

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1833/Mds/2017

निर्धारण वर्ष/Assessment Year : 2013-14

Mathew Varghese,
C15, Kotturvilla,
#5, Lock Street, Kottupuram,
Chennai – 600 085.

The Income Tax Officer,
Vs. Corporate Ward 4(4),
Chennai 600 034.

[PAN: AABPV 1798H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. Nammen Mathews, CA

प्रत्यर्थीकीओरसे/Respondent by

: Mrs. Ruby George, CIT

सुनवाईकीतारीख/Date of Hearing

: 28.12.2017

घोषणाकीतारीख/Date of Pronouncement

: 31.01.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-8, Chennai in ITA No. 67/2016-17 dated 27.06.2017 for assessment year 2013-14.

2. Shri Mathew Varghese, the assessee, was running proprietary business in the name of Digitograph. In the assessment made for ay 2013-14, the Assessing Officer observed that the appellant transferred the block of assets valuing the same at 'Nil' to his personal account - after selling Sublimation Heater and Inkjet Printer for Rs.10,16,667/- from the written down value of assets at Rs.19,04,513/-. Therefore, the Assessing Officer disallowed the amount of Rs. 8,87,846/- (Rs. 19,04,513 - Rs.10,16,667) claimed as short term capital loss stating that the block of assets was still in existence and the loss claimed by the assessee was not acceptable. Aggrieved, the assessee filed an appeal before the CIT (A). After considering assessee's submissions etc , the CIT (A) held as under:

" On the other hand, the appellant contends that he discontinued the business of proprietary concern, Digitograph Print Solutions, during the previous year relevant to the assessment year under and in support of his contention furnished a copy of the letter addressed to the CTO, Thiruvanniyur dated 10.01.2013 requesting deactivation of their VAT registration at the earliest. Nevertheless, I find that except for letter addressed to the CTO requesting deactivation of their VAT registration the appellant furnished no evidence to prove that the business of the proprietor concern was in fact discontinued during the previous year relevant to the Assessment Year under consideration. Secondly, the appellant furnished the computation of the short term capital loss as follows:

Particulars	Amount (Rs.)	Amount (Rs.)	Sold to
Opening Written down-Plant & Machinery @15%	19,02,665		
Opening written down value-Plant	1,848		

&Machinery @ 60%			
Opening Written down value - Total		19,04,513	
Less: Sale considerations			
MimakiJV33-260 BS Inkjet Printer with LED Lamp	6,66,667		Lipi Marketing Pvt
CS Sublimation Heater and Air Purifier (JV33-J60S)	3,00,000		Lipi Marketing Pvt
UPS	45,000		Mathew Verghese
Video Camera	4,000		Mathew Verghese
Cell Phone	1,000		Mathew Verghese
Total Sales Consideration		10,16,667	
Short Term Capital: Loss claimed in Financial Year 2012-13		8,87,846	

Note: Two machineries consisting of Mimaki JV33-260 BS Inkjet Printer with LED lamp and CS Sublimation Heater and Air Purifier(JV33-160S) was sold to Lipi Marketing Pvt. Ltd. situated at 32, Nehru Nagar, ist Link Street, Old -Mahabalipuram Road, Kottivakkam, Chennai - 600 041. The other assets comprising of UPS, Video Camera and Cell Phone were sold to the proprietor Mathew Verghese.

From the above, it is seen that there is no evidence to prove the fact that the above-mentioned items were transferred to sister concern and to the appellant at market value. In view of the above, I totally agree with the observations of the Assessing Officer that there is no evidence to conclude that the business of the appellant was discontinued and that the assets owned by the business were, in fact, transferred 'at their market value. Therefore, the disallowance of short term capital loss of Rs.8,87,846/- made by the Assessing Officer is confirmed."

3. Aggrieved against the order of the CIT(A) , the assessee filed this appeal with the following grounds:

"1. The learned Commissioner of Income Tax (Appeals) has heard not goin into both the evidences at the time of hearing, namely

- Copy of the letter dated 10.01.2013 requesting the Commercial Tax Officer to deactivate the TNVAT & CST Registration & Copy of the letter delivery book acknowledging receipt of this letter.*
- Copy of the Return of Income and Computation of Total Income for the assessment year 2014-15.*

2. The very fact that the subsequent year the assessee has not conducted any business is on record in Return of Income filed at the time of hearing which Commissioner of Income Tax (Appeals) failed to take note of.

3. The learned Commissioner of Income Tax (Appeals) has failed to appreciate that machinery was sold at a price below the Written Down Value because there was no buyers for the said machinery at that point of time.

For these and other reasons, produced at the time of appeal, the assessee be given relief.

The appellant craves leave to add, alter and amend any of the above grounds of appeal."

4. The contention of the assessee is that the assessee had stopped its proprietary business. Before the learned Commissioner of Income Tax (Appeals), the assessee placed on record a copy of the letter dated 10.01.2013 requesting the Commercial Tax Officer to deactivate the TNVAT & CST Registration & a copy of the letter delivery book acknowledging receipt of this letter and a copy of the return of Income and Computation

of Total Income for the assessment year 2014-15. The assessee had given the above two evidences, whereas the learned CIT(A) has taken only the first evidence. He has ignored the second evidence. The assessee after closing down the business could not find a suitable buyer for the assets and hence LIPI Marketing (P) Ltd., took over the assets at Rs. 9,66,667/-. Subsequently, LIPI Marketing was able to locate a buyer for a sum of Rs. 10,70,000/- which included administration expenses. The learned Commissioner of Income Tax (Appeals) has not given enough opportunity to prove that the assets were transferred at a lower price than the written down value and filed copies of tax invoice dated 14.09.2012 and 28.06.2014 issued by LIPI Marketing Pvt. Ltd., to Metro Imaging and Dreams 2 Visuals respectively, to say that the LIPI Marketing Pvt. Ltd., which purchased such assets have sold them to the other parties. Per contra, the DR supported the orders of the AO and the CIT(A).

5. We heard the rival contentions and gone through the material. We find that the lower authorities have not appreciated the facts properly. In the facts and circumstances, we deem it fit to remit these issues to the AO for a fresh examination. After affording adequate opportunity to the assessee, the AO shall pass appropriate order.

6. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced on Wednesday, the 31st day of January, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF