

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1670/Chny/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 1,
Coimbatore.

v. Shri P. Subramanian,
S.F.No.128/2 (2249),
Trichy Road, Singanallur,
Coimbatore – 5.

(अपीलार्थी/Appellant)

PAN : AMBPS 8931 K
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Vijay Kumar Punna,
Jr. Standing Counsel
प्रत्यर्थी की ओर से/Respondent by : Shri A. Arjunaraj, CA

सुनवाई की तारीख/Date of Hearing : 24.01.2018

घोषणा की तारीख/Date of Pronouncement : 28.02.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Coimbatore, dated 31.03.2017 and pertains to assessment year 2013-14.

2. There was a delay of 14 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. Departmental Representative and the Ld. representative for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Shri Vijay Kumar Punna, the Ld. Jr. Standing Counsel for the Revenue, submitted that the only issue arises for consideration is deletion of addition made by the Assessing Officer to the extent of ₹59,04,31,082/- under Section 28(va) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. Jr. Standing Counsel, during the assessment year under consideration, the assessee sold 2,82,50,291 equity shares of M/s Shanthi Gears Limited for a consideration of ₹2,28,82,73,571/- and admitted the capital gain on sale of such shares to the extent of ₹2,21,10,93,480/-. According to the Ld. Jr. Standing Counsel, the assessee also claimed deduction of ₹1,94,29,655/- under Section 54F of the Act. The assessee further claimed deduction under Section 54EC of the Act to the extent of ₹50,00,000/-. According to the Ld. Jr. Standing Counsel, the Assessing Officer found that the share purchase agreement

discloses the sale of shares at ₹81/- per share to M/s Tube Investments of India Limited. There was a clause for non-compete and also not to use the trademark of the company, therefore, the Assessing Officer found that the excess amount received by the assessee, over and above the market value of shares, was treated as business income under Section 28(va) of the Act. According to the Ld. Jr. Standing Counsel, since the share agreement specifically refers to restrict the assessee from engaging in business and not to use the trademark or share the information to third parties, according to the Ld. Jr. Standing Counsel, what was received by the assessee over and above the market value is nothing but business income, therefore, the Assessing Officer has rightly made the addition.

4. On the contrary, Shri A. Arjunaraj, the Ld. representative for the assessee, submitted that the assessee in fact invested ₹2,82,50,291 equity shares of M/s Shanthy Gears Limited. In fact, 34.57% of the equity shares were allotted to the assessee. According to the Ld. representative, the shares were held as investment by the assessee from the date of purchase. M/s Tube Investments of India Ltd. offered to purchase the equity shares of

M/s Shanthi Gears Limited from the assessee. According to the Ld. representative, the assessee valued the shares by an independent valuer at ₹81/- per share and the same was also approved by Security Exchange Board of India. The assessee offered the shares at the rate of ₹81/- per share to all the shareholders in accordance with Regulations 3(1) and 4 of the Securities and Exchange Board of India. According to the Ld. representative, the purchaser agreed to purchase at the rate of ₹81/- per share from all the shareholders including the assessee also. In other words, according to the Ld. representative, the purchaser M/s Tube Investment of India paid ₹81/- per share not only to the assessee but also to all the third party shareholders. Therefore, according to the Ld. representative, the allegation that the assessee has received non-compete fee over and above the market rate is not justified.

5. Referring to market rate, the Ld. representative for the assessee submitted that as on 03.09.2012, the market rate quoted in the Stock Exchange was ₹71/- per share. Therefore, the Assessing Officer was confused that the assessee has received excess payment of ₹10/- per share which needs to be treated as

non-compete fee. According to the Ld. representative, the rate quoted in the Stock Exchange are influenced by various factors. According to the Ld. representative, there will be a sudden fluctuation in the rate quoted in the Stock Exchange. According to the Ld. representative, shares sold through Stock Exchange are exempted from taxation. However, the shares transacted outside the Stock Exchange are taxed at the rate of ₹10/- per share. That is why there was a difference of ₹10/- per share. Moreover, in the agreement on sale of shares, there was a specific clause which says that apart from the consideration received, no consideration was paid as non-compete fee. According to the Ld. representative, the CIT(Appeals), in fact, reproduced this clause in his impugned order.

6. The Ld. representative further submitted that when a large stock of shares were transferred to another company, the purchaser company is taking control over the company, therefore, the market price will always be little over than the price quoted in the Stock Exchange. In this case, according to the Ld. representative, the assessee was admittedly holding 34.57% of shares, therefore, the purchaser company took over the administration of the company.

Hence, according to the Ld. representative, the Assessing Officer is not justified in considering the price received by the assessee over and above the market price towards non-compete fee. Moreover, according to the Ld. representative, not only to the assessee, to other parties also the purchaser has paid ₹81/- per share. The amount paid to third parties who are general public, at the rate of ₹81/- per share, cannot be treated as non-compete fee. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assessee.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee sold 2,82,50,291 equity shares of M/s Shanthi Gears Limited to M/s Tube Investment of India at the rate of ₹81/- per share. The market rate in the Stock Exchange on the date of sale was ₹71/- per share. Therefore, the excess price of ₹10/- per share received by the assessee was treated as non-compete fee by the Assessing Officer. The assessee got the shares valued by an independent valuer. The agreement for purchase of shares with M/s Tube Investment of India clearly says that no non-compete fee would be paid by the purchaser. Moreover, when the assessee is selling a large amount

of 2,82,50,291 equity shares to M/s Tube Investment of India, the purchaser gets control over the company. Moreover, ₹81/- per share was not only paid to the assessee but also to third party general public. In other words, M/s Tube Investment of India has purchased identical shares at the rate of ₹81/- per share from general public. Therefore, it cannot be said that ₹10/- per share was excessively received by the assessee over and above the market rate quoted in the Stock Exchange as non-compete fee. When the price fixed by the Stock Exchange for a single share was ₹71/- and the assessee was selling 2,82,50,291 equity shares whereby the controlling interest in the company stands transferred, this Tribunal is of the considered opinion that there cannot be any presumption that the price received by the assessee over and above the price quoted in the Stock Exchange is for non-compete fee. Therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 28th February, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Coimbatore
4. Principal CIT-1, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.