

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2716/Bang/2018
Assessment Year :2012-13

Shri. K. V. Sridhar, No.2029, 2 nd Floor, 26 th Cross, Banashankari 2 nd Stage, Bengaluru – 560 070. PAN : ABOPS 8745 F	Vs.	ITO Ward – 3(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri. Sankar Ganesh K, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.02.2022
Date of Pronouncement	:	16.02.2022

ORDER

Per N. V. Vasudevan, Vice President :

This is an appeal by the assessee against the order dated 17.05.2017 of CIT(A) - 7, Bengaluru, relating to Assessment Year 2012-13.

2. The only issue that arises for consideration in this appeal is as to whether the Revenue authorities were justified in bringing to tax a sum of Rs.1,60,00,000/- as income chargeable to tax under the head “Income from Other Sources”. The CIT(A) upheld the order of the AO by relying on the provisions of section 56(2)(vii)(a) of the Income Tax Act, 1961 (hereinafter called ‘the Act’) which reads as follows:

“56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the

head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i) to (vi).....

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;”

3. The facts and circumstances under which the aforesaid addition was made were that the assessee, who is an individual, was son of K.K. Vijaykumar. The Genealogical tree of the family of K. K.Vijaykumar was as under:-

K. K. Vijayakumar (father of the Assessee)

Smt. K. V. Shashi Rekha (mother of the Assessee)

K. V. Srinath (Brother of the Assessee) and

K. V. Sridhar (the Assessee)

4. The assessee's Grandfather Late. K. Krishnamurthy had purchased property situate at No. 13/7, Pampamaha Kavi Road, Shankarapuram, Bangalore, on 20-10-1966 through a Registered Sale Deed dated 30-11-1966. K. Krishnamurthy by his will dated 21.11.1986 bequeathed the said property to K. K. Vijayakumar absolutely, subject to a life interest in his favour and in favour of his wife. Upon his death and the death of his wife, the aforesaid property became the property of the assessee. Apart from the aforesaid property, K.K.Vijayakumar was also absolute owner of the following properties viz., (i)

two shops bearing No.171 and 237 in Raja Market, Avenue road, Bangalore-560 002; (ii) One shop in Lucky Paradise bearing No.40/5, 22nd Cross, III Block, Jayanagar, Bangalore-560 011; (iii) One building constructed on site Nos. 854 & 855, 17 th Main, 14th Cross, Banashankari II Stage, Bangalore-560 070.

5. By his last will and testament dated 14.4.1999, K. K. Vijayakumar bequeathed all the aforesaid properties to his wife Mrs. K. V. Shashirekha absolutely. According to the assessee, the bequest as above was only for the family convenience and also, she happened to be the eldest member of the family.

6. After the demise of K.K.Vijayakumar, the assessee filed a suit for partition and separate possession of his share of the properties belonging to K.K.Vijayakumar in O.S.No.3478/2011 on the file of the City Civil Court, Bangalore. The parties to the suit viz., the assessee his brother K.V.Srinath and his mother K.V.Shashirekha signed an agreement u/s.89 of the Code of Civil Procedure, 1908 read with Rules 24 & 25 of the Karnataka Civil Procedure (Mediation) Rules, 2005 dated 12.01.2012 whereby it was agreed that the assessee would be paid a sum of Rs.1,60,00,000/- and allotted one shop in Raja Market, Avenue Road, Bangalore as full and final settlement. The assessee gave up all his rights to any of the other suit schedule properties. On 27.1.2012, the Court passed a decree in terms of the comprise agreement between the parties.

7. The assessee received from his mother Smt. Shashi Rekha a cash of Rs. 70,00,000/- and a further sum of Rs. 90,00,000/- through a cheque bearing No. 947780 dtd: 27-01-2012 drawn on Amarnath Co-operative Bank, B.V.K lyengar Road Branch, Bangalore and thus the assessee received a consolidated

amount of Rs. 1,60,00,000/- as per the decree of Court in full satisfaction of his right, title and interest in the properties of the family and thus the litigation came to an end.

8. The assessee's mother K.V.Shashi Rekha, sold the properties which she got under the will of K.K.Vijayakumar even prior to the filing of suit by the assessee, through a registered sale deed No. 805/2011-12 dtd: 30-06-2011. K.V.Shashi Rekha, offered to tax capital gain on sale of the properties. According to the AO, the all the properties of K.K.Vijayakumar was given to K.V.Shashi Rekha under the will and belonged to her absolutely. The Assessee had no rights whatsoever over the property and therefore the sum of Rs.1.60 crores received by the assessee from his mother Smt. K.V.Shashi Rekha was in the nature of income chargeable to tax in the hands of the assessee. The CIT(A) held that the said receipt fell within the category of income specified in Sec.56(2)(vii)(a) of the Act.

9. None appeared for the assessee. We have heard the submission of the learned DR who relied on the order of the AO. We have already extracted the provisions of Sec.56(2)(vii)(a) of the Act. Those provisions will apply only when any sum of money is received, **without consideration**, the aggregate value of which exceeds fifty thousand rupees. Admittedly, the assessee received the sum of Rs.1.60 Crores for giving up his rights over some of the items of the suit properties. The fact that all the items of suit properties were bequeathed to the assessee's mother under the will of K.K.Vijayakumar cannot be the basis to hold that the assessee did not have any rights whatsoever. The assessee had a right to question the validity of the will and had in fact filed the suit for partition and separate possession of his share of the suit properties. He gave up his rights to contest the will and in

return received Rs.1.60 Crores and a shop at Avenue Road. Therefore the sum in question cannot be said to have been received without consideration. The sum in question is not in the nature of revenue receipt and is capital receipt not chargeable to tax. The sum so received cannot also be brought to tax as capital gain u/s.45 of the Act. In the case of Smt.T.Gayatri Vs. ITO 150 ITD 48 (Bangalore), the facts were, one 'B', father of assessee died intestate leaving behind four sons and six daughters including assessee. After expiry of 'B', assessee along with other sisters filed a suit for partition of self acquired property of their father. The suit was ultimately compromised between the parties duly recognized by Court. In terms of memorandum of compromise daughters agreed to receive their 1/10th share each in property coming to Rs. 87.50 lakh from their brothers. The assessee's brothers subsequently entered into a joint development agreement of property in question. In terms of said agreement, the developer directly paid amount of Rs. 87.50 lakh each to daughters of 'B' including assessee therein. The daughters of 'B' thereupon executed a release deed of disputed property in favour of their brothers. For the relevant year, the assessee filed her return wherein amount of Rs. 87.50 lakhs was not offered to tax under the head 'capital gain'. The assessee took a stand that the sum in question was a receipt consequent to a family arrangement and therefore, there was no transfer of any capital asset so as to attract provisions of section 45. The Tribunal dealt with the aforesaid issue and came to the conclusion that sum received by assessee is traceable to the realisation of rights as legal heir of intestate succession and not to any sale, relinquishment or extinguishment of right to property. The Tribunal took note of the fact that there was a suit for partition in which the assessee became entitled to 1/10th share over the property. The Tribunal also took note of the fact that there was a compromise recorded between the parties before the appellate court, whereby assessee agreed to receive Rs.87.50 lakhs towards her 1/10th share over the property in lieu of 1/10th share of property

physically delivered after division by metes and bounds. In these circumstances that the Tribunal came to the conclusion that the sum received by assessee was nothing but realization of assessee's rights as legal heir. The Tribunal also took note of the subsequent release deed executed by assessee in favour of developers, who purchased the property from other co-sharers, as a document for perfecting the title of the third party to the property and not for any other purpose. The Tribunal ultimately came to the conclusion that there was no transfer within the meaning of section 2(47) of the Act and therefore capital gain was not exigible. The above decision would also support the view that the sum in question cannot be brought to tax as capital gain also.

10. We therefore hold that sum received by the assessee in the facts and circumstances of the case cannot be brought to tax. The addition made is therefore directed to be deleted and the appeal of the assessee is allowed.

11. In the result, the appeal is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 21.02.2022.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.