

Mere signing of 'Sauda Chitthi' wouldn't prove that assessee had received consideration from sale of land: HC

Summary – The High Court of Gujarat in a recent case of Vinodbhai Shamjibhai Ravani, (the Assessee) held that where there was no tangible material available on record to form a reasonable belief that amount of sale consideration on sale of land owned by third party was received by assessee in cash, merely on basis of sauda chitthi signed by assessee for sale of such land, it could not be said that sale consideration was received by assessee

Facts

- The assessee was partner in various firms and derived his income from business and other sources. A re-opening notice was issued against the assessee on the grounds that a document was seized from the residence of RV, one of the partners of the firm SRV in which assessee was also a partner. This was a copy of 'Sauda Chitthi' entered between the assessee and one VSR on one hand as seller and PK and RV on other side of the deal as buyers for purchase of land. According to the Assessing Officer, the total sale consideration for above land, according to sauda chitthi, came to Rs. 18.80 crores and subsequently a sale deed was executed for a consideration of Rs. 56.39 lakhs and balance amount of Rs. 18.23 crores was received by assessee in cash as on money. He held that the differential amount must be added to income of assessee.
- On writ:

Held

- It appears that on the basis of the statement of RV recorded during the course of search proceeding and on the basis of one sauda chitthi signed by the respective petitioners. The Assessing Officer held that the sale consideration for the land in question comes of Rs. 18.80 crore and subsequently when the sale deed has been executed, the same is for sale consideration of Rs. 56.39 lakhs and therefore, the balance amount of Rs. 18.23 crore can be said to have been received by the petitioners-assessee in cash as on money and therefore, the same is required to be added into their income. Therefore, Assessing Officer has formed a belief that the income of the assessee has escaped assessment to the extent of Rs. 18.11 crore during the assessment year 2009-10.
- However, it is required to be noted that the respective petitioner were never owners of the land in question. It is also required to be noted that in fact the subsequently sale deeds are executed by the original land owners in favour of PK. It is an admitted position that the respective petitioners-assessee have never executed any sale deeds. Therefore, nothing is on record that any sale consideration was received by the respective petitioners-assessee. Therefore, merely on the basis of the sauda chitthi signed by the respective petitioners assessee (signed and executed though

admittedly they were not owners of land for which the sauda chitthi was executed/signed), it cannot be said that any amount is received by the petitioners-assessee.

- Even considering the statement of RV, upon which much reliance has been placed by the revenue/Assessing Officer, he has categorically stated that the sauda chitthi dated 12-03-2008 was subsequently immediately cancelled. From the statement of the said RV, it does not appear that he has stated that he paid any amount to the respective petitioners. Under the circumstances, as such there is no tangible material available with the Assessing Officer to form a reasonable belief that the amount of Rs. 18.23 crores has been received by the respective petitioners-assessee in cash. As observed herein above, as such there is no material whatsoever with the Assessing Officer that any amount of sale consideration has been received by the respective petitioners - assessee. The formation of opinion by the Assessing Officer, thus, seems to be on surmise and conjecture, which cannot be the basis for reopening the assessment of concluded assessment, in exercise of powers under section 147.
- Even otherwise, it is required to be noted that according to the Assessing Officer, the valuation as per the sauda chitthi signed by the respective petitioners assessee would come to Rs. 18.80 crores and the sale deeds have been executed for total consideration of Rs. 56.39 lakhs and therefore, the balance amount of Rs. 18.23 crores is considered to be on money received by them in cash. As observed hereinabove, according to the Assessing Officer the said sauda Chitthi was signed by both the petitioners. In case of both the petitioners-assessee, the Assessing Officer has reopened assessment for assessment year 2009-10 on the ground that the income chargeable to tax has escaped assessment to the extent of Rs. 18.23 crores during the year 2009-10. If the sauda chitthi was signed by both the petitioners-assessee, in that case, in case of both the petitioners-assessee, it cannot be said that the income to the extent of Rs. 18.23 crores has escaped assessment during assessment year 2009-10. In case of both the assessee the resultant effect would be that according to the Assessing Officer Rs. 36.46 crores is received in cash. If the difference is found to be Rs. 18.23 crores (in case of each petitioners), it can be said to be non-application of mind. No reasonable and prudent person would form such a belief. Under the circumstances also, on the aforesaid ground alone, the impugned reassessment proceedings cannot be sustained. On the aforesaid ground, the present petitions are required to be allowed by quashing and setting aside the impugned notices under section 148.