

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 815/JP/2019
निर्धारण वर्ष / Assessment Years : 2010-11

Smt. Devender Kaur 9, Vikash Path, Alwar.	बनाम Vs.	The ITO, Ward-1(3), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: GDSPK 2153 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Gulshan Madhan (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (ACIT)

सुनवाई की तारीख / Date of Hearing : 09/02/2021
उद्घोषणा की तारीख / Date of Pronouncement : 05/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A), Alwar dated 29.03.2019 for the assessment year 2010-11 wherein the assessee has taken the following grounds of appeal:-

"1. That the Id. Commissioner of Income Tax (Appeal) has erred in law as well as on the facts and circumstances of the case in confirming the initiation of the proceedings u/s 147 against the assessee and ignored the other aspect placed before them in submission.

ii) That the Id. Commissioner of Income Tax (Appeal) has erred in law as well as on the facts and circumstances of the case in

confirming the addition of Rs. 9,22,312/- in hands of the assessee who is not the owner of the asset."

2. During the course of hearing, the Id. AR submitted that in this case, notice U/s 148 of the I.T. Act, 1961 was issued to the assessee on 29.03.2017 on the basis of the information in his possession that the assessee has sold an immovable property for Rs. 6,00,000/- vide sale deed dated 23.09.2009 to Sh. Mahesh Chand Sharma, Alwar and Sub-Registrar, Alwar adopted value of Rs. 14,75,230/- for registration of sale deed. In response to notice U/s 148, the assessee filed her return of income on 06.10.2017 declaring total income of Rs. 340/-. During the course of assessment proceedings the assessee filed the copy of sale deed showing sales consideration of Rs. 6,00,000/- in which it is clearly mentioned that she is only General Power of Attorney holder and not the owner of the house property situated at 4/123 NEB House Board, Alwar which was allotted by Rajasthan Housing Board., Alwar for consideration of Rs. 2,89,582/- to Smt. Tripta Nurpuri, sister of the assessee. In support of the above, copy of the allotment letter issued by Rajasthan Housing Board, copy of Registered General Power of attorney in favour of assessee by Smt. Tripta Nurpuri and an affidavit of Smt. Tripta Nurpuri affirming receipt of sale consideration of Rs. 6,00,000/- from the assessee was submitted.

3. It was submitted by the Id AR that in this case the assessee could not produce Smt. Tripta Nurpuri for verification before the A.O although affidavit duly notarized affirming that the sale consideration of house No. 4/123 NEB, Housing Board Rajasthan, Alwar received from Smt.

Devendra Kaur her sister along with sale deed executed by Smt. Devendra Kaur as General power Attorney hold of Smt. Tripta Nurpuri, Jalandhar was submitted. The A.O however made the addition of Rs. 9,22,312/- in the hands of the assessee with the following observation:-

"In this case Smt. Devendra Kaur W/o Sh. Man Mohan Singh has sold Plot No. 4/123, NEB Vistar, Tuleda Housing Board, Scheme, Alwar at Rs. 6,00,000/ vide sale deed dated 23.09.2009 to Sh. Mahesh Chand Sharma S/o Late Sh. Murlidhar Sharma , 319, Arya Nagar Scheme No.1, Alwar which was valued by the sub Registrar at Rs. 14,75,230 on which liability of capital gain arises.

The A/R of the assessee was asked to prove the genuineness of sale consideration of Rs. 6,00,000/- received by Smt. Tripta Nurpuri and also produce Smt. Tripta Nurpuri for examination with all evidences (copy of Income tax Return and bank account statement for A.Y. 2010-11) which proves that she has received Rs. 6,00,000/- from Smt. Devendra Kaur and paid long term capital gain tax on above sale transaction but the assessee failed to produce Smt. Tripta Nurpuri for examination.

In view of the above remarks the liability of capital gain is arises on Smt. Devendra Kaur W/O Sh.Man Mohan Singh and assessment on capital gain is framed in her hand."

4. It was submitted that on appeal, the Id. CIT(A) sustained the addition so made by the AO and his findings read as under:

"I have perused the assessment order as well as submission filed by the appellant. On facts and circumstances of the case, the A.O is justified in calculating capital gain after applying provision of section 50C of the Act. Accordingly, the addition of Rs. 9,22,312/- is sustained and the appellant's ground of appeal on the issue is dismissed."

5. It was submitted that the A.O treated Smt. Devendra Kaur as owner of the residential house and ignored the documents furnished for allotment of house to Smt. Tripta Nulpuri by Rajasthan Housing Board. The Id. Commissioner (Appeals) followed AO's version in the order and without considering the facts and circumstances of the case that assessee is not owner of the house dismissed the appeal. The Id. Commissioner (Appeals) also ignored the taxability of long term capital gain contained u/s 45 of the I.T. Act, 1961, which cast liability of tax on owner of the asset and not any other person who is not the owner of the house property.

6. It was further submitted that during the course of assessment proceedings, the AO issued show cause notice to the assessee that the value of Rs. 14,75,230/- adopted by the Sub registrar for registration will be adopted in view of the provisions of section 50C of the I.T. Act, 1961. While passing the assessment order, indexation cost of Rs. 5,52,918/- was worked out and reduced from Rs.14,75,230/- and an amount of Rs.9,22,312/- was quantified as long term capital gain and

the demand was raised against the assessee who is not enjoying the ownership of the house. It was submitted that the assessee is a house wife and dependent on her husband and no substantial amount was found deposited in her bank account during the financial year by A.O. which may lead to the belief that she has kept with herself any amount over and above the sale consideration of Rs. 6,00,000/- and therefore, invocation of section 50C is not justified in the instant case. It was further submitted that without prejudice to the fact that the assessee is not the owner of the house property, even as per view taken by the AO, where the indexed cost of Rs. 5,52,918/- is reduced from the sale consideration of Rs. 6,00,000/-, the resultant gain works out to only Rs. 47,082/- which is well below the threshold of total income chargeable to tax in the hands of the assessee.

7. It was submitted that the Id. CIT(A) ignored the submission although forming part at page -2 of the appellate order, which is reproduced as under:-

"In this case notice u/s 148 of the I.T. Act, 1961 was issued on 29.03.2017 through registered post which was received after 31.03.2018. Subsequently notice u/s 142(1) was issued, in compliance to above return of income declaring total income of Rs. 340/- was filed along with documents sought and attended assessment proceedings time to time. During the course of assessment proceedings the Id. A.O. informed that the assessee sold out a residential house to Sh. Mahesh chand Sharma as per sale deed dated 23.09.2009 for consideration of Rs. 6,00,000/-. While registration the stamp value was adopted Rs. 14,75,230/-.

During the course of assessment proceedings the Id. A.O brought to notice that the assessee was GPA holder of Smt. Tripta Nurpuri Sister residing at Jhalandhar who was the owner of alleged House 4/113 NEB extention, which can be seen from the copy of sale deed furnished. The assessee remitted the sale consideration to her sister Smt. Tripta Nurpuri. In support of contention agreement from both the person were filed. The Id. AO directed to produce Smt. Tripta Nurpuri to examine whether sale consideration received by her or not and also furnish the return of income for the relevant assessment year of Smt. Tripta Nurpuri and declared capital gain on sale of the above mentioned house in her hand. When the assessee has not earned any capital gain on sale of any immovable property owned by her, even then the Id. A.O. assessed capital gain in the hands of the assessee instead of dropping the assessment proceedings because initiated u/s 147 of the I.T. Act against wrong person and without going into information in possession.”

8. It was further submitted by the Id AR that the Honorable Supreme Court in the case of Shiv Kumar & ANR v/s Union of India vide Civil appeal No. 8003 of 2019 arising out of SLP NO.24726/2019 D.N 25495 of 2019 has held that the GPA holder has no right in the property and the GPA holder is only an agent under contract Act and the said decision supports the case of the assessee. It was accordingly submitted that necessary relief may be provided to the assessee by deleting the addition so confirmed by the Id CIT(A).

9. Per contra, the Id. DR submitted that the AO was in possession of relevant information that the assessee has sold an immoveable property and the gains arising thereof has not been reported to tax and the notice u/s 147 was accordingly issued after recording the reasons and seeking requisite permission from the competent authority. It was accordingly submitted that the AO has rightly acquired the jurisdiction under section 147 and in any case, no arguments have been advanced by the Id AR regarding ground of appeal no. 1 and hence, the said ground of appeal should be dismissed.

10. On merits, it was submitted that the assessee has sold a residential house situated at Alwar to Sh. Mahesh Chand Sharma for a consideration of Rs. 6,00,000/ vide sale deed dated 23.09.2009 which was valued by the Sub Registrar at Rs. 14,75,230 on which liability of capital gain clearly arises in the hands of the assessee even after taking into consideration the indexed cost of acquisition. Regarding the contention of the Id AR that the residential house belongs to Smt Tripta Nurpuri, the sister of the assessee, it was submitted that during the course of assessment proceedings, the assessee was asked to prove the genuineness of sale consideration of Rs. 6,00,000/- received by Smt. Tripta Nurpuri and also produce Smt. Tripta Nurpuri for examination who was not produced and hence the liability of capital gain clearly arises in the hands of the assessee who has received the sale consideration and which has been rightly confirmed by the Id CIT(A). She accordingly relied on the finding of the lower authorities.

11. We have heard the rival contentions and perused the material available on record. The transaction which is subject matter of present dispute is gains arising on sale of residential house No. 4/123, NEB Vistar, Tuleda Housing Board Scheme, Alwar in terms of registered conveyance deed dated 23.09.2009. What is therefore relevant to determine is who had purchased the said property initially and has the ownership rights over such property; at what cost the said property has been purchased and subsequent improvements, if any; whether any rights have been bestowed by the owner of the property to any other person and nature of such rights; who has sold the said property and in what capacity; and finally, to whom the said plot of land has been sold and at what consideration. On perusal of records, we find that the Rajasthan Housing Board vide its allotment letter no. 4308 dated 18.03.1998 has allotted the said property to Smt. Tripta Nurpuri against payment of Rs 289,582/- and the payments receipts issued in name of Smt. Tripta Nurpuri are on record. Thereafter, on 3.01.2008, Smt Tripta Nurpuri gave a general power of attorney to the assessee who happens to be her sister which was registered with sub-registrar, Jalandhar. Thereafter, on 23.09.2009, the assessee as general power of attorney holder sold the property on behalf of Smt Tripta Nurpuri for a sale consideration of Rs 6,00,000/- vide conveyance deed registered with sub-registrar, Alwar. In the conveyance deed so executed by the assessee, it has been stated that the conveyance deed has been executed by the assessee as power of attorney holder and the power of attorney so given by Smt Tripta Nurpuri continues to remain valid and also the fact that as on date of execution of the conveyance deed, Smt Tripta Nurpuri was alive and she has not cancelled the said general

power of attorney. It has also been stated in the conveyance deed that Smt Tripta Nurpuri continues to enjoy the ownership rights as well as possession over the property and in event of any subsequent dispute, she will continue to remain responsible. Therefore, as per documentary evidence available on record, the assessee has executed the conveyance deed in the capacity of power of attorney holder and not in the capacity of owner of the property and accordingly, as far as power of attorney dated 3.1.2008 and sale deed dated 23.09.2009, nothing can be inferred that the assessee has acquired the property in question and subsequently sold the same vide sale deed dated 23.09.2009 as owner of the said property. The AO has not disputed these documents available on record, however for the reason that the assessee had failed to produce Smt Tripta Nurpuri for necessary examination has brought the same to tax in the hands of the assessee. To our mind, the assessee has produced the necessary documents and also the affidavit of Smt Tripta Nurpuri that she had sold the property and had received the sale consideration from the assessee and thus, has discharged the primary onus cast on her and where the AO still harbours any doubt, it was incumbent upon the AO to conduct further enquiry by issuing summons and calling Smt Tripta Nurpuri for necessary examination which the AO has failed in the instant case. Therefore, basis material available on record, it cannot be said that the assessee has sold the property in capacity as owner of the property rather the same has been sold in the capacity of power of attorney holder and on behalf of Smt Tripta Nurpuri and any capital gain tax liability on such transaction arises in hands of Smt Tripta Nurpuri and not in hands of the assessee. We find that similar issue had arisen in case of **Shri Gyan Chand Saini**

vs ITO (ITA No. 87/JP/2019 dated 25.11.2019), the Coordinate Bench has held as under:

"5. We have considered the rival submissions as well as the relevant material on record. There is no dispute that during the year under consideration the assessee has sold the land in question vide sale deed dated 14.08.2007 as a Power of Attorney holder of Hanuman Sahai, Chauthmal, Gyarsi Lal, Pachuram, Shankar Lal and Nanchi Lal. As per the documentary evidence it is clear that the assessee has executed the sale deed in the capacity of Power of Attorney holder and not in the capacity of owner of the land. Further, the sale deed also mentions that the sale consideration was received by the owners of the land prior to the date of sale, hence so far as the Power of Attorney dated 16.08.2005 and sale deed dated 14.08.2007 nothing can be inferred that the assessee has acquired the land in question and subsequently sold vide Sale Deed dated 14.08.2007. However, the Power of Attorney and Sale Deed are not conclusive proof of the fact that the assessee has not purchased the land in question. Once the assessee has discharged his primary onus by relying on these documents and the AO was not satisfied with these evidences, then it was incumbent upon the AO to conduct further enquiry by examining the original owners of the land who have given the Power of Attorney in favour of the assessee. The AO instead of discharging his duty of conducting the enquiry has asked the assessee to produce these persons. Further, when this is a case of sale of land by execution of Sale Deed in the capacity of Power of Attorney holder, then the proceedings should have

also been initiated in case of these original owners of the land. The AO failed to conduct the requisite enquiry and to ascertain the correct facts from such enquiry but has shifted the burden on the assessee to produce these persons. Accordingly on the plain reading of these documents when it cannot be said to be a sale by the assessee as an owner of the land, then in the absence of any further investigation and enquiry conducted by the AO and to bring any material or fact to establish that the assessee has initially acquired the property in question at the time of Power of Attorney dated 16.08.2005 and subsequently sold the same vide Sale Deed dated 14.08.2007 in the capacity and in his right as an owner of the land. Hence in the facts and circumstances of the case, when the AO has failed to contradict the documentary evidence, the addition made by the AO in the hands of the assessee is not warranted. The same is deleted."

12. In the instant case also, the AO has failed to conduct any enquiry and bring any material or fact to establish that the assessee has initially acquired the property in question at the time of Power of Attorney dated 3.1.2008 and subsequently sold the same vide sale deed dated 23.09.2009 in the capacity and in her right as an owner of the property. In fact, we find that while computing capital gains in the hands of the assessee, the AO has allowed the cost of acquisition of Rs 289,582 which was actually the cost of acquisition paid by Smt Tripta Nurpuri at the time of initial allotment way back in year 1998 which cannot be inferred as cost of acquisition in hands of the assessee as on the date of execution of power of attorney on 3.1.2008. The same thus

shows that the AO himself was not clear as to the taxability of the transaction in the hands of the assessee in absence of requisite enquiry and examination. In light of the aforesaid discussion and following the decision referred supra, the addition made by the AO in the hands of the assessee is not warranted and the same is directed to be deleted.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 05/04/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/04/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- Smt. Devender Kaur , Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(3), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 815/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar