

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.116/NAG/2013
निर्धारण वर्ष / Assessment Year : 1999-2000

Navin Mulinchi Shala,
Sahakarnagar,
Bhandara (MH).

PAN : AAATN7036P

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-02,
Nagpur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri V. V. Saranjam, Adv.
Revenue by : Shri U. U. Kasar, DR

सुनवाई की तारीख / Date of Hearing : 26.03.2019

घोषणा की तारीख / Date of Pronouncement : 29.03.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-
19, Mumbai [holding concurrent jurisdiction of CIT(A)-I, Nagpur]
dated 09.01.2013 for the Assessment Year 1999-2000.

2. The effective ground raised by the assessee is as under :-

“On the fact and in the circumstances of the case the learned CIT(A)-19/Mumbai, was not justified in upholding the order of the learned A.O. wherein, he had accepted the return filed in response to notice U/s 148, resulting into protective assessment and this honourable Court be pleased to direct the A.O. make the assessment as SUBSTANTIVE, in view of the fact that the HON’BLE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT NAGPUR has admitted the appeal U/s 260A filed for A.Y. 2000-2001 vide its order dated 15.07.2009.”

3. Briefly stated the relevant facts include that the assessee filed the return of income originally declaring total income at Nil. Subsequently, the assessment was reopened by issue of notice u/s 147 of the Act for taxing the capital gains earned on sale of plot of land. After considering the submission of the assessee, the Assessing Officer made reassessment determining the gross income at Rs.6,60,402/-. The Assessing Officer made an addition of Rs.4,90,000/- on account of profits on sale of plot of land. The contents of para 5 of the assessment order are relevant in this regard. The addition made by the Assessing Officer for the assessment year 1999-2000 on protective basis. For the sake of completeness, the relevant lines from the assessment order are extracted hereunder :-

“5. Close scrutinizing of copy of agreement and copy of sale deed reveals that in agreement dated 12.10.1998 assessee has struck down cash and has written in ink that payment of Rs.50,000/- has been made vide cheque dated 08.10.1998. However, in sale deed assessee has shown this payment of Rs.50,000/- as made by demand draft dated 12.10.1998. It raises doubt about the genuineness of the agreement. In any case, possession of the property before the sale deed has no meaning as far as trust property is concerned because for sale of the property, the trust has to obtain prior approval of the Joint Charity Commissioner.

From the sale deed and order of the Joint Charity Commissioner it is clear that the profit on sale of plot is includible in the year 1999-2000 (A.Y. 2000-01). But, as the assessee has preferred an appeal against the order of the Hon'ble CIT (as mentioned in written submission by the assessee) to the ITAT on the above issue, I hereby add the profit of Rs.4,90,000/- to the income of the assessee for this Asstt. Year on protective basis.”

4. The CIT(A) confirmed the same along with substantive addition made by the Assessing Officer in the case of the assessee for the later assessment year 2000-01. Thus, this is a case of substantive addition as made in the assessment year 2000-01 and protective assessment was made in the assessment year 1999-2000. In the light of the above finding of the CIT(A), the assessee is in appeal before the Tribunal with the above referred grounds.

5. Before us, ld. Counsel for the assessee filed a copy of the order of the Tribunal in assessee's own case vide ITA No.325/NAG/2006, order dated 25.01.2007 for the assessment year 2000-01, copy of

which is kept at page 1 to 8 of the Paper Book. Bringing our attention to the relevant extract from para 12 of the said order of the Tribunal (supra), ld. Counsel for the assessee submitted that the substantive addition of Rs.4,90,000/- on account of capital gains stands confirmed in the assessment year 2000-01 and, therefore, the assessment made in the case of the assessee for the assessment year 1999-2000 is of no value. The Tribunal confirmed the substantive addition as per discussion given in the said para 12 of the order of the Tribunal (supra). The ld. Counsel for the assessee fairly submitted that the present appeal also stands covered in favour of the assessee. The ld. Counsel submitted that the present appeal is required to be allowed in favour of the assessee.

6. On the other hand, ld. DR for the Revenue heavily relied on the orders of the authorities below. However, he did not dispute the fact that the addition made is protective nature in assessment year 1999-2000 and the said addition is only deleted while dealing with the appeal of the assessee for the later assessment year 2000-01.

7. On hearing both the sides on this issue and after perusing the order of the Tribunal in assessee's own case for the assessment year 2000-01 (supra), we find the "substantive addition" stands confirmed by the Tribunal and the "protective addition" was held to be of no value. For the sake of completeness, the relevant lines from para 12 of the order of the Tribunal (supra) are extracted hereunder :-

*"12 We also find no merit in another contention of the assessee that the transfer of the plot was made in the previous year and not in the assessment year 2000-01 in view of the fact that the A.O. has clearly held that the transfer of plot had taken place in the assessment year 2000-01. In our considered opinion, the revenue authorities are correct in taxing the capital gain of Rs.4,90,000/- in the hands of the assessee in the assessment year 2000-01. **Since the capital gain of Rs.4,90,000/- has been assessed in the year 2000-01, the protective assessment of the long term capital gain made by the A.O. in the assessment year 1999-2000 is of no value.** The decisions relied upon by the ld. Departmental Representative support the case of the revenue. In these circumstances, we find no infirmity in the order of the ld. CIT(A). We agree with the reasons given by the ld. CIT(A) in his impugned order and the same is upheld."*

8. From the above, it is evident that the "substantive addition" stands confirmed by the Tribunal and the "protective addition" was held to be of no value. Considering the above, we are of the opinion that the protective addition made by the Assessing Officer in the assessment year 1999-2000 is required to be deleted. Therefore, the

question of taxing the sum of Rs.4.9 lakhs substantively in this assessment year does not arise. Accordingly, the ground raised by the assessee is dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced on 29th day of March, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER
MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT

नागपुर / Nagpur; दिनांक / Dated : 29th March, 2019.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)
4. The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur.