

**IN THE INCOME TAX APPELLATE TRIBUNAL
CAMP BENCH AT JALANDHAR**

**Before Sh. N. K. Saini, Hon'ble Vice President
and**

Sh. Ravish Sood, Judicial Member

ITA No.212/Asr./2018 : Asstt. Year : 2010-11

Sh. Gurdev Singh, C/o Sh. Dinesh Sarna, Adv., Model Town Road, Jalandhar (APPELLANT)	Vs	Income Tax Officer, Ward-1, Hoshiarpur (RESPONDENT)
PAN No. ACTPB6603K		

Assessee by : Sh. Ashray Sarna, CA

Revenue by : Sh. Bhawani Shankar, DR

Date of Hearing : 09.01.2019

Date of Pronouncement : 17.01.2019

ORDER

Per N. K. Saini, Vice President:

This is an appeal by the assessee against the order dated 01.02.2018 of
ld. CIT(A)-1, Jalandhar.

2. Following grounds have been raised in this appeal:

“1. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 143(3)/147 and without complying with the mandatory conditions u/s 147 as envisaged under the Income Tax Act, 1961.

2. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 46,50,000/- without considering the submissions of the assessee and ignoring the fact that assessee is merely a

Power of Attorney holder and not the owner of the said plot.

3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. The only grievance of the assessee in this appeal relates to the confirmation of addition of Rs.46,50,000/- made by the AO.

4. Facts of the case in brief are that the AO initiated the proceedings u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act). In response, the assessee submitted that the return already filed on 19.01.2011 be treated as filed in response to the notice u/s 148 of the Act. The AO noticed that during the course of assessment proceedings for the assessment year 2011-12 in the case of one Sh. Deepak Pal Singh, Piplanwala (Hoshiarpur), it was noticed that as per Power of Attorney dated 19.03.2010 executed by Smt. Harsharan Kaur, w/o Late Sh. Gurbaksh Singh s/o Sh. Puran Singh, Sagran Mohalla, Adampur registered in assessee's favour, the assessee transferred full rights in respect of a plot situated in Village-Khawaspur Tehsil and Distt. Hoshiarpur registered undisputedly without any monetary consideration. This fact was confirmed in the statement dated 18.02.2014 recorded during the assessment proceedings of Sh. Deepak Pal Singh. The AO also observed that it was confirmed by the assessee that he was not related to Smt. Harsharan Kaur and the plot area which was inadvertently shown as 5M 15 Sq ft. in the reasons recorded was actually 2 Kanal 6 ½ Marlas. The AO was of the view that the

value of the said plot equal to stamp duty value @ Rs.1 lac per marla was chargeable to tax in the hands of the assessee as “income from other sources” u/s 56(2)(vii)(b) of the Act. The AO made the addition of Rs.46,50,000/- which was equivalent to the stamp duty value of the property.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the Power of Attorney does not give ownership rights to the assessee and that the document referred to and relied upon to infer transfer of the plot was nothing but the Power of Attorney executed by the lady owner in assessee’s favour. It was further submitted that in common parlance, it is well known that a Power of Attorney only authorized its holder to deal with the property as per the wishes of the principal/owner, laid out in attorney executed and the attorney holder does not become the owner of the property, by virtue of the attorney executed in his favour. The reliance was placed on the decision of the ITAT Amritsar Bench in the case of ACIT Vs Janak Raj Chauhan reported at (2006) 102 TTJ 0297. The assessee also furnished the written submission which has been incorporated by the Id. CIT(A) in para 4 of the impugned order, for the cost of repetition, the same is not reproduced herein.

6. The Id. CIT(A) summarized the submissions of the assessee at page no. 14 of the impugned order as under:

“1. There is no dispute with regard to the fact that, Smt. Harsharan Kaur is the recorded owner of the land in question.

2. There is also no dispute with regard to the fact that, there is no evidence on record suggesting that any consideration has been paid by the assessee to Smt. Harsharan Kaur for executing power of attorney in favour of the assessee.

3. There is also no evidence on record that any consideration has been received by Smt. Harsharan Kaur for executing power of attorney in favour of the assessee.

4. The terms of power of attorney clearly shows the property rights have not been transferred to the power of attorney holder.

5. There is no documentary evidence has been brought on record by Ld. AO showing that assessee purchased land from Smt. Harsharan Kaur.

6. There was no material before the Ld. AO which could led to conclusion that the power of attorney in favour of assessee was a device to camouflage activities and to defraud the Revenue.”

7. The Id. CIT(A) after considering the submissions of the assessee observed that the assessee was given general Power of Attorney by Mrs. Harsharan Kaur which was duly registered with the Registrar on 19.03.2010 and that vide this general Power of Attorney, Mrs. Harsharan Kaur had given general Power to one Sh. Kundan Singh for 19 ½ Marlas and to the assessee for 2 kanal 13 ½ marlas and the assessee vide the said Power of Attorney acquired many rights including right to sell and that the assessee sold a plot of land measuring 5 marla 15 Sq. ft. to one Sh. Deepak Pal Singh who further constructed house thereon and sold the same to one Sh. Amit Kumar for Rs.14,00,000/-.

8. The Id. CIT(A) did not find merit in the submissions of the assessee and sustained the addition of Rs.46,50,000/- by observing as under:

“From the facts brought on record, it is evident that Sh. Harsharan Kaur is not blood relation or related to the assessee. The assessee was given power of attorney through one Sh. Ranjeet Singh. The address of Sh. Ranjeet Singh was not known to the assessee. Vide this General Power of Attorney the assessee was not alone who was given power of attorney. The plot was specifically given to two persons one Sh. Kundan Singh and Sh. Gurdev Singh, the assessee. The General power of attorney which included the power to further sell was duly registered with the Joint Sub-Registrar, Aadampur.

The assessee using the general power of attorney has further sold a part of the land. From the whole it is clear that the said property was given to the assessee without any consideration. The said General power of attorney has not been revoked till date. In the revenue records, as per details provided by the Ld. Counsel the land is shown in the name of Smt. Harsharan Kaur. But, the subsequent sale of the plot being made by the assessee shows that he is using and appropriating the property as its own, so much he is further selling the same. The assessing officer has involved provisions of Sec. 56(2)(vii)(b) of the Income Tax Act 1961 and made addition of Rs. 46,50,000/-. The assessee has failed to bring on record, the actual investment made by him to acquire the general power of attorney of the property. Therefore, assessment of an amount of Rs. 46,50,000/- U/s Sec. 56(2)(vii)(b) of the Income Tax Act made by the assessing officer is upheld. Ground of appeal No. 2 is dismissed.”

9. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that Smt. Harsharan Kaur was 73 years old lady at the relevant time. Therefore, she gave Power of Attorney to the assessee since she could not maintain the property. It was further submitted that within one year from the date of general Power of Attorney, the assessee gave the attorney to Sh. Deepak Pal Singh on

07.01.2011 as an attorney holder only and not as owner of the concerned property. It was submitted that the assessee was appointed as an attorney to the property on behalf of Smt. Harsharan Kaur and received property for a period of less than a year and subsequently Sh. Deepak Pal Singh was appointed as an attorney holder. Therefore, the addition made by the AO u/s 56(2)(vii)(b) of the Act for the reason that the assessee received property without consideration, so stamp duty value of the property was to be assessed as “income from other source” in the hands of the assessee was not justified because the basic conditions of the said Section were not fulfilled as the assessee had not sold any property and did not receive property but was made just an attorney holder of the property in question and no investment was made by the assessee in the property. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified. The reliance was placed on the following case laws:

- *Suraj Lamp & Industries (P) Ltd. Vs State of Haryana 340 ITR 001 (SC)*
- *ACIT Vs Janka Raj Chauhan (2006) 102 TTJ 297 (Asr.)*
- *Gunpreet Singh Vs ITO, Ward-1(5), Haryana in ITA No. 2731/Del/2018, order dated 27.09.2018 (Del. ITAT)*

10. In his rival submissions, the Id. DR strongly supported the orders of the authorities below.

11. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the assessee was given general Power of Attorney by Smt. Harsharan Kaur to maintain the property. The said property was not transferred in the name of the assessee at any point of time and later on the Power of Attorney was given to one Sh. Deepak Pal Singh.

12. On a similar issue in the case of Suraj Lamp & Industries (P) Ltd. Vs State of Haryana in SLP(C) No. 13917 of 2009 dated 11.10.2011 (supra) their Lordships held in paras 13 & 18 as under:

“13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable: or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan V/s. Basant Nehata - 2005 (12) SCC 77, this Court held :

"A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.”

13. So, respectfully following the ratio laid down in the aforesaid referred to case, we are of the view that only on this basis that a general Power of Attorney was given to the assessee by Smt. Harsharan Kaur to maintain the property, it cannot be said that the assessee received the property and was liable to pay the tax on the stamp duty value of the said property.

14. A similar view has been taken by the Co-ordinate Bench in the case of ACIT Vs Janak Raj Chauhan (supra) wherein it has been held as under:

“6.5 On consideration of the above facts, we are of the view that the CIT(A) was justified in deleting the addition. The POA would not give right to the assessee in his individual capacity to acquire any right, title or interest in the property unless the facts are brought on record that POA was subject to consideration. The AO has not brought any evidence on record to justify his estimate of

income. Mere recovery of POA from the possession of the assessee is not enough to estimate income against the assessee. The law is clear that POA is meant for doing the certain acts on behalf of the principal. It is also subject-matter of cancellation. Only certain acts which have been authorised by the POA could be exercised. Therefore, the AO was not justified in drawing adverse inference against the assessee that on the basis of recovery of POA the assessee earned the income. There is no merit in the appeal of the Revenue. The same is accordingly dismissed on this ground.”

15. So, respectfully following the aforesaid referred to order, the impugned addition made by the AO and sustained by the ld. CIT(A) is deleted.

16. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 17/01/2019)

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 17/01/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR