

आयकर अपीलीय अधिकरण, “अई” खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI-“ P”, BENCH
सर्वश्री संजय गर्ग, न्यायिक सदस्य एवं अशवनी तनेजा, लेखा सदस्य
Before S/Sh. Sanjay Garg, Judicial Member & Ashwani Taneja, Accountant Member
आयकर अपील सं./ITA No.3050/Mum/2015, निघरण वर्ष/Assessment Year-2010-11

M/s. Ram & Company C/o., Shankarlal Jain & Associates 12, Engineer Building, 265, Princess Street Mumbai-400 020. PAN No.AAAFR 1894 D	Vs.	Principal Commissioner of Income tax-30 Income tax Office, Bandra Kurla Complex, Bandra (E) Mumbai-400 051.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Appellant by	Shri S.L. Jain
Respondent by	Shri Rajesh R. Prasad-CIT-DR

Date of hearing :	14.12.2015
Date of pronouncement :	08.01.2016

ORDER

PER ASHWANI TANEJA, AM:

Present appeal is against the order passed by principle CIT u/s. 263 of the Act. Perusal of the impugned order shows that it has been passed on following two issues;-

i. The assessee has claimed deduction of transfer expenses u/s. 48 of the Act, aggregating to Rs.17,64,350/-. According to ld.CIT, the Assessing Officer has not examined whether these expenses are allowable u/s. 48 of the IT Act and, therefore, order passed by the assessing officer was considered as erroneous in so far as prejudicial to the interest of the Revenue.

ii. It was noted by the ld. CIT on the perusal of the assessment record that assessee had claimed loss under the head business on account of valuation of closing stock of shares of two companies. According to ld. CIT these shares were held as investment, and therefore, the impugned loss should not have been allowed as business loss and should not have been set off

against Long term Capital Gain (LTCG) .The assessing officer without looking into these facts and making necessary enquiries allowed the said claim.

2. In view of the aforesaid discrepancies noted by the Id.CIT, a show cause notice u/s. 263 was given/served upon the assessee. The assessee furnished detailed replies before the Id. CIT explaining that exhaustive enquiries were made by the assessing officer during the course of assessment proceedings before accepting claim of the assessee made in the return, but Id. CIT was not satisfied with the response of the assessee and assessment order framed by the assessing officer and therefore, he directed the AO to re-do the assessment and not to allow the loss under the head 'income from business or profession'. Being aggrieved, the assessee is before the Tribunal.

3. During the course of hearing before us, Id. Counsel appearing on behalf of the assessee has shown that exhaustive details were filed before the AO during the course of assessment proceedings and were examined by him before passing the assessment order on both the issues, and, therefore, the Id. CIT was legally and factually incorrect in pointing out these discrepancies and in framing the impugned order u/s. 263.

4. We have gone through the order of the lower authorities and heard both the parties. It is noted, with the assistance of Id. Counsel that exhaustive details were filed by the assessee before the Assessing Officer, during the assessment proceedings on both the issues as have been raised in the impugned order. It is noted that vide letter dated 7.8.2012, addressed to the assessing officer, the assessee submitted as under :-

a) The assessee was owning several industrial galas and shops at Mumbai. These properties were provided as security to State Bank of India for credit facilities provided to Group Companies in 1994 or thereabout. However, due to certain disputes with the Bank, all the properties were under attachment and in possession of Court Receiver. On settlement of disputes with Bank, these properties were released by Bank on condition of payment of sales consideration towards loan outstanding of the principal borrowers.

4.1 Further vide letter dt.27.8.2012 the assessee submitted details of expenses claimed u/s. 48 with following explanation.

b) Details of legal expenses, transfer fees and brokerage paid claimed as deduction out of Realisation in computation of capital gains are furnished herewith with particulars of TDS deducted, wherever applicable.

4.2 It is noted that item-wise detail of the expense claimed was given under the head of legal and professional charges, transfer charges, brokerage and rates and taxes for the amount aggregating –to Rs.17,64,350/-.

4.3 It is further noted that assessee has submitted bills and other evidences of these expenses, sale deed of the properties sold and order of the Debt Recovery Tribunal, in support of the transactions done by the assessee. The assessee has also submitted copies of correspondence with State Bank of India (SBI) on the issue of settlement of dues under compromise. Thus, from all the evidences it was clearly discernible that the impugned expenses were done for the purposes of enabling the assessee to make transfer of the property sold by it during the year under consideration. On this issue we find that the position of law is in favour of the assessee. In the case of *CIT vs. Shakuntala Kantilal (190 ITR 56)*, Hon'ble Bombay High Court has held that

any amount the payment of which is absolutely necessary to effect the transfer will be an expenditure covered u/s. 48. It has been further held that if an expenditure is necessary to remove an encumbrance without which transfer could not be effected, such expenditure is allowable u/s. 48.

4.4 Thus, it is noted that after taking into account all the facts and circumstances of the case and details submitted by the assessee, the AO took a view that these expenses were allowable. The view adopted by the AO is correct as per law. In any case, it can be said to be one of the views possible as per law. Under these circumstances, the view adopted by the AO cannot be held to be erroneous, as envisaged u/s. 263 of the Act.

4.5 With respect to the second issue also, it is noted that requisite details were filed before the AO. Ld.CIT-DR was fair enough to admit that requisite details were on record of the AO. It is noted that assessee has filed complete details of shares as stock- in- trade. The assessee has also filed evidences for market value of shares. In the assessment order of the earlier years the impugned shares have been accepted as part of stock-in-trade. This year also, the assessee was engaged in the business of share trading activities, as has also been mentioned by AO in para- 3 of the assessment order and these facts have not been denied by the Ld.CIT. There were no reasons with the AO in the present year to take a different view. In our view, there are no valid basis with the Ld. CIT to treat these shares as part of investments. Ld. CIT has suggested in his order that disclosures made by the assessee in his balance sheet are immaterial and the AO should have ignored the same, and should have treated these shares in the nature of investments, that too, by disregarding the treatment given in the earlier years. In our view the reasoning given by the Ld. CIT in his order is not acceptable in law, and in the given facts of the case. We find

that the AO has accepted the claim of the assessee, after analyzing facts of the case and evidences placed by the assessee and in line with the record of assessment of earlier years. The view adopted by the AO was in accordance with law and facts. In our view, on this issue also, order of the AO cannot be held to be erroneous or prejudicial to the interest of Revenue.

4.6 Thus, the order passed by the Id. CIT is not in accordance with law and facts, and, therefore, same is quashed. Grounds raised by the assessee in its appeal are allowed.

5. As a result appeal filed by the assessee is allowed.

Order pronounced in the open court on 08.01.2016.
आदेश की घोषणा खुले न्यायालय में दिनांक: 8 जनवरी, 2016 को की गई।

Sd/-

Sd/-

(संजय गर्ग /SANJAY GARG)
न्यायिक सदस्य/ JUDICIAL MEMBER

(अशवनी तनेजा /ASHWANI TANEJA)
लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई, Mumbai, दिनांक Dated : 08.01.2016
Jv, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai