

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA Nos.40 & 41/Chd/2019
निर्धारण वर्ष / Assessment Years : 2006-07 & 2008-09

Smt. Amarjit Kaur 386-R, Model Town Ludhiana	बनाम	The ITO Ward-6(1), Ludhiana
स्थायी लेखा सं./PAN NO:AFWPS0637N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Modit Srivastava, Sr. DR

सुनवाई की तारीख/Date of Hearing : 12/06/2019

उद्घोषणा की तारीख/Date of Pronouncement : 14/06/2019

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

Both the above appeals have been filed by the Assessee against the separate order each dt. 25/10/2018 of Ld. CIT(A)-4, Ludhiana.

2. At the first instance, I will deal with ITA No. 40/Chd/2019 for the Assessment Year 2006-07 wherein Assessee has raised the following grounds:

1. That the Ld. Commissioner of Income Tax (Appeals)-4, Ludhiana has erred in confirming the action of the Assessing Officer in making the addition of Rs. 11,44,500/- by taking the sale consideration of 1/2 portion of the property at Rs. 45,15,000/-.

2. That the CIT(A) has failed to appreciate the fact that in the case of co-owner namely Sh. Indertej Pal Singh (Husband), the CIT(A) vide order, dated 20.06.2018 has already deleted such addition on the basis of same facts and circumstances and, as such, the addition as confirmed by the Ld. CIT(A) is against the facts and circumstances of the case.

3. That the CIT(A) was fully apprised by way of submissions alongwith paper book, wherein, the order of the CIT(A), dated 20.06.2018 have been filed and which have not been discussed at all by the Ld. CIT(A).

4. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

3. Facts of the case in brief are that the assessee filed the return of income on 26/04/2013 declaring an income of Rs. 90,000/-. Thereafter the A.O. reopened the assessment under section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on the basis of information received from ADI(Inv.)-III, Ludhiana. The A.O. during the course of assessment proceedings noticed that the assessee was co-owner of the property no. BXIX/446 measuring 601-2/3 Sq. Yards in which she had ½ share and her husband was also the owner of ½ share. He also observed that sale deed was executed in favour of Shri Kanwar Ranbir Singh Dhillon(purchaser) and total consideration @ Rs. 15,000 per Sq. Yards came to Rs. 90,30,000/- where as the assessee

had shown her share at Rs. 25,00,000/- as against Rs. 45.15 lacs. The assessee submitted that she was owner of 300 Sq. Yards being ½ share and received payment as under:

- i) Rs. 1,00,000/- as biana vide Ch. No. 164119 dt. 02/04/2005
- ii) Rs. 9,00,000/- as biana vide Ch. No. 164118 dt. 11/04/2005
- iii) Rs. 5,00,000/- vide Ch. No. 849516 dt. 06/05/2005 drawn on ICICI Bank
- iv) Rs. 10,00,000/- in Cash 04/08/2005
- v) Rs. 10,00,000/- vide Ch. No. 910132 dt. 13/08/2005 drawn on PNB Bank BRS Nagar Branch, Ludhiana

4. The A.O. observed that as per revised agreement dt. 19/09/2005 executed between the two parties for extension of date of sale deed, the sale deed date was fixed as 25/12/2005 and in this agreement the payment of Rs. 35,00,000/- made by the purchaser and the rate of land @ Rs. 15,000/- per Sq. Yards had been confirmed. The A.O. made addition of Rs. 11,44,500/- to the total income of the assessee.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the addition. Thereafter the assessee carried the matter to the ITAT Bench "B" Chandigarh wherein vide order dt. 22/03/2018 the matter was restored back to the file of the Ld. CIT(A). In compliance to the said direction the Ld. CIT(A) decided this issue. He reproduced the written submission of the assessee in para 5 of the impugned order, for the cost of repetition the same is not reproduced herein. The assessee also submitted to the Ld. CIT(A) that the said property was sold vide agreement to sale dt. 02/04/2005 for Rs. 90,30,000/-. Subsequently the sale agreement was revised by the parties on 30/12/2006 to Rs. 55,00,000/- and that the sale deed of ½ share of the plot was executed at Rs. 25,00,000/- on 22/12/2005 the other sale deed of the property was executed at Rs. 30,00,000/- on 18/04/2007. It was pointed out that when the purchaser had come aware to the suit filed by Mrs. Rajinderwant Kaur sister of donar of the property to the Christian Medical College Society from whom the assessee had purchased the property, the sale consideration of the transaction was reduced to Rs. 55,00,000/-. It was explained that there was dispute regarding gift of property to the Christian Medical College Society which had taken note of in the assessment order also. A reference was also made to the order of Hon'ble Court Civil Judge(Jr. Div) Ludhiana in the case of Rajinderwant Kaur Vs. Gurvir Singh Dhillon etc. in civil suit no. 293 of 10/10/2001 dt. 14/08/2006 which has been incorporated in para 5.2 of the impugned order. The Ld. CIT(A) sustained the addition by observing in para 5.3 of the impugned order as under:

"5.3 I have carefully considered the facts of the case and submissions of the appellant. The property at Sant Nagar question was purchased by the assessee alongwith her husband for Rs.42 lacs on 29.10.2004. Vide agreement to sell dated 02.04.2005, the property was agreed to be sold at the rate of Rs. 15000 per Square Yard i.e. for Rs.90,30,000/- (601 x 15,000).

As per this agreement total amount of Rs.35,00,000/- was received by the sellers till 13.08.2005.

It is observed that on 23.12.2005, there was registry of the property for Rs.25,00,000/- for 1/2 property. After already having received Rs.35,00,000/- on account of sale of property, the registry was made only for Rs.25,00,000/- by the parties.

It is observed that on 15.10.2005 a notice for claim of damages was filed by Sh. Kanwar Ranbir Singh to the assessee and her husband and accordingly a suit was filed in court on 10.12.2005 which was dismissed on 11.03.2006. During the pendency of such suit V of the property was registered as sold for Rs.25,00,000/- on 23.12.2005 itself. When, the purchasers - Sh. Kanwar Ranbir Singh has paid Rs.35,00,000/- to the sellers and has filed a suit also against the sellers, why only part amount of Rs.25 lacs was got registered as against of payment already made of Rs.35 lacs is not explained. Subsequently on 18.04.2007, both the parties entered into another agreement at Rs.30,00,000/- for sale of the same property. Thus, total sale consideration of the property was received at Rs.55,00,000.

The hon'ble Civil Court at Ludhiana has made following observations in para 10 of the order mentioned in para 5.2 above.

Moreover, after filing of the present application, they got registered the sale deed in favour of Kanwar Ranbir Singh by taking Rs. 4500000/- of half of the property that is 300 square yards in favour of Kanwar Ranbir Singh. Copy of the sale deed is also on the file which shows that the sale deed was registered in favour of Kanwar Ranbir Singh to the tune of Rs. 2500000/-. It is categorically stated by the applicants that the property was sold to the tune of Rs.45,00,000/-. Whereas the sale deed was registered to the tune of Rs.25,00,000/-. It is a clear cut case of evasion of stamp duty but this court cannot take cognizance about the evasion of the stamp duty because it is the duty of the revenue Court to take care of this type of evasion, but the conduct of the applicant can be seen at this stage. First of all applicants Inder Tejpal Singh materially concealed the fact that he had executed and agreement of sale for whole of the property in favour of Kanwar Ranbir Singh. Even the applicant did not take care of this thing that he has filed an affidavit with his application. It seems that the applicant Inder Tejpal Singh has no regards or respect for the court and he voluntarily and knowingly concealed the material facts. Now regarding the other applicant Kanwar Ranbir Singh he is also on the same footing, when it was in the knowledge of applicant Kanwar Ranbir Singh who is well educated and retired professor, he categorically stated in the court on oath that there was an agreement between him and other applicants for Rs. 90 lacs of whole of the property and this agreement was revised between the parties and he purchased the half of the property for Rs. 25 lacs. He also evaded the stamp duty in knowingly or voluntarily.

It is noted that the above adverse remarks of the Hon'ble Court have not been disputed by the assessee. The hon'ble court has clearly observed that during the pendency of suit the parties have agreed for purchase of property and the property was registered at much less amount as against the agreed amount and the stamp duty was evaded knowingly or voluntarily. Though Sh. Kanwar Ranbir Singh filed a suit for damages against the assessee and her husband for proposing to sell a disputed property, simultaneously a registry of the part amount of Rs. 25,00,000/- out of total Rs.35,00,000/- paid was made, during the pendency of such suit. Though the suit filed by Sh. Kanwar Ranbir Singh for damages was dismissed at a subsequent date. These facts show that sellers and purchasers of the property have entered into the second agreement at reduced price of Rs.55 lacs only to avoid taxes. The sale of property was agreed to between parties at Rs.90,30,000/-. The sale of the property has been executed between the parties. The action of the assessing officer in assessing the proportionate sale consideration on the basis of total sale consideration of Rs.90,30,000/- is upheld. In view of these facts, addition made by the assessing officer on account sale consideration of the property is confirmed.

Therefore, this ground of appeal is dismissed."

6. Now the assessee is in appeal.

7. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that an identical issue has been decided by the CIT-1, Ludhiana in the case of Shri Indertej Pal Singh husband of the assessee who is co-owner of the same property having a ½ share for the same Assessment Year 2006-07, vide order dt. 20/06/2018 wherein the similar addition made by the A.O. was deleted, copy of the said order was furnished which is placed on record. It was also submitted that no further appeal was filed by the Department against the said order. It was

contended that the consistency was required to be maintained by the Department and the addition sustained by the Ld. CIT(A) was not justified. Reliance was placed on the following case laws :

- Berger Paints India Ltd. Vs. Commissioner of Income Tax (2004) 266 ITR 99 (SC)
- Commissioner of Income Tax Vs. Leader Valves Ltd. (2007) 295 ITR 273 (P&H)

8. In his rival submissions the Ld. Sr. DR strongly supported the order passed by the Ld. CIT(A) and reiterated the observations made therein.

9. I have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that a similar addition made in the hands of the Husband of the assessee who is co-owner of the same property, having similar share i.e $\frac{1}{2}$, as had been held by the assessee, was deleted by the Ld. CIT(A) vide order dt. 20/06/2018 in appeal no. 153/IT/CIT(A)-I/Ldh./2014-15. The relevant findings have been given in para 13 which read as under:

The aforesaid facts obtaining in the case of the appellant as also the submissions in the light of the aforesaid facts, have been carefully examined, perused and considered. Facts as outlined above leave no doubt as to the spate of litigation surrounding the subject property. When the appellant acquired the house property in question from CMC, he had no inkling of the fact that the property which had been donated to CMC and had become its exclusive property, shall become litigious on account of a suit filed by sister of the donor of the said property. It was only when the appellant decided to sell the property to another purchaser that this dispute came to light. It cannot also be denied that disputed property with imperfect title, does result in lesser price than the prevailing market rate. This is what happened in the case of the appellant, as is borne out by the various documents placed before the AO and also adduced in the appellate proceedings. The ownership of the property at the time of purchase by the appellant came in dispute because of the plaintiff, Smt. Rajinderwant Kaur filing a suit for declaration and permanent injunction against her brother who had gifted the said property to CMC vide 'gift deed' dated 26/07/2001 bearing vasika No. 5105. When this fact came to be known, the appellant and the intending purchaser entered into litigation themselves and thereafter sought to be impleaded in the suit filed by Smt. Rajinderwant Kaur, as defendant. The said effort came to naught because of the dismissal of their applications. Thereafter, the appellant and the purchaser came to terms, to effect the sale by reducing the sale price to make up for the litigation cost in future. In any case, it cannot be denied that an encumbered property fetches a lesser price than the prevailing market price. Considering the situation, it is not unlikely that if the appellant had not agreed to scale down the sale price, there would have been further litigation with the intending purchaser and there would have been pressure to return the amount of earnest money received pursuant to the original "agreement to sell". Besides, the conveyance document in the form of registered sale deed shall, undoubtedly, have greater evidentiary value than an unregistered "agreement to sell", more so when there is no evidence of receipt of money over and above the sale price as per the recital of the registered sale deed and no dispute between the parties with regard to the original "agreement to sell" and its subsequent revision, coupled with a "community decision" which ratified the revised agreement. In the circumstances, it would not be fair to fasten undue liability on the appellant by presuming that the sale deed was executed at a depressed figure than the agreed amount as per the "agreement to sell". If the said "agreement to sell" between the parties is considered genuine and sacrosanct, there is no rationale for disbelieving the subsequent and revised "agreement to sell" between the same parties. The circumstances necessitating the scaling down of the price of the property are too evident to be ignored or considered as concocted or make believe story. The desideratum for fastening a liability onto the appellant is the existence of or unearthing of some evidence which travel beyond the realm of presumption. Considered in the aforesaid light, the impugned addition to the returned income is directed to be deleted. It is ordered accordingly

10. The contention of the Ld. Counsel for the assessee that no appeal has been filed by the Department against the aforesaid referred to order in the case of Shri Indertej Pal Singh husband of the assessee, was not controverted.

11. On a similar issue the Hon'ble Supreme Court in the case of Berger Paints India Ltd. Vs. Commissioner of Income Tax (supra) held as under:

" If the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause."

12. Similarly the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Leader Valves Ltd. (P&H) (supra) held as under:

" that keeping in view the principle of consistency, the Revenue could not be permitted to raise an issue in isolation only for one year in the case of one assessee, while accepting the findings on the same issue in the case of other assessees and for other years in the case of the assessee."

13. Therefore by keeping in view the ratio laid down by the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court in the aforesaid referred to cases, I am of the view that the Department ought to have maintained consistency and that the addition sustained by the Ld. CIT(A) was not justified particularly when an identical addition made in the hands of the co-owner of the same property i.e; Husband of the assessee, has been deleted by the Ld. CIT(A) and the said order was not challenged before the higher Forum. In view of the above the addition made by the A.O. and sustained by the Ld. CIT(A) is deleted.

11. In ITA No. 41/Chd/2019 for the Assessment Year 2008-09, the facts are similar as were in ITA No. 40/Chd/2019 for the Assessment Year 2006-07, the only difference is in the amount involved, therefore my findings given in the former part of this order shall apply mutatis mutandis for this Assessment Year also.

12. In the result, both the above appeals of the Assessee are allowed.

(Order pronounced in the open Court on 14/06/2019).

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 14/06/2019

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File