

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.378/Chny/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Manoj Kumar Mulasi,
2102 Platina Apartment,
Mount Poonamallee Road,
Near – Saravana Store, Porur,
Chennai - 600 116.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle – 1(1),
Chennai.

PAN : AKUPM 9361 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. B. Ramakrishnan, FCA

प्रत्यर्थी की ओर से/Respondent by : Ms. D. Kumudha, JCIT

सुनवाई की तारीख/Date of Hearing : 30.10.2018

घोषणा की तारीख/Date of Pronouncement : 16.11.2018

आदेश /O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -4, Chennai, dated 30.11.2017 and pertains to assessment year 2013-14.

2. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the assessee initially filed the return of income disclosing long term capital gains of ₹2,15,77,952/- and paid the taxes also. Subsequently, according to the Ld. representative, the assessee filed revised return withdrawing the entire long term capital gains and claimed refund. Referring to the Share Transfer Agreement dated 28.01.2013, a copy of which is available at page 1 of the paper-book, the Ld. representative submitted that as per clause 3B, at the time of payment, the seller shall absolutely and unconditionally transfers the shares to the buyer. Referring to the copies of the certificate issued by Axis Bank, Dr. Radhakrishnan Salai, Mylapore, the Ld. representative submitted that the assessee received the money on 31.12.2014. Therefore, according to the Ld. representative, the date of receipt of money, i.e. 31.12.2014 falls in the financial year 2014-15 which is relevant to the assessment year 2015-16. The Ld. representative further submitted that for the assessment year 2015-16, the assessee has already filed the return of income disclosing the very same capital gain and paid the taxes also. Therefore, according to the Ld. representative, the CIT(Appeals) is not correct in concluding that capital gain accrued to the assessee during the year under consideration. In fact,

according to the Ld. representative, capital gain accrued to the assessee only during the assessment year 2015-16 and not during the year under consideration.

3. On the contrary, Ms. D. Kumudha, the Ld. Departmental Representative, submitted that as per the Share Transfer Agreement, the aggregate price for the shares is US\$ 400404. The assessee, in fact, sold 123 shares of M/s Atlas Systems Inc., a New Jersey Corporation. According to the Ld. D.R., as per the agreement dated 28.01.2013, the shares were transferred during the financial year 2012-13 relevant to the assessment year 2013-14. According to the Ld. D.R., on the date of agreement, i.e. on 28.01.2013, the transfer of shares took place, therefore, the capital gain has to be assessed only for the year under consideration. According to the Ld. D.R., the assessee initially filed return of income disclosing the capital gain, however, he withdrew the same by filing the revised return, therefore, the Assessing Officer assessed the long term capital gains during the year under consideration. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the Share Transfer Agreement dated 28.01.2013. The certificate of Foreign Inward Remittance issued by Axis Bank, Dr. Radhakrishnan Salai, Mylapore is available at pages 9 to 12 of the paper-book. As per this Foreign Inward Remittance, the share price was credited to the account of the assessee on 14.12.2012, 16.12.2013, 15.12.2014 and 31.12.2014. Therefore, obviously the final settlement by making entire payment was made only on 31.12.2014. From the above, it is obvious that the actual payment was received by the assessee only during the financial year 2014-15, which is relevant to the assessment year 2015-16. Clause 3 of Share Transfer Agreement dated 28.01.2013 reads as follows:-

“3. PURCHASE AND SALE. Subject to the terms and conditions of this Agreement, on 28th January 2013 (the “Closing Date”):

A. Buyer shall deliver to Seller the Purchase Price.

B. At the time of such payment, Seller shall absolutely and unconditionally sell, convey, transfer, assign and deliver the Shares to Buyer, free and clear of all claims, liens, restrictions and encumbrances. Seller will deliver: (i) Seller's Shares, fully endorsed, and such instruments of conveyance of

the Shares as are reasonably required; (ii) the Certificate of Seller representing and warranting to Buyer that each of Seller's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of such date as if made on such date; and (iii) such other documents as are reasonably required to effect the provisions of this Agreement and the contemplated transaction.

C. Seller shall be solely responsible for the payment of all taxes, in every jurisdiction, which may be due on account of his sale of the Shares and receipt of the Purchase Price.”

5. From the above it is obvious that at the time of payment, the assessee being the seller, shall transfer and deliver the share to the buyer. In view of above, this Tribunal is of the considered opinion that the actual transfer of shares took place on 31.12.2014 which falls in the financial year 2014-15 relevant to the assessment year 2015-16. Therefore, this Tribunal is of the considered opinion that the capital gain is not assessable during the year under consideration.

6. We have carefully gone through the judgment of Madras High Court in T.V. Sundaram Iyengar & Sons Ltd. v. CIT (1959) 37 ITR 26 referred by the Ld. D.R. In the case before Madras High Court, the assessee is engaged in the business of purchase and sale of motor cars, spares and accessories. The vehicle and route

rights in the case of buses belonged to the assessee which was transferred to 'S' which was an entirely different legal entity. The profit that arose on transfer was to be ascertained by reducing the book value of sale price. The price or the sale consideration became payable forthwith during the relevant accounting year. Therefore, the Madras High Court found that the assessee obtained the right to receive the price in that year. Therefore, the profit has to be assessed in that year. In the case on our hand, the facts are entirely different. As per the agreement, the assessee will deliver and transfer the shares only on the date of payment. The final payment was admittedly settled on 31.12.2014. Therefore, this judgment of Madras High Court may not be of any assistance to the Revenue.

7. In view of the above discussion, we are unable to uphold the orders of the lower authorities. Accordingly, the orders of both the authorities below are set aside and the addition made towards long term capital gains for transfer of share of M/s Atlas Systems Inc. a New Jersey Corporation is not assessable during the year under consideration.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 16th November, 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 16th November, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A) -4, Chennai-34
4. Principal CIT, Chennai- 1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.