

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI

BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 856/Del/2012
(Assessment Year: 2007-08)

Baldev Raj Chhabra,
Prop. Chhabra Electricals,
C/o. GirishAneja, CA, 796,
Sector-13, UE Karnal, Haryana,
PAN: AIDPR0219B
(Appellant)

Vs. ITO,
Ward-4,
Karnal

(Respondent)

Assessee by :

ShriGirishAneja, CA

Revenue by:

ShriGovindSinghal, Sr. DR

Date of Hearing

02/03/2022

Date of pronouncement

29/04/2022

ORDER

PER N.K. CHOUDHRY, J. M.:

1. The Assessee has preferred the instant appeal against the order dated 17.11.2011, impugned herein, passed by the Ld. Commissioner of Income-tax(Appeals), Karnal (in short „Ld. Commissioner) u/s 250(6) of the Income-tax Act, 1961 (in short “the Act”) for the assessment year 2011-12, whereby the assessment order passed by the AO u/s 143(3)/ 144 of the Act was upheld.

2. Brief facts relevant to the adjudication of this appeal are that the Assessee had entered into an agreement to sale (Ikrarnama) on dated 10.10.2006 with the owners of the land measuring 220 kanals, 6 marlas (27 acres 4 kanals, 6 marlas) situated at Village Salwan @Rs. 9.12 lakhs per acre and consequently paid an advance of Rs. 20 lakhs (Rs. 12 lakhs in cash and 4 cheques of Rs. 2 lakhs all dated 10.10.2006 of PNB Bank, Branch Karnal).

2.1 Subsequently, by virtue of the said agreement to sale (Ikrarnama) dated 10.10.2006, the Assessee had also entered into an agreement to sale (Ikrarnama) with Shri Dharampal on dated 18.12.2006 for sale of the above stated land @ Rs. 10.60 lakhs per acre for which the Assessee had received an amount of Rs. 40 lakhs in cash as an advance.

2.2 Later on, the said land was sold by the original/registered owners by way of registered sale deed dated 30.01.2007 at the sale consideration of Rs. 5 lakhs per acre.

2.3 The AO on the basis of agreement to sale dated 10.10.2006 and 18.12.2006 held that the Assessee had earned income of Rs. 40.70 lakhs from the undisclosed sources and consequently, added the same in the income of the Assessee.

2.4 The Assessee being aggrieved challenged the said addition inter-alia other additions before the Ld. Commissioner who vide impugned order sustained the same by holding as under:

1.18 The remand report was provided to the appellant. The appellant at this stage came out with the plea that since agreement of sale of that land with Sh.Dharam pal was cancelled and hence question of earning of any income by the appellant from this deal does not arise. The plea of the appellant is considered. It is a well known fact that prices of real estate including land has been increasing day by day. The appellant in the case under considerations entered in an agreement for purchase of land @ Rs.9.12 lacs per acre on 10.10.2006 and also entered into another agreements of sale of that land @ Rs. 10.60 lacs per acre on 18.12.2006 with Sh. Dharam pal. Since the agreement of sale of the said land could not be materialised, the same was sold to a third party per sale deed dated 30.01.2007. The sale deed was, however, got registered at the collector's rate i.e. Rs. 5 lac per acre. It is admitted by the sellers of that land that they received their balance amount of Rs.2,28,74,200/- (Rs.57,18,550/- each by four co-owners) at the time of registration of sale deed. Sh. Dharm Pal also stated that he received back the advance made by him as per agreement of purchase of that land from the appellant at that time. In view of these facts apparently the said land was actually sold at a price much higher to the collector's rate enabling the appellant to make payment of the amount of sale to the sellers and to refund the amount of advance of Rs. 40 lac received from Sh.Dharam Pal.

1.19 In view of the facts discussed above, it is held that the sale of that land was carried out at least at the rate of Rs. 10.60 per acre and hence the appellant earned an income of Rs. 40.70 lacs from this transactions, that is the amount taken by the AO and hence addition made by the AO on this account is hereby confirmed.

3. The Assessee being aggrieved preferred the instant appeal and raised the issue that both the authorities below acted only on the basis of surmises and conjectures without verifying as to whether the Assessee has received more than the advance given by him as per agreement dated 10.10.2006. The Assessee claimed that though he had entered into an agreement with the original owner of the property on dated 10.10.2006 and subsequently on 18.12.2006 with the 3rd Party however, it is a fact that both the agreements referred above could not be materialized and stands cancelled. There is no dispute qua consideration amount of Rs. 20 lakhs which was refunded by the owners of the property to the Assessee and the Assessee also refunded the amount of Rs. 40 lakhs to the 3rd Party i.e. Shri Dharampal as per agreement to sale dated 18.12.2006. It is not the case of the department that the Assessee had received more than the amount paid, from the owners of the property/land.

4. On the contrary the Id. DR refuted the claim of the Assessee and vehemently supported the orders passed by the authorities below.

5. Heard the parties and perused the material available on record. From the impugned order it clearly reflects that the Ld. Commissioner observed *“that it is a well known fact that prices of real estate including land has been increasing day by day. Apparently the said land was actually sold at a price much higher to the collector’s rate enabling the appellant to make payment of the amount of sale to the sellers and to refund the amount of advance of Rs. 40 lakhs received from the Assessee. In view of the facts discussed above it is held that sale of land was carried out at the rate Rs. 10.60 per acre and hence, Assessee earned an income of Rs. 40.70 lakhs from this transaction i.e. the amount taken by the AO and hence the addition made by the AO hereby confirmed.”* Whereas the Assessee has claimed that he had entered into an agreement for purchase of said land on dated 10.10.2006 and by virtue of said Agreement to sell entered in to and Agreement to sell with Shri Dharampal on dated 18.12.2006. Since the agreement of sale of the said land could not be materialized, therefore the land was sold by the owners of the land to the 3rd Party as per sale deed dated 30.01.2007 which was got registered at the Collector’s rate i.e. Rs. 5 lakhs per acre. Assessee

drew our attention to the collector's decision dated 20.03.2007 (Pg 20-23 of Paper Book) wherein it has been held that registration of the said land was done @5 lakhs per acre only as per registered collector's rate. However it appears that the Authorities below have not taken into consideration the said decision. The assessee also claimed that though the Assessee appeared before the AO on various occasions but still the AO passed the order partly as ex-parte u/s 144/143(3) of the Act and therefore the case may be remanded to the file of the AO.

6.1 We have given thoughtful consideration to the facts and circumstances of the case and find that both the authorities below have acted upon, only on the presumption and without any substantive material for making and sustaining the addition under consideration. In our considered view the presumption cannot be real adjudication of an issue. The very purpose of income tax proceedings is to correctly assess the tax liability of an Assessee in accordance with law but not under presumption as held in this case. Article 265 of the Constitution of India prescribes that no tax shall be levied or collected except by the authority of law. The Hon'ble Allahabad high Court in the case of Pt. SheoNath Prasad Sharma Vs. C.I.T., 66 ITR, p.647 (All.) reminded that the law empowers the Income-tax Officer to assess the income of an Assessee and determine the tax payable thereon in accordance with law.

6.2 Hence on the aforesaid analyzations and considering the peculiar facts and circumstances of the case and specific prayer of the Assessee for remand of the case, we for the ends of justice, deem it appropriate to remit this case to the file of the AO for decision afresh, suffice to say while granting reasonable opportunity of being heard to the Assessee. Thus ordered accordingly.

7. In the result, Appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 29/04/2022.

-Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 29/04/2022

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi