

\$~68

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.03.2013

+ **ITA 162/2013**

COMMISSIONER OF INCOME TAX –VII Appellant

versus

NEERA BHANDARI Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Rajpal, Sr. Standing Counsel

For the Respondent : Mr Satyen Sethi, Adv.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 4947/2013

The delay in refiling the appeal in condoned.

The application is disposed of.

ITA 162/2013

This appeal is directed against the order dated 19.07.2012 passed by the Income Tax Appellate Tribunal in ITA No.3773/Del/2009 pertaining to the assessment year 2006-07.

2. The revenue was in appeal before the Appellate Tribunal on the following grounds: -

“1. The Ld. CIT (A) erred in law and on facts in deleting the addition of ₹1,07,25,000/- made by the Assessing Officer on account of short term capital gains.

2. The Ld. CIT (A) erred in law and on facts in deleting the addition of ₹6,72,910/- made by the Assessing Officer on account of Income from House Property.”

Additional grounds had also been taken, which were in any event related to ground No.1. The additional grounds were as under: -

“(i) The CIT(A) has erred in law and on the facts of the case in holding that the sale of the property relates back to date on which the assessee's father, Sh. A.P.Bajaj was alive and that consequently the will executed by the said Sh.A.P.Bajaj is of no consequence, when as per the assessee's own submission (reproduced at Para 5.5 of the CIT(A)'s order, there was no formal agreement of sale in this case and a mere receipt of the initial advance of ₹7.5 lakhs can not be treated as an agreement for sale, particularly when the sale deed executed by the son of Sh. A.P.Bajaj on 08.11.2005 (after the death of Sh. Bajaj) does not make any mention of any earlier agreement of sale and when there is no evidence/indication of the date, if any, on which possession of the land was given to the buyers in pursuance of any agreement of sale executed during the life time of Sh. A.P.Bajaj.

(i) The Ld. CIT(A) has erred in law and on facts in treating the amount of ₹1,05,00,000/- received by the assessee from her brother as a gift within the meaning of

Sec. 56(2)(v) of the I.T.Act 1961 and not as a part of the sale consideration received in pursuance of the will of Sh.A.P.Bajaj.”

Insofar as the first ground and the additional grounds are concerned the issue is with regard to the addition of ₹1,07,25,000/- made by the assessing officer as short term capital gains. That has been deleted by the Tribunal. The facts are that the assessee received a sum of ₹1,05,00,000/- from her brother Pramod Kumar Bajaj (₹72 lakhs during assessment year 2005-06 and a further sum of ₹33 lakhs during assessment year 2006-07). This receipt was in accordance with the direction given by her late father Sh. A P Bajaj in his will. In the will it was stated that in case the agricultural land at village Badshahpur, Distt. Gurgaon, Haryana is sold under any circumstance by said Pramod Kumar Bajaj, 30% of the sale consideration would be given to the assessee (Smt. Neera Bhandari). It is in these circumstances that the assessee received the above sums of money from her brother which was equal to 30% of the sale proceeds of the land. The said sum was received in its entirety after the demise of the father (late Sh. A P Bajaj). The assessing officer treated the sale consideration as short term capital gains and added it to the total income of the assessee. The

assessing officer also denied the claim of exemption under Section 54EC to the extent of ₹35,25,000/- made by the assessee.

3. The Commissioner of Income Tax (Appeals) deleted the addition of ₹1,07,25,000/-. The Tribunal on different reasons has confirmed the deletion.

4. The learned counsel for the appellant submitted before us that the Tribunal had erred in law inasmuch as the receipt of the said sum of ₹1,05,00,000/- by the assessee from her brother had been received by the brother, in part, during the lifetime of the father in November, 2004. It is only thereafter, that the assessee's father late Sh. A P Bajaj passed away on 24.11.2004.

5. We feel that even if we accept the position as advanced by the learned counsel for the appellant, it is apparent that the assessee received the said sum of ₹1,05,00,000/- as inheritance from her father. This would become clear from the fact that late Sh. A P Bajaj had clearly indicated in his Will that in case the property is sold, 30% of the sale proceeds would be given to the assessee. The fact that the property was agreed to be sold during the lifetime of the father and

some part consideration had been received during the lifetime would only imply that the condition upon which the assessee was to receive the said 30% of the sale consideration had already been satisfied during his lifetime. In other words, the assessee's share out of the said consideration became payable to her directly under the will on the death of the father. Even if we look at the matter in this perspective the receipt in the hands of the assessee cannot be regarded as income. However, the Tribunal has taken a different approach by holding that even if it is regarded as income the assessee would be entitled to the benefit of income under Section 56(2)(v) of the Income Tax Act, 1961. Either way we look at the issue, the answer is the same. Therefore, insofar as this aspect of the matter is concerned no interference with the order of the Tribunal is called for.

6. As regards the second ground raised before the Tribunal with regard to the addition of ₹6,72,910/-, that issue was decided in favour of the assessee in respect of the assessment year 2005-06 by the CIT (Appeals) and it has not been questioned by the revenue before the Tribunal. Therefore, following the said decision, the Tribunal

confirmed the view taken by the CIT (Appeals). Even on that aspect, no interference is called for.

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

The appeal is dismissed.

BADAR DURREZ AHMED, J

MARCH 22, 2013

vld

R.V.EASWAR, J

