

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 345/2007

COMMISSIONER OF INCOME TAX DELHI VII... Appellant

Through: Ms.P.L.Bansal, Adv.

versus

SHAKUNTALA DEVI Respondent

Through: Dr. Rakesh Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

02.03.2009

Three questions have been canvassed before us by learned counsel for the Revenue. The first is with regard to the deletion by the ITAT of an addition of Rupees 1,79,435/-, allegedly being unexplained deposits in the Accounts of the Assessee/Respondent. According to the Assessee, she had purchased two plots of land, one of which was sold in the year 1989 and the second in January, 1991. It is the second plot with which we are concerned; the sale consideration of Rupees 1,80,000/- was received by cheque and after deduction of bank commission the aforementioned sum of Rupees 1,79,435/- was credited to the Assessee's Account.

The ITAT has noted that declaration for the purpose of capital account, in Form 2-B, has been made by the Assessee on this transaction. The ITAT was satisfied since the transaction was through banking channels. There was no justification for the said addition. Learned counsel for the Revenue has laboured upon the fact that the documents of Conveyance were not found in order.

This Court ought not to interfere in the findings of fact arrived at by the ITAT unless these are perverse in nature. (See K. Ravindranathan Nair ?vs- CIT, (2001) 247 ITR 178(SC):2001(1) SCC 135). We find no perversity in the conclusion.

The second question pertains to the valuation of certain properties, of which the relevant documents were found in the course of a Search. The Assessing Officer (AO) made an addition of Rupees 4,56,450/- by treating the difference between the valuation of the Assessee and that carried out at his behest. The ITAT has discussed the valuation in respect of each of the properties and has accepted the Assessee?s valuation. It has noted that the Department has failed to collect any information or material to show that any consideration above and beyond the stated sale consideration had changed hands.

It applied the dictum in K.P. Varghese ?vs- ITO, 131 IT 597(SC) which lays the burden to establish the factum of the Assessee having received more than what is declared or disclosed by him as a consideration on the Revenue. The ITAT has opined that the investments shown by the Assessee stand fully corroborated by

documentary evidence. We find no error in the approach of the ITAT. This is also essentially a determination of facts which we must abjure from entering upon. Thirdly, learned counsel for the Revenue has assailed the deletion by the ITAT of an addition of Rupees 2,00,000/- also, being alleged as unexplained deposits in the bank account of the Assessee. It is uncontrovertable that this amount had been shown in the Return for Assessment Year 1996-1997, that is, prior to the issuance of notice under Section 158BC. The version of the Assessee is that the plot was purchased on 16.12.1991 for Rupees 1,95,000/-.

According to learned counsel for the Revenue, it is inconceivable that this property would have been sold on the very same year for a consideration of Rupees 2,00,000/-. All these monies have been transacted through banking channels. The gain of Rupees 5,000/- has been shown in the Return for Assessment

Year 1996-1997. Moreover, the ITAT took note of the fact that the address and particulars of the purchaser had been furnished by the Assessee but the AO made

no inquiries. As in the other two cases the controversy centres around the questions of fact. We find no error in the Order of the ITAT on the third ground also.

It may be relevant to note that a Division Bench of this Court, comprising Dr. Arijit Pasayat and D.K. Jain, JJ., as their Lordships then were, reiterated that there must be a finding of the Revenue that the Assessee had received amounts over and above the consideration stated in the sale deeds, following Varghese. Varghese had also been followed and applied by the Supreme

Court in CIT ?vs- Godavari Corporation Ltd., (1993) 200 ITR 567(SC). The Division Bench of this Court in CIT ?vs- Ashok Khetrapal, (2007) 294 ITR 143 referred to the report of a Valuation Officer in the absence of any incriminating documents found in the course of a Search. The decision in CIT ?vs- Manoj Jain, (2006) 287 ITR 285 is also to the same effect. In CIT ?vs- Shivakami Co.(P) Ltd., (1986) 159 ITR 71(SC) their Lordships have once again reiterated that the onus whether the Assessee had received more consideration than what was stated in the documents of transfer rested on the Revenue and in the absence of that burden being discharged it would be legally impermissible to make any inferences against the Assessee.

No substantial question of law arises for our consideration. Dismissed.

VIKRAMAJIT SEN,J

RAJIV SHAKDHER, J

March 02, 2009/tp