

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "E": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2165/Del/2011

A.Y. : 2006-07

Asstt. Commissioner of Income Tax
Circle Noida, G, Block,
Shopping Complex,
Sector-20,
Noida

(APPELLANT)

VS. Smt. Madhu Singh,
Legal Heir of Late Sh. Prabjot
Singh Sabharwal,
8, Shaheed Bhagat Singh Marg,
Gole Market, New Delhi
(PAN: BCJPS6248A)

(RESPONDENT)

AND

ITA No. 2495/Del/2011

A.Y. : 2006-07

Smt. Madhu Singh,
Legal Heir of Late Sh. Prabjot
Singh Sabharwal,
8, Shaheed Bhagat Singh Marg,
Gole Market, New Delhi
(PAN: BCJPS6248A)

(Appellant)

vs.

Asstt. Commissioner of Income Tax
Circle Noida, G, Block,
Shopping Complex,
Sector-20,
Noida

(Respondent)

Assessee by : None
Department by : Ms. Pramita M. Biswas, CIT(DR)

ORDER

H.S. SIDHU, JM

These are the cross appeals filed by the Revenue and Assessee emanate out of the Order of the Ld. Commissioner of Income Tax (Appeals),

Ghaziabad dated 24.2.2011 pertaining to assessment year 2006-07. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being consolidated by this common order for the sake of convenience, by first dealing with Assessee's Appeal No. 2495/Del/2011 (AY 2006-07).

2. The Assessee has raised the following ground:-

That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining the determination of long term capital gains in a sum of Rs. 15,08,64,715/- by rejecting the claim of assessee that no capital gains accrued to him. The order being most arbitrary, erroneous and unlawful, it is prayed that the same must be quashed.

3. The Revenue has raised the following grounds:-

- i) The Ld. CIT(A) has erred in law and on facts and circumstances of the case, by not appreciating that the assessee as individual, and the company are two separate entities in law and liability of the company, cannot be treated as cost of acquisition / improvement of the shares of the individual assessee.
- ii) That the Ld. CIT(A) has erred in law by holding that payment made to the Supreme Court and Nainital Bank by the purchaser is cost of acquisition / cost of improvement of the share

without appreciating the facts of the case property.

iii) Hence, the order of the Ld. CIT(A) be cancelled and the order of the AO be restored.

4. Brief facts of the case are that the assessee filed the return on 30.3.2007 declaring income of Rs. 7,81,643/- and assessment was completed on 31.12.2008 on total income of Rs. 26,95,67,032/- u/s. 143(3) of the Income Tax Act, 1961. Assessing officer having been aggrieved with the order, filed an application / petition before the Ld. CIT, Ghaziabad u/s. 264 of the Income Tax Act, 1961. The Ld. CIT, Ghaziabad after hearing the assessee, passed an order dated 20.3.2009 u/s. 264 of the Income Tax Act and cancelled the addition made by the AO and directed to recompute income of the assessee after giving adequate opportunity of being heard to the assessee. In compliance to the direction contained in the order u/s. 264 of the Act, statutory notices u/s. 143(2) and 142(1) of the Act alongwith query letter were issued and in response to the same, the A.R. for the assessee attended the proceedings and filed the reply. In this case assessee has filed the return and disclosed income from salary at Rs. 2,31,000/- from M/s AJS Builders Pvt. Ltd. and income from commission at Rs. 4,85,167/- after deducting expenses, income from other sources at Rs. 1,10,865/- and loss of Rs. 1,79,76,231/- NIL long term capital gain from sale of shares of Technology Parks Limited. AO asked the assessee to explain as to why the sale consideration of Rs. 26,62,50,000/- should not be taken instead of

Rs. 16,00,00,000/- shown by assessee. AO observed that the cost of acquisition of shares is only of Rs. 29,77,200/- and the other amounts which were paid to Supreme Court of India of Rs. 10,78,00,000/- is the personal liability of the assessee and not the purchase consideration, but is a part of sale consideration paid by M/s Platinum Ventures Pvt. Ltd. on behalf of M/s Endogram Leasing and Trading Co. Pvt. Ltd. inclusive of other assessee's personal liabilities of Rs. 9,50,000/- of Nainitak Bank, which also forms part of sale consideration. Hence, the cost of acquisition of shares is only Rs. 29,77,200/- and the assessee is entitled for indexation cost. Accordingly, the AO worked the long term capital gain on sale of shares to TPL works at Rs. 25,96,14,716/- and made the in the hands of the assessee by completing the assessment at Rs. 26,03,96,360/- u/s. 143(3)/264 of the Act vide order dated 11.12.2009. Against the order dated 11.12.2009, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 24.02.2011 has worked out the Long Term Capital Gain at Rs. 15,08,64,715/- by partly allowing the appeal of the assessee. Against the impugned order, Assessee as well as Revenue are in cross appeal before the Tribunal.

5. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and

circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeals *ex parte qua assessee*, after hearing the Ld. DR and perusing the records.

6. Ld. CIT(DR) relied upon the order of the Assessing Officer and has tried to justify the action of the Assessing Officer.

7. We have heard the Ld. DR and perused the records. We find that payment of Rs. 10,78,00,000/- to Supreme Court (for distribution to various claimants as admitted by Bahri Commission) and Rs. 9,5,000/- to Nainital Bank) were liability of the Co. (Technology Park Ltd.), to be paid by the purchaser (of the shares) on behalf of the Co., whose shares were held by late assessee and his wife, as part of order of the Supreme Court; so, in other words, necessary for effecting the entire deal of purchase / sale of shares, the Ld. CIT(A) has rightly accepted the plea of the assessee that this is part of acquisition / improvement of shares. We further note that in the appellate stage it was the plea of the assessee that only Rs. 15,75,00,000/- was the sale consideration received by the assessee, which was not correct, because it was admitted by the Ld. counsel for the assessee during the appellate proceedings. It is clear that sale consideration for the relevant shares sold, would be total sum of Rs. 26,62,50,000/-,

which is simply because Rs. 10,78,00,000/- and Rs. 9,50,00,000/- were, in principle, first received by the assessee and, then, were paid by the assessee to the legal claimants. Therefore, the Ld. CIT(A) has rightly determined the Long Term Capital gain of Rs. 15,08,64,715/-, which does not need any interference on our part, hence, we uphold the finding of the Ld. CIT(A) and reject the ground raised by the Assessee and accordingly dismiss the appeal filed by the Assessee.

8. As regards Revenue's appeal is concerned, since we have already upheld the order of the Ld. CIT(A) in assessee's appeal as aforesaid, hence, the grounds raised by the Revenue has become infructuous and dismissed as such. In the result, the Revenue's appeal is also dismissed.

9. In the result, both the appeals filed by the Assessee as well as Revenue stand dismissed.

Order pronounced on 11/01/2019.

Sd/-

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 11/01/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT
Assistant Registrar, ITAT, Delhi Benches