applied in the current facts since the Property in substance is purchased by the firm M/s. Chandran Steels.

Principle of substance over form to be preferred as per the Act

5.The learned CIT(A) failed to appreciate the legal principle laid by **Commissioner of Income-tax Vs Podar Cement's Private Limited (1997] 226 ITR 625 (SC)** that anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded there from and having the right to use and occupy the property and/or to enjoy its usufruct in his own right shall be the owner/acquirer of the

Property **though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc.**

In the current facts, though the legal owner is the Appellant, the actual owner/purchaser in substance is the firm M/s Chandran Steels since the Property prima-facie is exclusively used by the Firm M/s Chandran Steels for its business purposes. Further, the addition/improvements and repairs of the Property is carried out only by the firm M/s Chandran Steels. Furthermore, repayment of loan taken for acquisition of the Property is paid by the firm M/s Chand ran Steels.

Given the same, applying principle of substance over form, it is clearly evident that the Property in substance is purchased by the firm M/s Chandran Steels. Accordingly, invoking of section 56(2)(vii) of the Act is erroneous and bad in law.

Income to be assessed only in the hands of real owner

6.The learned CIT(A) failed to appreciate the key Principles laid out in the case of **Maharani Yogeshwari Kumari v. C.I.T., 213 ITR 541 (Rajasthan HC)** that the assessing authority has power to assess the income in the hands of the real owner and not on the beneficial owner.

Based on the above legal principles, the income, if any, has to be assessed only in the hands of the firm M/s Chandrasekaran Steels (the real owner) and not on the Appellant (beneficial owner). Given the section 56(2)(vii) of the Act is applicable only for Individual/HUF, invoking of same by learned CIT(A) is erroneous and bad in law.

Penalty

7.The learned CIT(A) erred in levying penalty under 271(1)(c) of the Act whereas there is no concealment of income.

8.The learned CIT(A) erred in levying penalty under section 271(1)(c) of the Act whereas there is no furnishing of inaccurate particulars.”

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

2. The Registry has noted a delay of 6 days in ITA No.652/Chny/2022, the condonation of which has been sought by Ld. AR on the strength of condonation petition. Though Ld. Sr. DR opposed the condonation, the bench deems it fit to condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR advanced arguments supporting the case of the assessee and submitted that the property was acquired on behalf of the partnership firm and even depreciation was claimed as well as allowed to the firm. The Ld. AR submitted that it was only partnership firm which was paying the loan installment and therefore, the purposive construction was to be considered. The Ld. AR further submitted that

since the provisions of Sec. 56(2)(vii) do not apply to a partnership firm, the impugned addition is not sustainable. To support the same, financial statements of the firm and other documents have been placed on record. The Ld. Sr. DR, on the other hand, controverted the arguments of Ld. AR and submitted that the property was acquired in the name of partners only and therefore, the provisions of Sec.56(2)(vii) have rightly been invoked. The Ld. Sr. DR also controverted the argument that the property was being used by the firm. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

4.1 The assessee being a partner in a firm M/s Chandran Steels, along with 3 other partners of the firm, purchased certain building situated at Coimbatore for Rs.95.72 Lacs. This amount was stated to be debited in the firm. It was also submitted that building loan of Rs.70 Lacs was obtained against the same. However, Ld. AO noted that as against guideline value of the property for Rs.155.77 Lacs, the property was purchased for Rs.85 Lacs. Therefore, the provisions of Sec.56(2)(vii)(b)(ii) would apply and accordingly, the differential amount was to be added as 'income from other sources' to the extent of assessee's share therein i.e., one-fourth.

4.2 The assessee, inter-alia, submitted that as per Section 14 of Indian Partnership Act, any property and rights and interest in property acquired with money belonging to the firm is deemed to be have been acquired by the firm. The entire amount to purchase the property was spent by the firm and the property actually belonged to the firm. Since the firm paid the amount and also repayment of loan obtained to

purchase the property was met out of the funds of the firm, the property belonged to the firm only. The firm claimed the depreciation on the property which would show that the property was being used for the business of the firm. Therefore, the provisions of Sec.56(2)(vii)(b)(ii) would not apply. However, Ld. AO rejected the same on the ground that the sale deed does not mention that the property was purchased in the capacity of the partners of the firm and the property was being acquired by the firm. The loan was sanctioned in the name of the partners only. Therefore, the property was purchased in individual names only and accordingly, the impugned addition of Rs.17.69 Lacs on account of $\frac{1}{4}$ th share of the assessee was made.

4.3 During appellate proceedings, the assessee submitted that purposes construction was to be followed and the judicial principle as laid down in **CIT vs Kamal Wahal (351 ITR 4)** was to be preferred as against literal construction. It was evident that the property was purchased only for the firm through its partners. However, Ld. CIT(A) confirmed the stand of Ld. AO by observing that in the present case, the property was purchased in individual names. This being so, the firm was required to pay the rent to the co-owners. The mere repayment by firm on behalf of the partners would not make the firm the owner of the property. Accordingly, the impugned addition was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the impugned property has been purchased in joint ownership of 4 persons all of whom happens to be partner in a firm M/s Chandran Steels. From the financial statements as placed on record, it emerges that the said property has been

introduced by the partners in the firm and the said property is in business use of the firm. The same is also evidenced by the fact that the depreciation has also been allowed to the firm. The firm is repaying the loan installment and for all practical purposes, it is the firm only which is exclusively using the property for its business use. We also find that the provisions of Section 14 of Indian Partnership Act provide that unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm. Therefore, applying purposive construction to the facts of the present case, the property is deemed to have been acquired by the firm only and not by individual partners. This being so, the provisions of Sec.56(2)(vii)(b)(ii) could not be pressed into service since these provisions do not apply to partnership firm at the relevant point of time. Therefore, in our considered opinion, the impugned addition is not sustainable. By deleting the same, we allow both the appeals.

6. Both the appeals stand allowed.

Order pronounced on 29th November, 2023

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated :29-11-2023
DS

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF