

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एफ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 3070/दिल्ली/2018 (नि . व. 2015-16)
ITA No.3070/DEL/2018 (A.Y.2015-16)

Ranveer Singh Chauhan,
R/o H.No. 33, Pallavpuram, MIG,
Phase-I, Modipuram, Meerut, UP
PAN: AEYPC-4949-L

..... अपीलार्थी / Appellant

बनाम Vs.

Income Tax Officer,
Ward-2(2), Meerut
New Delhi

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri Rohit Tiwari, and
Ms. Shivani, Advocates

प्रतिवादीद्वारा / Respondent by : Shri Vivek Vardhan, Sr. DR

सुनवाई की तिथि / Date of hearing : 10/07/2024

घोषणा की तिथि / Date of pronouncement : 30/07/2024

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Meerut [in short 'the CIT(A)'] dated 28.02.2014, for assessment year 2015-16.

2. The assessee in appeal has assailed the order of CIT(A) on following counts:

i. Confirming addition of Rs. 20 lakhs in respect of cash deposits in the bank;
and

ii. Confirming addition of Rs. 45,79,404/- on account of alleged Long Term capital Gain (LTCG).

3. Shri Rohit Tiwari appearing on behalf of the assessee narrating facts of the case submitted that the assessee is an ex-servicemen. The assessee sold his agricultural land at village Mukarrabpur Palhera, Pargana Daurala Meerut for a total consideration of Rs. 55,33,320/- to M/s Ruchiram Buildtech Pvt. Ltd. in the year 2012. The assessee received Rs. 20 lakhs vide two cheques of Rs. 10 lakhs each. The remaining consideration of Rs. 35 lakhs was paid by the purchaser by way of four post dated cheques all dated 01.02.2015 i.e. three cheques of Rs. 10 lakhs each and one cheque of Rs. 5 lakhs. The photocopies of the cheques are at page 95 & 96 of the paper book. However, when the aforesaid cheques were deposited by the assessee in his bank account all the cheques were dishonored. The assessee was constrained to file complaint u/s. 138 of the Negotiable Instruments Act r.w.s. 420 IPC before the Chief Judicial Magistrate; Meerut. A copy of said complaint is at page no. 106 to 108 of the paper book. During the pendency of aforesaid complaint, the purchaser of the land settled the issue and made payment of Rs. 35 lakhs by way of different cheques in the year 2018. After receipt of entire consideration the parties to the sale deed have executed corrigendum to the sale deed on 06.07.2018 and the same has been duly registered with the Sub-Registrar Sardhana, Meerut. A copy of corrigendum is at pages 46 to 54 of the paper book. The assessee, thereafter, offered long term capital gain to tax in the return of income for AY 2019-20. The CIT(A) has erred in confirming addition of LTCG on the basis of sales consideration already received i.e. Rs. 20,33,320/- in the impugned AY.

3.1. The Id. Counsel further submitted that the assessee had also entered into a transaction of purchase of Plot No. 59 Madhur Enclave, Meerut developed by Madhur Infra Developers P. Ltd. The assessee had made advance payment of Rs. 20 lakhs on 02.06.2012 for purchase of said plot. The receipt of such payment issued by Madhur Infra Developers Pvt. Ltd., dated 02.06.2012 is at page 45 of the paper book. Since for the purchase of plot the funds were to be sourced from sale consideration to be received from sale of land, the latter transaction did not mature as the first transaction of sale of land was wedged due to non-payment of balance consideration by the purchaser. The assessee received back Rs. 20 lakhs in cash from Madhur Infra Developers P. Ltd., on 27.09.2014. The said cash amount was deposited by the assessee in his bank account on 01.10.2014. The cash deposit by the assessee in the bank has been wrongly added back by the AO/CIT(A) without proper examination of facts and without considering the submissions of the assessee. Thus, the Id. Counsel prayed for deleting the addition made on account of cash deposits in bank.

4. Per contra, Shri Vivek Vardhan representing the Department vehemently defending the impugned order submitted that the assessee failed to produce any corroborative evidence to substantiate that Rs. 20 lakhs cash deposited in bank account relates to refund of alleged advance paid by assessee for purchase of plot. Since, the assessee failed to show the source of cash deposited in the bank, the CIT(A) rightly confirmed the addition of Rs. 20 lakhs. With regard to the second issue of long term capital gains, the CIT(A) has restricted the addition of LTCG, considering Rs. 20,33,320/- as the sale price of land received by the assessee. The CIT(A) has taken note of the fact that Rs. 35 lakhs is tangled in dispute and was not

received by the assessee till AY 2015-16.. The Id. DR prayed for upholding the impugned order and dismissing appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the order of authorities below. In the present appeal the assessee is against upholding of two additions by the First Appellate Authority, i.e:

- i. Addition on account of cash deposits in the bank Rs. 20 lakhs; and
- ii. Addition on account of long term capital gains

6. In so far as, the facts relating to sale of land by the assessee at village Mukarrabpur Palhera, Pargana Daurala Meerut is concerned it is not in dispute. The Revenue has also accepted the fact that the total sale consideration fixed for sale of aforesaid land was Rs. 55,33,320/- out of which the assessee has received Rs. 20,33,320/- only and the balance amount of Rs. 35 lakhs was not actually received by the assessee at the time of execution of registered sale deed dated 01.10.2014 as the cheques dated 01.02.2015 for remaining amount of consideration Rs. 35 lakhs were dishonored. The assessee had to file criminal complaint u/s. 138 of the Negotiable Instruments Act for the recovery of said amount.

7. The first addition made by AO is in respect of cash deposits in the bank Rs. 20 lakhs. The assessee has placed on record his savings bank account statement with Punjab & Sind Bank (at page 39 & 40 of paper book) which reflects that two cheques of Rs. 10 lakhs each were credited in the bank account of the assessee in May 2012. The aforesaid cheques were ostensibly received by the assessee as part of consideration for sale of land at village Mukarrabpur Palhera, Pargana Daurala Meerut. A further perusal of said bank statement shows that the assessee had

withdrawn cash Rs. 15 lakhs in June 2012 for allegedly making payment towards advance for purchase of plot in Madhur Enclave. This fact is corroborated by the receipt issued by Madhur Infra Developers P. Ltd., dated 02.06.2012 (at page 45 of the paper book). An examination of the said receipt shows that Rs. 20 lakhs were paid by the assessee as advance for purchase of Plot No. 59 Madhur Enclave. The assessee was to finance purchase of said plot from the consideration received from sale of land at village Mukarrabpur Palhera, Pargana Daurala Meerut. Since, the transaction of sale of land at village Mukarrabpur Palhera, Pargana Daurala Meerut did not mature as the cheques issued by the purchaser were dishonored, the latter transaction entered into by the assessee for purchase of plot also ran into trouble because of lack of financial sources with assessee.

8. The contention of the assessee is that the assessee received back Rs. 20 lakhs paid as advance for purchase of plot from M/s. Madhur Infra Developers Pvt. Ltd. on 27.09.2014 in cash. The assessee had issued receipt against cash received from Madhur Infra Developers Pvt. Ltd. (at page 44 of the paper book). The cash deposits of Rs. 20 lakhs on 01.10.2014 in the bank account is the amount received by assessee from Madhur Infra Developers P. Ltd. The proximity of receipt of cash by the assessee from Madhur Infra Developers P. Ltd. and cash deposits of Rs. 20 lakhs reflected in the bank account on 01.10.2024 fairly indicate the possibility of deposit of cash received by the assessee from Madhur Infra Developers P. Ltd. Thus, deposit of cash in the bank account stands explained by the assessee. A specific query was made to the Counsel for the assessee as to whether the documents on which reliance has been placed before the Tribunal were furnished to the AO and CIT(A), he made statement at Bar that all these documents were furnished to the

authorities below and a certificate to this effect has also been given by him after the Index of paper book.

9. In light of the facts of case and the documents on record ground no. 1 & 2 of the appeal are allowed.

10. The second issue in appeal is qua addition on account of long term capital gains of Rs. 45,79,404/-. The assessee had sold land admiring 0.3318 hectare at village Mukarrabpur Palhera, Pargana Daurala Meerut vide sale deed dated 01.10.2014 for total consideration of Rs. 55,33,320/-. It is an undisputed fact that as against the agreed consideration, the assessee had received Rs. 20,33,320/-only at the time of execution of registered sale deed. The remaining amount of Rs. 35 lakhs paid by way of four cheques (3 cheques of Rs. 10 lakhs each and one cheque of Rs. 5 lakhs) issued by the purchaser were dishonored. The assessee filed criminal complaint u/s. 138 before in the court of Chief Judicial Magistrate; Meerut for the recovery of aforesaid amount. Purportedly, the purchaser entered into a settlement with the assessee and the said amount was subsequently paid and Corrigendum dated 06.07.2018 to the sale deed explaining the payment of remaining amount of Rs. 35 lakhs was made and registered with Sub-Registrar. The contention of the assessee is that the assessee has offered long term capital gain to tax in AY 2019-20 i.e. the year of receipt of total consideration. To substantiate his submissions he has placed on record a copy of acknowledgment of return of income along with computation of income for AY 2019-20.

10.1. The Assessing Officer has computed long term capital gains in the impugned assessment year on the presumption that the entire consideration of Rs.

55,33,320/- has been received by the assessee , as the Sale Deed was executed & registered in the relevant period and accordingly worked long term capital gain on sale of land at Rs. 45,79,404/-. In First Appellate proceedings, the CIT(A) noted the fact that Rs. 35 lakhs was not received by the assessee, the CIT(A) directed the AO to recalculate capital gain on the sales consideration to the extent actually received i.e. Rs. 20,33,320/- only. After examining peculiar facts of case, we are of considered view that the computation of LTCG in the impugned AY is not in accordance with the provisions of the Act.

10.2 Be that as it may, the Id. Counsel for the assessee has pointed that the assessee has discharged his tax liability on Long Term Capital Gains in the year of receipt of entire sale consideration i.e. AY 2019-20. We deem it appropriate to restore this issue to the AO for limited purpose to verify whether the assessee has offered long term capital gains to tax in the year of receipt of entire consideration, if it is so no addition in the impugned assessment year on this account is warranted.

11. In the result, ground of appeal no. 3 & 4 are allowed for statistical purpose.

12. Ground no. 5 & 6 of appeal are general in nature, hence, require no separate adjudication.

13. In the result, appeal of the assessee is partly allowed, in the terms aforesaid.

Order pronounced in the open court on Tuesday the 30th day of July, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 30/07/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI