2023:BHC-AS:35951-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14600 OF 2023

Deepa Moti Singh ....Petitioner

V/s.

Income Tax Officer, Ward 4(1) & Ors. ....Respondents

Mr. Tanmay M. Phadke for petitioner.
Mr. Ajeet Manwani a/w. Ms. Samiksha Kanani for respondents – Revenue.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 18th DECEMBER 2023

P.C. :

1 It is petitioner's case that petitioner (assessee), during the Financial Year 2015-2016 pertaining to Assessment Year 2016-2017, had sold a residential flat for Rs.36.51 lakhs and purchased another residential flat for Rs.35 lakhs. Petitioner has been candid in admitting that though the residential flat sold during the year was a short term capital asset and petitioner was liable to pay tax thereon, petitioner did not pay any tax on short term capital gain because petitioner was advised that as the flat was a residential flat and in the same year petitioner had purchased another flat, no income was chargeable to tax.

2 Petitioner received a show cause notice dated 10th February 2023 under Section 148A(b) of the Income Tax Act, 1961 (the Act) for Assessment Year 2016-2017. The information, on which reliance was

placed, read as under :

Information code	*Information Description*	*Source*	*Amount (Rs.)*
AIR-007	*Sold immovable property valued at Rs.30,00,000 or more*	*REJSTRATION RF DEPARTMENT*	*36,51,000*
AIR-000	*Purchased immovable property valued at Rs.30,00,000 or more*	*REJSTRATION RF DEPARTMENT*	*70,00,000*
Total			*1,06,51,000*

3 Petitioner filed a reply explaining her case and provided copy of the Sale Deed, Purchase Deed and working of capital gain on sale of flat alongwith index II of purchase of said property. Petitioner also explained that petitioner has not purchased any property worth Rs.70 lakhs but has paid only Rs.35 lakhs and the source of Rs.35 lakhs was Rs.5 lakhs loan from petitioner's brother and Rs.30 lakhs by way of home loan disbursed on various dates. Copy of petitioner's brother's bank statement as well as housing loan statement was also made available.

4 On the working of the short term capital gain for the flat sold, the Assessing Officer came to a finding that taxable capital gain was Rs.13,64,000/-. But strangely in the impugned order dated 29th March 2023 issued under Section 148A(d) of the Act, the Assessing Officer proceeded further on the basis "*as regards the two immovable properties purchased by the assessee, the assessee has submitted that, she has purchased only one*

property for the consideration of Rs.35,00,000/-". Paragraphs 2 to 6 of the impugned order read as under :

> *2. As regards the two immovable properties purchased by the assessee, the assessee has submitted that, she has purchased only one property for the consideration of Rs.35,00,000/-. However, the assessee has not submitted any documentary evidences i.e. the confirmation letter of SRO, Vasai-1, to prove that during the year under consideration the assessee has purchased only one property. Hence the source of investment for purchase of property for the consideration of Rs.35,00,000/- remains unexplained.*
>
> *3. As regards, the purchase of property for the consideration of Rs.35,00,000/- on 15.03.2016, the assessee has submitted the source of investment as Rs.30,00,000/- loan taken from Bank of Baroda. In supporting of the same the assessee has submitted the loan statement of Bank of Baroda from 08.06.2016 to 25.06.2020. The Balance payment of Rs.5,00,000/- made through Bank account of the assessee. In supporting of the same the assessee has enclosed copy of relevant page of Bank statement of her brother.*
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> *4. As discussed above the Capital gain of Rs.15,10,200/- remains undisclosed and source of purchase of immovable property for the consideration of Rs.35,00,000/- remains unexplained.*
>
> *5. Inspite of having substantial transaction, the assessee has failed to disclose the above transactions by filing ROI for the year under consideration.*
>
> *6. Thus, the source of purchased immovable property for a consideration of Rs.35,00,000/- remains unexplained and Capital gain of Rs.15,10,200/- remains undisclosed for A.Y. 2016-17 thereby escaping assessment in the hands of assessee.*

5 What we find difficult to digest is even in the notice issued under Section 148A(b) of the Act or the information annexed thereto, nowhere does it state petitioner has purchased two properties for Rs.70 lakhs. Petitioner has provided documents to justify that petitioner has

purchased only one property for Rs.35 lakhs and also has explained the source of funding. If the Assessing Officer has to say that there are two properties purchased, either erroneously the figure of Rs.35 lakhs is doubled and shown as Rs.70 lakhs in the AIS, or the Assessing Officer should provide the details of the second property, which according to the Assessing Officer, petitioner has purchased but has failed to disclose resulting in an escapement of income. An assessee cannot prove negative. If the Assessing Officer has any positive information about the details of the second property allegedly purchased, the Assessing Officer was duty bound to apply his mind and confront petitioner with those documents. Simply relying on what the AIS states and passing an order is not something which this Court can accept.

6 Mr. Phadke states that assessee will pay the actual capital gain as will be determined within 30 days of receiving a computation of income from the Assessing Officer. Mr. Phadke further states that assessee will not raise any issue of limitation at any stage.

7 We accept this statement as undertaking to this Court and we should state that we agreed to entertain this petition only in view of this undertaking given by Mr. Phadke that assessee will pay the capital gain payable and will not raise the issue of limitation under Section 149(1)(b) of the Act.

8 The impugned order to the extent of Rs.35 lakhs remaining as unexplained is hereby quashed and set aside.

9 The Assessing Officer shall give effect to this order and provide computation of income to petitioner within four weeks of this order being uploaded and as per the undertaking given, petitioner shall pay the amount as computed within four weeks thereafter. Even if petitioner feels the computation is wrong, the amount will be paid and thereafter, petitioner may take such steps as advised in accordance with law to impugn the computation of income.

10 Petition disposed accordingly.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**