

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA

[Before Hon'ble Shri P.M. Jagtap]

I.T.A. No. 567/Kol/2017
Assessment Year : 2010-11

Shri Amitava Banerjee.....Appellant
C/o. V.N. Purohit & Co., Chartered Accountants,
A-4, Nandalal Bithi, City Centre,
Ground Floor,
Durgapur - 713 216
[Pan : AHNPB 7336 E]

D.C.I.T., Cir - 2.....Respondent
Aayakar Bhawan, Aayakar Bithi,
Durgapur - 713 216

Appearances by:

Shri V.N. Purohit, CA appearing on behalf of the Assessee.

Shri Soumyajit Dasgupta, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : November 01, 2017

Date of pronouncing the order : January 05, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals), Durgapur dated 18.01.2017 and the grounds raised by the assessee therein read as under:

"1. That the CIT(A) has erred both in law and on facts, in not giving any decision on ground no 1 which read as follows:

i. That the notice issued u/s 148 is bad in law and on the facts and circumstances of the case.

2. That the CIT(A) has likewise erred in making an addition of Rs. 23,77,816/- (wrongly stated in ground as Rs. 13,90,737/-) being profit on sale of agricultural land.

3. That the CIT(A) has likewise further erred in confirming following adhoc disallowances made by Assessing Officer.

<i>(a) Out of Car Expenses</i>	<i>Rs. 25,000/-</i>
<i>(b) Out of maintenance cost of Officer Equipment</i>	<i>Rs. 50,000/-</i>
<i>(c) Expenses on Staff Training</i>	<i>Rs. 88,400/-</i>
<i>(d) Loss on Sale of Asset</i>	<i>Rs. 34,679/-</i>

2. At the time of hearing before the Tribunal, the learned counsel for the assessee has not pressed ground no 1 raised in this appeal of the assessee. The same is accordingly dismissed as not pressed.

3. Apropos the issue involved in ground no 2 relating to the taxability of the profit claimed to be earned by the assessee on sale of agricultural land, the relevant facts are that the assessee is an individual who is engaged in the business of trading of computer and peripherals under the name and style of his proprietary concern, M/s. Tech International. The return of income for the year under consideration was filed by him on 28.09.2010 declaring a total income of Rs. 13,90,737/-. During the year under consideration, the assessee had sold a land for Rs. 26,00,000/-. Since the entire sale proceeds of the land was invested in purchase and development of another land within a period of 2 years, the long term capital gain arising from the sale of land was claimed to be exempt by the assessee under section 54 of the Income Tax Act, 1961. The Assessing Officer, however, found that neither the land sold by the assessee nor the land purchased by him was having any facility for residence in as much as there was no construction over them. He, therefore, held that the assessee was not entitled for exemption under section 54 as claimed. He also held that the assessee was not entitled for exemption even under section 54B of the Act as there was no evidence which could be produced by the assessee to show that the land sold by him was used for agricultural purpose for at least two years immediately prior to transfer. He, therefore, disallowed the claim of the assessee for exemption under section 54 and brought to tax the profit of Rs.

23,77,816/- arising from the sale of land in the hands of the assessee as long term capital gain.

4. The disallowance made by the A.O. on account of his claim for exemption under section 54 was challenged by the assessee in the appeal filed by the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), it was submitted by the assessee that the land sold by him being an agricultural land was not a capital asset and therefore, the profit arising from sale thereof was not chargeable to tax as long term capital gain. Documentary evidence in the form of relevant land record was also produced by the assessee to show that the land sold by him was categorised as agricultural land. This documentary evidence filed by the assessee was forwarded by the Ld. CIT(A) to the A.O. for verification and after taking into consideration the remand report submitted by the A.O. as well as the other material available on record, the Ld. CIT(A) held that even though the land of the assessee was termed as agricultural land, there was no evidence to show that any agricultural activity was carried on by the assessee in the immediately preceding two years. He noted in this regard that no agricultural income was shown by the assessee in his returns of income for A.Y. 2008-09 and 2009-10. He further noted that the land of the assessee was not fit for the agricultural purposes as there was no water facility available and it was surrounded by pucca road on one side and housing and small industries on the other side. He, therefore, rejected the claim of the assessee that the land sold by him was an agricultural land and confirmed the addition made

by the A.O. on account of long term capital gain arising to the assessee from the sale of his land.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. Although the learned counsel for the assessee has once again relied on the documentary evidence filed by the assessee to show that the land in question sold by the assessee was an agricultural land as per the relevant land record, he has failed to adduce any evidence to show that the said land was actually utilised by the assessee for carrying out any agricultural activity during the period of two years immediately preceding the date of transfer. He has also not been able to produce any evidence to rebut or controvert the findings recorded by the Ld. CIT(A) in his impugned order that the land sold by the assessee was not fit to use for agricultural purpose. It is thus clear that the user condition to establish that the land sold by the assessee was an agricultural land is not satisfied in the present case and this being so, I find no infirmity in the impugned order of the Ld. CIT(A) confirming the addition made by the A.O. on account of long term capital gain arising to the assessee from the sale of the said land. I, therefore, uphold the same on this issue and dismiss ground no 2 of the assessee's appeal.

6. As regards the issue involved in ground no 3 relating to the various disallowances / additions made by the A.O., it is observed that the disallowance of Rs. 25,000/- was made by the A.O. out of car expenses claimed by the assessee for the involvement of personal

element. As noted by the A.O. as well as by the Ld. CIT(A) in this regard, the assessee was owner of 4 four wheelers and 1 two wheeler and the entire expenses incurred on the said vehicles were claimed as business expenses. Since the personal use of the said vehicles by the assessee could not be ruled out, some disallowance for such personal use, in my opinion, was very much called for and since such disallowance made by the A.O. to the extent of about 25% for such personal use is fair and reasonable, I do not find any justifiable reason to interfere with the impugned order of the Ld. CIT(A) confirming the same. As regards the disallowance of Rs. 50,000/- made by the A.O. out of maintenance cost of office equipment, it is observed that the same was made by the A.O. mainly on the basis of value of office equipment which was only Rs. 90,012/-. However, as rightly submitted on behalf of the assessee before the authorities below as well as before the Tribunal, the written down value thereof after claiming depreciation was not very relevant to consider the reasonableness of the expenditure incurred on maintenance. Moreover, the fact that the office equipment of the assessee was old is sufficient to justify the incurring of high maintenance cost. At the same time, admittedly there was a failure of the assessee to produce the supporting bills and vouchers for verification of the A.O. Keeping in view all these facts of the case, I am of the view that it would be fair and reasonable to restrict the disallowance made by the A.O. out of maintenance cost of office equipment to Rs. 25,000/-. Similar is the case of the disallowance of Rs. 88,400/- made by the A.O. on account of expenses on staff training which was done on the basis that the total expenditure incurred by the assessee on salary was only Rs.

2,08,142/-. Although the Assessing Officer accepted the fact that training was required to be imparted in the ever changing electronic market, he disallowed the entire expenditure incurred by the assessee on staff training for want of supporting evidence. In my opinion, keeping in view the nature of the assessee's business, the entire disallowance made by the A.O. on account of staff training expenses is not justified and it would be fair and reasonable to restrict the same to 50%. As regards the disallowance made on account of loss claimed by the assessee on sale of assets, I find that the said loss cannot be claimed by the assessee in case of depreciable asset after the introduction of the concept of "block of asset". Even the learned counsel for the assessee has not been able to bring on record anything to show that the relevant "block of asset" had got exhausted during the year under consideration so as to justify the claim of the assessee for loss on sale of assets. I, therefore, find no infirmity in the impugned order of the Ld. CIT(A) upholding the action of the A.O. in disallowing the claim of the assessee for loss on sale of assets. Ground no 3 of the assessee's appeal is thus partly allowed.

7. During the course of appellate proceedings before the Tribunal, the assessee has raised the following additional ground:

"That the CIT(A) has further erred in confirming the addition of Rs. 3,77,301/- made by the A.O. as fresh capital introduction".

8. Since the issue involved in the additional ground raised by the assessee is arising from the impugned order of the Ld. CIT(A) and as submitted by the learned counsel for the assessee, the same was not raised by way of original ground due to inadvertent mistake, the

additional ground is admitted by me. On merit of the issue raised in the additional ground, it is observed that the fresh capital of Rs. 3,77,301/- introduced by the assessee during the year under consideration was added by the A.O. to the total income of the assessee as unexplained cash credit under section 68 as the assessee failed to explain the source of such capital introduction. On appeal, the Ld. CIT(A) confirmed the said addition made by the A.O. after having found that the source of capital introduction explained by the assessee as gift from Shri Ashim Kumar Bandhopadhyay was not supported by any evidence and there was a failure on the part of the assessee to establish the capacity of Shri Ashim Kumar Bandhopadhyay to give such gift. Even at the time of hearing before the Tribunal, the learned counsel for the assessee has not produced any evidence to establish the capacity of Shri Ashim Kumar Bandhopadhyay to give the amount in question as gift to the assessee. I, therefore, find no justifiable reason to interfere with the impugned order of the Ld. CIT(A) confirming the addition made by the A.O. on this issue and upholding the same, I dismiss additional ground raised by the assessee.

9. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 5th January, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 05/01/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Amitava Banerjee, C/o. V.N. Purohit & Co., Chartered Accountants, A-4, Nandalal Bithi, City Centre, Ground Floor, Durgapur – 713 216.
2. D.C.I.T., Cir-2, Aayakar Bhawan, Aayakar Bithi, Durgapur – 713 216.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata