

## **HIGH COURT OF JUDICATURE AT ALLAHABAD**

Court No. - 32

Case:- INCOME TAX APPEAL No. - 162 of 2013

**Appellant :- Commissioner Of Income Tax**

**Respondent :- Intezar Ali**

Counsel for Appellant :- Dhananjay Awasthi, Sc Hon'ble Sunil Ambwani, J.

Hon'ble Surya Prakash Kesarwani, J.

1. We have heard Shri Dhananjay Awasthi, learned counsel for the income tax department. The affidavit of service of the assessee has been filed but no one appears for the respondent assessee.

2. This income tax appeal under Section 260A of the Income Tax Act, 1961 arises out of order dated 8.3.2013 passed by the Income Tax appellate Tribunal, Delhi Bench 'C' New Delhi in ITA No.1657/Del/2012 for the assessment year 2008-09. The department has preferred this appeal on the substantial questions of law framed in the memo of appeal as follows:-

"(1) Whether on the facts and circumstances of the case the ITAT was justified in deleting the addition by holding that it is prevalent practice in the land transaction not to show full consideration and ignoring all the concrete findings of the lower authorities.

(2) Whether on the facts and circumstances of the case the ITAT was justified in ignoring the provisions of Section 68 when such interpretation by the ITAT would result in serious curtailment of powers of Section 68.

(3) Whether on the facts and circumstances of the case the ITAT was justified in deleting the addition of Rs.77,80,000/- without appreciating that the assessee himself declared the

sale consideration of Rs.22,20,000/- as per the registered deed and there was no evidence on record that the purchase had given total consideration of Rs.1,20,00,000/-.

(4) Whether on the facts and circumstances of the case, the ITAT was justified in not testing the case of the assessee on the anvil of the provisions of Section 68.

(5) Whether on the facts and circumstances of the case, the ITAT was justified in deleting the addition of Rs.77,80,000/- without appreciating that the assessee had grossly failed to discharge its onus to prove the source of cash deposit in its banks account."

3. The assessee voluntarily filed return on 17.10.2008 disclosing total income of Rs.64,188/- and agricultural income of Rs.1,25,000/-. On receipt of certain information that the assessee had deposited an amount of Rs.1,08,32,752/- in bank account no.4621 with Syndicate Bank, Village Dehra, Tehsil Hapur, enquiries were made and statements of the assessee and purchasers were recorded. The assessee stated that he had sold agricultural land measuring 30 kachcha bigha situate in Village Gordhanpur, Tehsil Hapur, Distt. Ghaziabad for a sum of Rs.1,20,00,000/- on 12.11.2007 to Shri Yameen and Shri Raisuddin. Both the purchasers denied in their statements to have purchased the land for a consideration of Rs.1,20,00,000/- from the assessee. They stated that they had purchased the land only for Rs.22 lacs. The sale deed was executed on the sale value of Rs.22 lacs, whereas the assessee Shri Intjar Ali claimed that he had sold his land for Rs.1,20,00,000/-. Surplus amount of Rs.97,80,000/- over sale deed value was suspected to be income from undisclosed sources and case was selected for scrutiny on which notice under Section 143 (2) of the Act was issued on 18.9.2009.

4. On the queries served upon the assessee he filed copies of the khasra and khatauni (record of possession and title) in respect of agricultural land holding, the debit and credit entries in his bank account and justification in respect of agricultural income along with other documentary evidence.

5. The assessee produced the witness to the sale deed, who proved that the assessee had

received Rs.1,08,32,752/- and which he deposited in his bank account. The Bank Manager of the Syndicate Bank, Village Dehra, Tehsil Hapur, which was the only bank in the village, and who had stayed late in the evening on the request of the assessee, deposed that the assessee had deposited the entire amount in his bank and which he had stated to be the sale consideration of the land sold by him. The assessee also produced the evidence of the land rates in the area and claimed exemption of the agricultural land, which is not capital asset within the definition of Section 2 (14) (iii) (a) (b) of the Act and is therefore not chargeable for capital gains tax. He also produced the evidence by way of report of Tehsildar, Hapur dated 28.9.2010 showing that the agricultural land in question lies more than 8 kms. from the local limit of Nagar Palika and also 9 kms. from the Local Town Area. The assessee also produced the evidence to show that in that area the land was valued at Rs.4 lac per bigha, which has increased manifold. The Income Tax Officer did not disbelieve the evidence that the amount was received by sale consideration. He, however, relying only on the report of the Stamp Valuing Authority took cognizance of the complaint and treated the amount to be undisclosed income. The findings recorded by the Assessing Officer are quoted as below:-

"In view of the circumstantial evidence, based on the statements of three witnesses including that of the Branch Manager, Syndicate Bank Dehra who has been said to facilitate the deposit of Rs.90.00 lacs in the bank as late hour deposit on 12.11.2007 coupled with the affidavit of the assessee and report of the Tehsildar, Hapur dated 30.11.2010 prima facie support the version of the assessee. However stamp valuation authority, Ghaziabad has taken cognizance of the complaint of the assessee for evasion of stamp duty but sale consideration claimed in the impugned sale deed is not adjudicated in favour of the assessee till date. Further assessee could not furnish sources of funds of purchasers to the extent of Rs.1,20,00,000/- instead of Rs.22,20,000/- neither their creditworthiness could be proved. The matter of unexplained investment by purchasers has been referred to the concerned assessing officers. In view of the facts that assessee is found to be owner of such money i.e. Rs.97,80,000/- but explanation about nature and source of acquisition of that money is not satisfactory. Since Rs.20,00,000/-

out of Rs.97,80,000/- belongs to the financial year 2006-07 relevant to A.Y. 2007-08, Rs.77,80,000/- (97,80,000-20,00,000) is treated as income of the assessee. Accordingly addition of Rs.77,80,000/- is substantially made in the income of the assessee.

[Addition:Rs.77,80,000/-]"

6. In appeal written arguments were filed giving almost entire circumstances and the evidence by which the assessee had explained that the amount had been received by sale consideration and could not be treated as income from undisclosed sources. The CIT (A) also called for remand report and thereafter dismissed the appeal.

7. The assessee filed second appeal in which the appellate authority noted the submissions as follows:-

"In support of the grounds the Id. AR has reiterated the submissions made before the authorities below. He submitted that the sum of Rs.1,20,00,000/- is neither the income of the assessee from undisclosed source nor an unexplained money but represents sale consideration of the agricultural land sold by him which in turn, is exempt from income tax as well as capital gain tax. He submitted that assessee is having no other source of income, hence, the only inference which can be drawn is that the money amounting to Rs.90,00,000/- deposited in the Syndicate Bank on 12.11.2007 is a part of the sale receipt of the land sold by the assessee on 12.11.2007. The Id. AR submitted that the AO himself admits that the evidence on record prima facie supports, the version of the assessee, however, because of evasion of stamp duty pending adjudication before the Assistant Commissioner of Stamps-II, Ghaziabad, he made the impugned addition. The sale consideration of Rs.1,20,00,000/- is supported by the comparable sale and another sale instances cited before the A.O. He submitted further that in their statements Shri Guljar and Shri Gaffar who had attested a sale deed as witness on 12.11.2007, had also stated that at the time of registry, the purchasers had in their presence made the payment of Rs.1,00,00,000/- to the assessee (Rs.7,00,000/- by DD and Rs.93,00,000/- in

cash) and that the bank manager had collected the money from the assessee. They further stated that the market price of the land at that time was Rs.4,00,000/- per bigha which had increased manifold on the date of their statement. The bank manager, Syndicate Bank, Dehra where the sale proceeds 90,00,000/- was deposited, has also stated on oath that the assessee had told him that on 12.11.2007 sale deed in respect of his agricultural land would be executed and the sale consideration was intended to be deposited in his bank account on the same day and he (Bank Manager) should remain with him. The assessee had also filed a report of Tehsildar Hapur dated 28.9.2010 showing that the agricultural land in question lies more than 8 km. from the local limit of Nagar Palika, Pilakhua and also 9 km. from the local limit of town area Dasna. He submitted that the agricultural land in the instant case is not a capital asset within definition of Section 2 (14) (iii) (a) (b) and is therefore, not chargeable to capital gain tax. He pointed out further that the assessee on his own had filed his return of income voluntarily well before the closing of financial year 2008-09 with true and full disclosure without waiting for any notice u/s 142 or 147/148 of the IT act from the department. He also informed that in the case of Mohd. Raisuddin, who is one of the two purchasers, the AO has accepted that the Raisuddin is owner of the money i.e. Rs.97,80,000/- and accordingly addition of Rs.77,80,000/- has been made on substantial basis in his hand as his income during the year. A copy of this assessment order has been made available on the record. he also referred page nos.1 to 88 of the paper book which are copies of: note dated 2.6.2008, Extract of Khatauni showing the land owned by the appellant, Extract of passbook showing deposit of Rs.14,50,000/- on 22.02.2007 (In dispute), Bank receipt showing late hour deposit, Pay-in-slip of Bank showing deposit for Rs.90.00 lakhs on 12/13.11.2007, Bank declaration by assessee dated 13.11.2007, complaint dated 14.09.2010- reminder to earlier complaint regarding evasion of stamp duty addressed to Assistant Commissioner of stamps, Bank statement showing of Rs.1,08,32,752/- in the account of Sh. Intizar Ali at the time of attachment on 06.12.2007, Undertaking, Note of A.O. Hapur showing non-compliance of notice u/s 131 by Raisuddin, Receipt for return filed voluntarily on 27.10.2008, Copy of

return, Letter of ITO Hapur u/s 142 dated 21.12.2010, Letter dated 21.12.2010, Reply assessee for justification for non conversion of sale proceeds into unexplained one, Letter dated 24.12.2007 of ADM (LA) showing payment of compensation at 179.34 per sq. mt, Report of Tehsil showing agricultural income, Report of Tehsildar showing distance from Nagar Palika & T.A., Report of Tehsildar 30.11.2010/10.12.2010 showing market value of the land at Rs.1.20 crore, AC stamps recommendation for registration of case u/s 47A dated 28.09.2010 and transfer of the case to ADM (E), Statement of Intizar Ali, Assessee, Statement of Gaffar, Statement of Gulzar, Statement of Zahir Alam Zaidi, Bank Manager, Statement of Mohd. Yamin, Statement of Raisuddin, Letter dated 15.11.2007 addressed to District Magistrate, Ghaziabad, Letter dated 22.01.2008 addressed to District Magistrate, Ghaziabad and Assessment Order dt.30.12.2011 in the case of Sh. Raisuddin. The documents have been filed under the certificate that documents made available at page nos.1 to 78 were made available before the Assessing Officer.

The Id. DR on the other hand tried to justify the orders of the authorities below on the issue. He submitted that onus lies heavily on the claimant to establish the claimed source of deposit to which the assessee has thoroughly failed to. The AO was thus justified in making the addition of Rs.77,80,000/- as unexplained."

8. The ITAT considered the submissions and found that the evidence led in the light of the explanation submitted by the assessee, source of deposit in question in the bank is sale of land by him. The reasons shown by the authorities below for deposit and the explanation of assessee are wholly arbitrary. The assessee had explained that the land was sold for Rs.1.20 crores out of which Rs.20 lacs was paid in advance and remaining sale consideration was paid to him at the time of registration of sale deed. Out of which Rs.93 lacs was paid in cash and Rs.7 lacs by demand draft. In this manner total amount of Rs.1,20,00,000/- was paid. The amount of Rs.22,40,000/- is shown in the sale deed out of which Rs.20 lacs was paid in advance pertaining to the financial year 2006-07. The

appellate authority thereafter accepted the explanation of the assessee and recorded its findings as follows:-

"Besides Shri Gulzar and Shri Gaffar who were shown as witnesses in the sale deed had also stated that at the time of registry, the purchasers had in their presence made the payment of Rs.1,00,00,000/- to the assessee i.e. Rs.7,00,000/- by DD and Rs.93,00,000/- in cash and that the bank manager had collected the money from the assessee. The bank manager, of the concern branch of Syndicate Bank in his statement has also supported this fact that an amount of Rs.90,00,000/- was deposited by the assessee to his branch with this information that it was out of the sale receipt of the land sold by him. It is a prevalent practice in the land transaction that real sale consideration is not shown in the sale deed. There was also sufficient reason for the purchasers to conceal actual sale consideration in the sale deed to evade tax and stamp duty since it is paid by the purchasers only.

Ignoring the above documents, circumstantial evidence and the prevalent practice in the land transaction, we are of the view that the authorities below were not justified in doubting the explanation of the assessee for the source of deposit in question mainly on the basis that the registered sale deed signed by the assessee himself shows a sale value consideration of only Rs.22,20,000/- and that there is no full proof evidence on record that the purchasers had given total consideration of Rs.1,20,00,000/-. There was also nothing on record to suggest either that assessee was having any other source of income which has been given more weightage by the authority below than the explanation of the assessee that the source of the deposit in question was sale receipt of the land sold by him as the selling of land and deposit made out of the sale receipt made on the same day, when sale deed was registered has not been disputed. We thus find that preponderance of probability is more in favour of the explanation of the assessee. In its remand report which was furnished before the Id. CIT (A) on the submission of the assessee made before him, the AO has also failed to contradict the

explanation furnished by the assessee with some positive evidence. On the basis of documents, explanation of the assessee and others and the prevalent practice in the land transaction it can be safely inferred that whatever the assessee had explained about the source of the deposit cannot be doubted especially in absence of contrary material on record.

We thus while setting aside orders of the authorities below in this regard, direct the AO to delete the addition in question made at Rs.77,80,000/- on account of income from undisclosed sources. The grounds involving the assessee are thus allowed."

9. We have gone through the orders passed by the A.O., CIT (A) and ITAT and find that the questions of law as raised do not arise for consideration in as much as findings recorded by ITAT are findings of fact, which do not call for consideration or reconsideration of this Court.

10. We may observe here that the assessee as an honest citizen not only made a complaint to the registering authority that the sale deed has been registered at a value much below the amount, which he has actually received, he deposited the entire amount in the bank and voluntarily filed return. There was no material whatsoever or any circumstance, which could have suggested that this amount was received by him from any other source. The deposition of witness of the sale deed, the Bank Manager and the evidence filed with regard to valuation of the property was more than sufficient to discharge the burden, which the A.O. had unreasonably placed on the assessee. The A.O. in disbelieving the evidence has not given any reasons whatsoever to discard the statement of the witnesses, deposit of the entire sale consideration in bank and the deposition of the Bank Manager. The assessee had not only deposited the entire amount in the bank but also informed the registering authority of the deficiency of the stamp in the sale deed.

11. We further notice the observations made in the order of the Tribunal that in the case of Mohd. Raisuddin, one of the purchaser, the A.O. had accepted that he was the owner



of the money i.e. Rs.97,80,000/- and accordingly addition of Rs.77,80,000/- was made in his hand on substantial basis as his income during the year for which a copy of the assessment order was filed on record.

12. The income tax appeal is dismissed.

13. Before parting with the case we may observe here that from the facts and circumstances on the record that in the present case the Income Tax Officer did not act in bonafide manner. The assessee led substantial evidence to establish that the amount treated to be undisclosed income by the A.O. was the sale consideration of sale of his agricultural land, which he had deposited in the bank and had voluntarily filed return disclosing his income. Overwhelming evidence led by him was discarded without giving any reasons at all. The assessment was framed only on the ipse dixit of the A.O., which gives us reason to believe that he had exceeded his authority with some ill will or with ulterior motive.

14. We, therefore, find it appropriate to direct the Registrar General of the Court to forward a copy of this judgment to the Chairman of the Central Board of Direct Taxes to cause an enquiry into the conduct and motives of Shri Yaduvansh Yadav, Income Tax Officer, Ward-1, Hapur in framing the assessment and raising demand of income tax against the petitioner.

Order Date:- 26.7.2013