

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.557/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2009-2010

ITO, Ward-1(2)(1) Vadodara.	Vs.	Shri Karsanbhai Sodhabhai Rathod 29, Divyalok Park Society Chhani Jakatnaka Baroda 390 002.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri V.K. Singh, Sr.DR
Assessee by :	Shri Mukund Bakshi, AR

सुनवाई की तारीख/Date of Hearing : 04/07/2018

घोषणा की तारीख/Date of Pronouncement: 09 /07/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-5, Vadodara dated 10.11.2015 passed for the assessment year 2009-10.

2. Sole grievance of the Revenue is that the Id.CIT(A) has erred in deleting additions made by the AO on account of capital gain accrued to the assessee.

3. Brief facts of the case are that the AO had received an information about transfer of property. He observed that the assessee has not filed any return of income for this assessment year. He executed a sale deed on behalf of six original owners vide which same property was

transferred for a consideration of Rs.1,18,10,352/-. The Id.AO further observed that for the purpose of stamp duty, valuation of this property was adopted at Rs.2,07,61,224/-. The AO passed *ex parte* assessment order. He determined the long term capital gain at Rs.2,02,91,808/-. He assessed this long term capital gain in the hands of the assessee on protective basis because during the assessment proceedings he called for relevant documents from the office of sub-registrar and found that actually six persons were original owners of the property. They have assigned their rights by way of development agreement to the extent of 70% to the company viz. Ms.Rajni Builder P.Ltd. (PAN : AAACR 9879 D). Thus, according to the AO, capital gain/business income to the extent of 70% deserves to be assessed on substantive basis in the hands of Rajni Builder P.Ltd. However, on protective basis, total amount was assessed in the hands of the assessee.

4. Dissatisfied with the action of the AO, the assessee carried the matter before the Id.CIT(A). The Id.CIT(A) has deleted the addition by observing as under:

"6.3 I have considered the facts and the circumstances of the case, the observations of the Assessing Officer, the submissions of the assessee, material available on the records and relevant judicial pronouncements on the subject. It is not disputed that the assessee was not the owner of the properties. He was merely power of attorney holder by the six original owners, for the purpose of the sale transaction. The assessee had signed the sale deed for the transfer of the immovable property, on behalf of the said six original owners and he had no vested interest or ownership or any other rights in the property. The property was sold by the original owners and the sale consideration was received by them. There is nothing on record to evidence/establish that the assessee had benefitted in any way from the transfer of the said immovable property. A power of attorney is a written document in which one person (the principal) appoints another person to act as an agent on his or her behalf, thus conferring authority on the agent to perform certain acts or functions on behalf of the principal. It is a legal document

giving one person (called an "agent" or "attorney-in-fact") the power to act for another person (the principal). The agent can have broad legal authority or limited authority to make legal decisions about the principal's property and finance. The power of attorney is frequently used in the event of a principal's illness or disability, or when the principal can't be present to sign necessary legal documents for financial transactions.

6.4 Hon'ble Madras High Court has, in the case of CIT vs C. Sugumaran [2015] 57 taxmann.com 20 (Madras), held that where owner of property executed power of attorney in favour of assessee without any consideration and thereafter property was registered in name of assessee's wife for certain sum, since property rights had not been handed over to assessee, he could not be treated as owner of property for computing capital gain in his hands. In the present case also, there is nothing on record to prove that the assessee had received any part of the consideration out of the sold property or had paid any consideration to the original owners for obtaining power of attorney from the six original owners of the property. In view of this, it is evident that the assessee was neither the owner of the property in question, nor had he sold it. He had also, not received any part of the consideration on account of the transfer of the property. Capital Gains, if any, was to be charged in the hands of the six original owners of the property, instead, the Assessing Officer has wrongly assessed whole of the LTCG in the hands of the assessee, which is legally not tenable. In view of the above discussion, the order of the Assessing Officer in protectively assessing the LTCG in the hands of the assessee as Power of attorney holder of the original owners, cannot be sustained. Therefore, addition of Rs.2,02,91,810/- is directed to be deleted. The assessee succeeds on this ground of appeal."

5. With the assistance of the Id.representatives, we have gone through the record carefully. As seen from the finding of the Id.CIT(A) assessee has just acted as a representative of original owners of the property. He was holding a power of attorney. He has acted on behalf of them. Therefore, the right person for assessment of capital gain is the person who owns the property and in whose behalf assessee acted as an agent only. The Id.CIT(A) has appreciated this fact and thereafter deleted the protective addition. It is also important to note that status

of substantive assessment in the hands of the original owners or Rajni Builders P.Ltd. could not be pointed out before us in spite of our inquiry. It is not ascertainable, whether substantive addition is there or not and if not then, how the protective addition is sustainable. After going through well reasoned order of the Id.CIT(A), we do not find any merit in the appeal of the Revenue. It is dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 9th July, 2018 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER