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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 984/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX,
DELHI-10, Appellant

Through: Mr.Shlok Chandra, Sr.SC with
Ms.Madhavi Shukla, Jr.SC,
Ms.Priya Sarkar, Jr.SC and
Mr.Ujjwal Jain, Adv.

versus

SMT. RASHMI RAJIV MEHTA Respondent

Through: Mr. Ved Jain with Mr. Nischay
Kantoor, Advs.

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+ **ITA 989/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX,
DELHI-10, Appellant

Through: Mr.Shlok Chandra, Sr.SC with
Ms.Madhavi Shukla, Jr.SC,
Ms.Priya Sarkar, Jr.SC and
Mr.Ujjwal Jain, Adv.

versus

RASHMI RAJIV MEHTA Respondent

Through: Mr. Ved Jain with Mr. Nischay
Kantoor, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER
04.03.2024

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PER: PURUSHAINDRA KUMAR KAURAV, J.

1. These two appeals preferred by the Revenue are against the common impugned order dated 28 May 2019 passed by the Income Tax Appellate Tribunal ["ITAT"] in ITA No. 3643/Del/2018 and ITA



No. 4398/Del/2018, whereby, while the appeal preferred by the Revenue has been dismissed, the appeal preferred by the assessee has been allowed. In both the appeals, proposed substantial questions of law are common and therefore, keeping in mind the commonality of the facts and issues involved, the same are being decided by this common order.

2. The instant appeals relate to Assessment Year [“AY”] 2010-11. The genesis of the case pertains to receipt of information by the Assessing Officer [“AO”] in the form of a photocopy of an alleged agreement to sell dated 5 March 2010. The said photocopy of the agreement to sell indicated that the land in Ghittorni, Delhi, was to be purchased against a total consideration of Rs.11,00,00,000/-, wherein, the assessee was described to be a co-purchaser. It has been alleged that the assessee paid a sum of Rs.2,75,00,000/- as advance for purchase of the said land, which amounted to 25% of the total consideration. Out of the said amount, a sum of Rs.1,38,00,000/- was stated to have been paid by way of a cheque and the remaining amount i.e., Rs.1,37,00,000/- was allegedly paid in the form of cash at the time of the execution of the said agreement to sell.

3. In view of the above, a notice under Section 148 of the Income Tax Act, 1961 [“Act”] was issued to the assessee on 26 September 2014. The assessee appears to have filed the Income Tax Return [“ITR”] on 07 November 2014, declaring total income of Rs.44,676/- for AY 2010-11. Consequently, proceedings under Section 143(3) read with Section 147 of the Act were initiated against the assessee.

4. The AO, while relying on the photocopy of the said agreement to sell *vide* assessment order dated 28 March 2016, *inter alia* made an addition of Rs.9,00,00,000/- to the income of the assessee on account



of purchase of the said land from undisclosed sources.

5. Against the order passed by the AO, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [“CIT(A)”]. The CIT(A) *vide* order dated 15 December 2017, restricted the addition of Rs.9,00,00,000/- to Rs.1,37,00,000/-, on the ground that it is only the aforesaid amount which can be attributed to the income of the assessee for the relevant AY. However, the veracity of the photocopy of the alleged agreement to sell was not doubted by the CIT(A). The order of the CIT(A) led to the filing of cross appeals by the Revenue and the assessee both, before the ITAT.

6. The Revenue’s appeal being ITA No.4398/Del/2018 was against the deletion of Rs.7,63,00,000/-, whereas, the assessee’s appeal being ITA No.3643/Del/2018 before the ITAT was against the sustained addition of Rs.1,37,00,000/-. The ITAT *vide* common order dated 28 May 2019 dismissed the appeal preferred by the Revenue and the appeal of the assessee was allowed.

7. As stated above, both the appeals have been decided by the impugned common order. The Revenue has challenged the order passed in both the appeals under Section 260A of the Act. The instant appeals propose the following common substantial question of law for our consideration:-

“A. Whether the photocopy of a document, some part of information/facts recorded on it found to be correct in verification, could be treated as a valid document or not in the absence of the original?”

8. We have heard learned counsels appearing for the parties and perused the material available on record.



9. During the assessment proceedings, the assessee's stand was to the effect that the said land was purchased against a consideration of Rs.2,00,00,000/-.The AO, on the other hand, while relying on the photocopy of the alleged agreement to sell, proceeded to make an addition treating the consideration to be Rs.11,00,00,000/-. The AO held that the genuineness of the said document cannot be denied as the signatures of the relevant parties in the aforesaid agreement resembles with the signatures of the assessee and therefore, it has been presumed that the assessee had no explanation to offer in that regard. The relevant paragraph no.7 of the said order reads as under:-

"7. Further, during the course of assessment proceedings, it has been observed that the Judicial Stamp vide bearing No. T253930 dated 05.03.2015 on which the agreement to sell of Gottorni land is made, is purchased in the name of Capt. Rajinder Singh Rosha, Mrs. Jalveen Rosha and Mrs. Rashmi Mehta w/oof Mr. Rajiv Mehta on 05.03.2010. Accordingly, the assessee was requested to provide the use of Judicial Stamp paper or produce the blank paper, if she has not utilized the same for Agreement of this property, but the assessee has failed to provide any reply to this query raised. The summon u/s 131 of Income-Tax act was also issued to the Seller Shri Rajinder Singh Rosha to appear and file explanation with regard to the Agreement to sale bearing No. T253930 dated 05.03.2015 as the amount is mentioned Rs. 11,00,00,000/- in this Agreement to Sale, whereas the assessee has stated that the Ghittorny property was purchased for Rs. 2,00,00,000/- {Rs. 2 crore). But, Shri Rajinder Singh Rosh a not attended the office on one pretext or other. Finally, vide order sheet dated 24.02.2016 the Agreement to Sale bearing no.T253930 dated 05.03.2010 which was signed by the assessee was shown to the assessee and the assessee was asked to explain and produce the above said stamp paper(in original) if not utilised and also asked to produce the seller Capt. Rajinder Singh Rosha and the case was adj. to 29.02.2016. On 29.02.2016, the counsel of the assessee Sh. Arun Ahuja, CA and AR of the assessee attended the proceedings and asked for the adjournment till 07.03.2016. On 07.03.2016, counsel of the assessee attended the case but neither produced the seller nor filed the judicial stamp paper in original with regard to sale agreement bearing No. T253930 dated 05.03.2015 amounting to Rs. 11,00,00,000/-. As, the sale agreement contains the signature of Mrs. Rashmi Rajiv Mehta and Mr. Rajiv Mehta as a purchaser Sh. Rajinder Singh Rosha as a seller. **The genuineness of this**



document cannot be denied as the signature of the relevant parties, resembles with signature signed by these persons on the other documents i.e. copy of ITR, statement taken and other replies. Therefore, it is presumed that the assessee has no explanation to offer in this regard. In view of the above facts, it is established that the property was sold for Rs. 11 /- crore."

[Emphasis Supplied]

10. It is thus seen that the sole basis for addition of Rs.9,00,00,000/- to the income of the assessee is the photocopy of the alleged agreement to sell which contains, *inter alia* the signatures of the assessee as a purchaser of the property, wherein, the sale consideration is shown to be Rs.11,00,00,000/-.

11. The CIT(A) while placing reliance on the photocopy of the alleged agreement to sell concluded that the cash transaction of Rs.1,37,00,000/- had taken place at the time of execution of the said agreement to sell i.e., on 5 March 2010. Therefore, an addition of a sum of Rs.1,37,00,000/- is attributable to the income of the assessee only in the relevant AY. The balance amount was required to be paid at the time of execution of the sale deed which, admittedly, had taken place on 07 June 2010 and therefore, the said date does not fall in the concerned AY. The relevant paragraph is being reproduced herein below:-

“5.2d Coming back to the impugned order, it is observed that the sale consideration has been considered at Rs.11,00,00,000/- while it was registered at Rs.2,00,00,000/- thereby adding the difference of Rs.9,00,00,000/- to the returned income of the appellant. **However, as mentioned in the immediately preceding sub-para that out of Rs.11,00,00,000/- the seller was in receipt of Rs.1,38,00,000/- in cheque and Rs.1,37,00,000/- in cash as on 5/03/2010 (as per the Agreement to sell). But, the balance of Rs.8,25,00,000/- was to be paid by purchaser to the seller at the office of the Sub-registrar at the time of executing the sale deed in favour of the purchaser.** However, it is seen from the registered sale deed executed on 7/06/2010 that Rs.62,00,000/- was paid to the seller (Capt. Rajinder Singh Rosha) by the purchaser through banking channel (cheque No.008660 dated 7/06/2010



drawn on HDFC Bank) - cheque cleared for payment on 10/06/2010 as observed from the copy of the relevant bank statement of the appellant.”

[Emphasis Supplied]

12. The ITAT, however, by the impugned order had taken the view that only on the basis of a photocopy of the alleged agreement to sell the addition of any amount would be unsustainable. The relevant paragraph nos. 12 and 13 with respect to the aforesaid findings read as under:

“12. We have examined the alleged agreement to sell quoted in the assessment order. Clause 3 of this agreement to sell reads as under:-

"The balance of Rs.8,25,00,000/- (Rupees Eight Crore Twenty Five lacs only) shall be paid by the second party to the first party at the time of executing the sale deed in favour of the second party which will be within a period of 15 days from the date of obtaining NOC by the first party from the Competent Authority with an intimation to the second party."

On going through above clause 3 we note that in this agreement to sell which has been made the basis of addition by the AO it has been stated that the balance of Rs.8.25 crore shall be paid at the time of executing the sale deed. The sale deed admittedly has been executed on 07.06.2010. The payment of this balance money even if it is assumed would have been paid, the same would have been paid at the time of the execution of sale deed, i.e., on 07.06.2010. This date does not fall in the year under consideration. As per section 69/69A of the Act, any addition on account of unexplained made only in the year in which such investment has been made. **In view of this fact, we are of the view that CIT (A) was correct in deleting addition of Rs.7.63 Crores on this account. In the result, the appeal of the Revenue is dismissed.**

13. Now coming to the appeal of the assessee which is regarding addition of Rs.1.37 Crores sustained by the CIT (A). On going through the same, we note that issue here is the allegation of payment in cash for purchase of land on the basis of the alleged agreement to sell. The AO received a tax evasion petition along with the copy of agreement to sell. On the basis of this petition and the agreement to sell the AO had reopened the assessment u/s 147. The assessee in response thereto filed the return and submitted her replies. It was a contention of the assessee that she has not signed any such agreement to sell and this is a manipulated agreement by



her husband who because of the strained relationship has implanted this document to harass her. The AO in order to verify the authenticity of this document issued summon to Mr. Rajiv Mehta the other co-owner but surprisingly while recording his statement, he did not even ask any question about the authenticity of the alleged agreement to sell despite the fact the assessee by that time had already challenged the authenticity of the alleged agreement to sell. Further, the AO issued letter to the seller Mr. Rajinder Singh Rosha and received a reply dated 07.03.2016, whereby he has denied having entered into such agreement to sell and also challenged the authenticity of the alleged agreement to sell. The AO despite getting above reply did not make any further enquiry about the alleged agreement to sell. The assessee's contention that Mr. Rajiv Mehta has made the sign of all the concerned parties on false agreement through editing in photoshops like copy and paste as there are lot of lines coming on the said document and the buyer and seller have not signed this document, have been totally ignored without any verification or necessary inquiry being done. Not only that, the assessee has also pointed out specific inconsistencies in the photocopy of the alleged agreement to sell to demonstrate that the signature has been wrongly pasted on at the place where witnesses have to sign. **It is important to point out that the sole basis for making this addition is the photocopy of alleged agreement to sell. We further note that, it is not a case where this document was found with assessee so as to draw any presumption or adverse inference on that basis. From the facts it is evident that this document was received by way of complaint. Further it is only a photocopy and accordingly when its authenticity was challenged, then it was incumbent upon the AO to establish the authenticity of the photocopy of the alleged agreement to sell. Revenue cannot shift the onus on the assessee to prove the negative as is being contended by the Ld. DR. If the allegation has been made by the Assessing Officer, then onus lies upon him to establish the same. No doubt the income tax proceedings are not bound by the technical rule of evidence, but where the addition is solely based on a photocopy of alleged document and the authenticity of such photocopy which is being made basis for making addition is being challenged by the assessee, then ostensibly onus will shift upon the Revenue to first establish the authenticity of such photocopy, thereafter, the onus may shift to the assessee to establish what is stated is correct. Here is the case where Revenue has failed to establish the authenticity of the photocopy of the alleged agreement to sell and thus, we are of the view that the addition on the basis of such photocopy the authenticity of which has not been established, the same cannot be sustained. Accordingly, we direct the AO to delete the addition."**

[Emphasis Supplied]



13. The Hon'ble Supreme Court in the case of **S. Ganga Saran & Sons (P) Ltd. v. ITO**[(1981) 3 SCC 143] has held that the Income Tax Officer must rely upon relevant material to form a reason to believe escapement of income and such belief should not be arbitrary or irrational.

14. Further, this Court in the case of **CIT v. Kulwant Rai**[2007 SCC OnLine Del 1777], while relying on the decision of the Hon'ble Supreme Court in the case of **Dhakeswari Cotton Mills Ltd. v. CIT**[1954] 26 ITR 775], has opined that though tax assessment proceedings do not follow the strict rules of the Indian Evidence Act, 1872 but the assessment by the AO cannot be based on guess work and imagination. Rather, there must be something more than a mere suspicion to prove escapement of income.

15. In the case of **CIT v. Moorti Devi** [2010:DHC:4677-DB], the issue pertained to the addition on the basis of seizure of two different set of documents i.e., agreement to sell and sale deed, which signified different purchase considerations; however, the assessee was never confronted with the original documents. This Court, while upholding the finding of the ITAT therein that merely on the basis of an alleged photocopy of a document, it cannot be assumed that the transaction was in fact entered into by the assessee, has held as under:-

“7. On a perusal of the order passed by the authorities below, it is luminescent that the original documents were never confronted to the assessee. Nothing has been brought on record as to what happened to the original documents. There is no material even to indicate that the photocopies are the copies of the original documents.

8. In view of the aforesaid, we are of the considered view that the tribunal has correctly held that they do not have any evidentiary



value. That apart, no steps were taken to establish the factum of the transaction but time and again reliance was placed on the photocopy of the instrument which pertained to the transaction.”

16. Further, the Hon’ble Supreme Court in the case of **Moosa S. Madha& Azam S. Madha v. CIT** [(1973) 4 SCC 128] was of the opinion that photostat copies have very little evidentiary value.

17. Admittedly, the entire foundation is laid on the basis of the photocopy of the alleged agreement to sell dated 5 March 2010. The original copy of the said document has not seen the light of the day. Further, there is no other evidence to support the veracity of the recitals made in the aforesaid alleged agreement. Therefore, under the facts of the present case, the same cannot be construed to be a sustainable ground for making addition to the income of the assessee.

18. We, thus, find that these appeals do not raise any substantial question of law. The ITAT has rightly opined that under the facts of the present cases, sustaining an addition on the basis of photocopy of alleged agreement to sell would be completely unwarranted and unjustifiable. The appeals are, therefore, dismissed. Pending application(s), if any, are also disposed of, accordingly.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 04, 2024/p