

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH AHMEDABAD

BEFORE, SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI S. S. GODARA, JUDICIAL MEMBER

ITA No. 2410/Ahd/2016
(Assessment Year: 2013-14)

Satishchandra Harishankar Joshi
101, Divya Residency, Ellisbridge,
Ahmedabad - 380006

Appellant

Vs.

Income Tax Officer,
Ward 7(2)(5), Ahmedabad

Respondent

PAN: ADFPJ4534Q

आवेदक की ओर से/By Assessee : None
राजस्व की ओर से/By Revenue : Shri Mahesh G. Jiwade, CIT. D.R.
सुनवाई की तारीख/Date of Hearing : 30.10.2017
घोषणा की तारीख/Date of
Pronouncement : 31.10.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This assessee's appeal for assessment year 2013-14 arises against the CIT(A)-7, Ahmedabad's order dated 23.06.2016 in case no. CIT(A)-7/163/15-16, upholding Assessing Officer's action making addition of Rs.32,17,674/- as long term capital gains arising from sale of factory building, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

2. Case called twice. None appears at assessee's behest. Case file reveals that the registry has already sent an RPAD notice to the assessee dated 29.09.2017. He is accordingly proceeded ex parte.

3. Relevant facts pertaining to the above solitary issue of long term capital gains addition are in a very narrow compass. The assessee is fair enough in not disputing sale of above immovable property in the nature of factory building. His only case has been that it is not he himself appearing as proprietor of M/s. Nagarjun Pharmaceuticals but the said entity has sold the above factory building in question. Learned CIT(A) rejects this contention in his lower appellate order as under:

“4.2 I have considered the assessment order and the submissions made by the appellant During assessment proceedings, the AO noted that the appellant has sold Immovable property for Rs,51,00,000/- in his capacity as proprietor of M/s. Nagarjun Pharmaceuticals. The appellant contended, however, that this property had been sold by M/s. Nagarjun Pharmaceutical Pvt. Ltd. wherein he was a director and that the capital gains arising from this transaction had been shown in the return of income of M/s. Nagarjun Pharmaceutical Pvt Ltd., A perusal of the submissions and the assessment order shows that the property was allotted in the name of M/s. Nagarjun Pharmaceuticals, which is the proprietorship concern of the appellant and remained in this name till the date of sale. The said property was not transferred to M/s. Nagarjun Pharmaceutical Pvt Ltd. at any time. The same was sold by the appellant himself as proprietor of M/s. Nagarjun Pharmaceuticals and-not by M/s. Nagarjun Pharmaceuticals Pvt. Ltd. Not only this, even the sales consideration received by the appellant was received in the bank account of the proprietorship concern. In view of these facts, since the ownership of the property remained with the appellant from the date of allotment till the date of sale and was not transferred at any time to M/s. Nagarjun Pharmaceutical Pvt. Ltd., the capital gains arising from this sale would be taxable in the hands of the appellant and proprietor of M/s. Nagarjun Pharmaceutical As per the Act, the individual and the company are different persons separately assessable under the Income-tax Act. It is dear that the long term capital gain arising from the transaction of sale of property was to be taxed in the hands of the person owning the property which in this case is .the appellant as proprietor of M/s. Nagarjun Pharmaceuticals. In view of the same, the addition of Rs.32,17,674/- made by the Assessing Officer as long gain in the hands of the appellant is confirmed. Ground of appeal No, 1 is dismissed.”

4. We have heard learned Departmental Representative strongly supporting both the lower authorities' action making impugned long term capital gain addition.

There is no evidence in the case file produced at assessee's behest which could rebut the above extracted CIT(A)'s conclusion that M/s. Nagarjun Pharmaceuticals Pvt. Ltd. had never become owner of the factory building in question. We therefore find no reason to interfere with the impugned addition. The same is accordingly confirmed. The assessee's sole substantive ground fails.

5. This assessee's appeal is dismissed.

[Pronounced in the open Court on this the 31st day of October, 2017.]

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 31/10/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।