

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.3084/Mum/2017
(Assessment Year :2010-11)

Ramratan Saraf (HUF) T-6 1201 Rustomjee Ozone CHS Ltd.,Near MTNL Exchange, Goregaon (E) Mumbai – 400 062	Vs.	Asst. CIT 24(3) Mumbai
PAN/GIR No. AADHR5389C		
Appellant)	..	Respondent)

Assessee by	Shri Haresh P Shah
Revenue by	Ms.N. Hemalatha
Date of Hearing	26/10/2017
Date of Pronouncement	08/11/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-42, Mumbai dated 14/12/2016 for the A.Y.2010-11 in the matter of order passed u/s.143(3) of the IT Act.

2. The only grievance of assessee relates to disallowing claim of expenditure incurred in connection with transfer of shares.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a HUF and derives income from Business as well as from Other Sources. The assessee had filed its return of income for AY 2010-11 on 28/07/2010 declaring a total income of Rs. 25,29,686/-. The assessee had declared Long Term Capital Gains & Short-Term Capital Gains also in respect of sale of shares of M/s Electroplast India Private

Limited (EIPL). The assessee had submitted the computations of the Capital Gains as under:

Short Term Capital Gains		
Sale consideration of 30,000 shares of EIPL	Rs.	30,30,000
Less: Cost of Acquisition	Rs.	Nil
Profit on Sale of Shares	Rs.	30,30,000
Less: Service Charges (Proportionate)	Rs.	4,32,649
Net Short Term Capital Gains	Rs.	25,97,351

Long Term Capital Gains

Sale consideration of 50,000 shares of EIPL	Rs.	50,50,000
Cost of Acquisition	Rs.	4,50,000
Less: Indexed Cost of Acquisition	Rs.	6,06,576
Profit on Sale of Shares	Rs.	44,43,424
Less: Service Charges (Proportionate)	Rs.	7,21,082
Net Short Term Capital Gains	Rs.	37,22,342

4. Before the AO the assessee claimed that the Service Charges which were claimed as a deduction in the computation of Long Term & Short-Term Capital Gains were actually paid to M/s Expanza Access Ltd & M/s Pristine Ventures Private Limited for providing advice in the matter of sale of shares. It was claimed that the payments are in the nature of brokerage

& commission. The AO held that the explanation of the assessee is not proper or convincing and rejected the same. The AO held that the assessee has failed to submit the details of significant work done by these parties and the AO disallowed the expenses of Rs. 4,32,649/- & Rs. 7,21,342/- and recomputed the relevant Capital Gains.

5. By the impugned order CIT(A) confirmed the action of the AO, against which assessee is in further appeal before us.

6. I have considered rival contentions and carefully gone through the orders of the authorities below and found from record that EPIL is a family concern of the Saraf Family. This Company had a manufacturing unit at Daman. The shareholding of the company was claimed to be as under:

Shareholder	Number of Shares	Sale Price of Shares
Ramratan Saraf	184000	18584000
Niraj Saraf	296000	29896000
Mamta Saraf	320000	3232 0000
M/s RR Saraf (HUF)	80000	8080000
	880000	88880000

7. Somewhere in the month of August 2009 it was unanimously decided by the Company and all the above promoters and shareholders to exit the company and cede control to someone else. It was claimed that it was not easy to liquidate the whole shareholding and the Company had to look for some agency to get the best offer for the effective transfer of control of the company. It was claimed that M/s Pristine Ventures Private Limited (Pristine) was given the work to obtain the best offer for the company and in turn M/s Pristine involved its associate M/s Expanza Access Ltd (EZL) also in this activity. It was claimed that both these agencies had expertise in the line of disinvestment of shares. It was claimed that M/s *EZL* introduced the Company to some prospective buyers and after a number of meetings it was collectively decided to go ahead with the due diligence process in respect of one potential buyer. It was claimed that a formal proposal was entered into between EPIL and M/s Pristine on 20/10/2009, It was also claimed that a sub-mandate was entered into separately between M/s Pristine & M/s *EZL* on 06/11/2009. It was claimed that it was M/s *EZL* which entered into some correspondence with M/s EPIL and after six weeks of due diligence it was decided to disinvest with one-party M/s Yash Vikram Infrastructure P Ltd. It was claimed that the MoU was drafted by M/s *EZL*. It was claimed that the raw materials, work in progress and finished goods were also taken stock of by the representatives of the buyer and M/s *EZL* and the balance sheet of the company was struck as on 31/12/2009. It was also claimed that M/s *EZL* also obtained the account confirmations from the debtors and creditors of

the company and prepared the legal documents in respect of the transfer. It was claimed that the assessee along with the other family shareholders did not have to engage or hire any other advocate or expert for the necessary execution of the disinvestment process and all the assistance was provided only by M/s EZL & M/s Pristine. It was claimed that the entire Company was sold off in the month of January 2010.

8. Before the lower authorities assessee had filed various documents to prove that these two parties had actively done the work of transfer of business of M/s EPIL and besides holding meetings, having due diligence exercises and drafting the MoUs these concerns also prepared the relevant agreements for purchase/sale of shares, deed of indemnity, general power of attorney, board resolutions and other documents. It was claimed that M/s EZL had been paid a sum of Rs.9,14,259/- by the assessee as proportionate share for the transfer of shares held by it and M/s. Pristine was paid a sum of Rs.2,39,472/- by the assessee as proportionate share for the transfer of shares. These amounts were further allocated between the calculations for Long-Term & Short-Term Capital gains by the assessee. It was claimed that these expenses were incurred wholly and exclusively in connection with the transfer the shares and should be allowed as a deduction.

9. Since the assessee has offered Long-Term & Short-Term capital gain in its hand, the expenditure incurred wholly and exclusively for earning the same is to be allowed as a deduction u/s.48(i) of the IT Act. Accordingly, I direct the AO to allow the claim of service charges of Rs.7,21,082/- and

Rs.4,32,649/- as deduction while computing capital gains. I direct accordingly.

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

Order pronounced in the open court on this 08/11/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 08/11/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai