

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRIG. S. PANNU,HON'BLE VICE PRESIDENT
&
SHRI K. N. CHARY,JUDICIAL MEMBER**

ITA No.3129/Del/2011
(Assessment Year :2008-09)

DCIT,
Central Circle-6,
New Delhi.

Vs.

M/s. Sahara India Prime City Ltd.,
1, Kapoorthala Complex, Aliganj,
Lucknow (UP)

[PAN No.AABCS 7893 P]
(Appellant)

..

(Respondent)

Appellant by :
Respondent by :

Shri Sanjay Goel, CIT-DR
Shri Ajay Vohra, Sr. Advocate &
Shri Durjan Mittal, C.A.

Date of Hearing
Date of Pronouncement

10.10.2019
31.10.2019

ORDER

PER K. NARSIMHA CHARY–JUDICIAL MEMBER:

Aggrieved by the order dated 31.03.2011 in appeal No. 266/10-11 passed by the Learned Commissioner of Income Tax (Appeals)-I, New Delhi("Ld. CIT(A)") for the Assessment Year 2008-09, the Revenue preferred this appeal on the following grounds:

- “1. *The CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Id CIT(A) has erred in deleting the addition of Rs.97,38,26,400/- on account of long term capital gain.*

3. *On the facts and circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.1,13,90,550/- on account of unverifiable expenses.*
4. *On the facts and circumstances of the case, the Id CIT(A) has erred in deleting the addition of Rs.5,83,650/- on account of inadmissible expenses.*
5. *On the facts and circumstances of the case, the Id CIT(A) has erred in allowing the claim of expenses of Rs.34,90,243/- in respect of expenses relating to year.*
6. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

2. Briefly stated facts of the case are that the assessee is a company. It has filed its return of income for A.Y. 2008-09 on 25.06.2009 declaring a total income of Rs.124,73,07,436/-. The Learned AO, however, assessed the income at Rs.223,25,82,750/-, by making addition of Rs.97,38,26,400/- on account of long term capital gain on sale of shares of M/s. SICCL, Rs.1,13,90,550/- on account of unverifiable expenses and Rs.58,365/- on account of inadmissible expenses u/s 14A of the Income Tax Act, 1961 (for short "the Act").

3. Assessee preferred appeal before the Learned CIT(A) challenging those three additions and also the action of the Learned AO in not entertaining the claim of the assessee in respect of the expenses relating to the assessee amounting to Rs.34,90,243/-. Learned CIT(A) after considering the contentions on either side, in the light of the material available on record, accepted the assessee's contentions and deleted the additions. Hence, the Revenue is before us challenging all the four deletions.

4. In so far as the first addition of Rs.97,38,26,400/- is concerned, the

facts are that during the year, the assessee company earned LTCG of Rs. 97.38 Crores by selling shares of M/s Sahara India Commercial Corporation Ltd (M/sSICCL) and M/sSahara Airlines. These shares were held by assessee company in its books at Rs. 485 Crores prox), and were sold at Rs. 668 Crores (Approx.). All these shares were sold to the three new companies, e.g. Sahara green realtors P. Ltd., Sahara Flagship Real Estates P. Ltd. and Sahara Property Construction P. Ltd., claimed to be the subsidiary companies of assessee company. These LTCG were claimed by the assessee company as exempt from Income Tax, claiming that these transactions were not to be treated as transfer in view of provisions of s. 47(iv) of the Act.

5. All three subsidiary companies, Sahara green realtors P. Ltd., Sahara Flagship Real Estates P. Ltd. and Sahara Property Construction P. Ltd, to whom the shares were sold by the assessee company, were incorporated during the F.Y. 2007-08 itself, which is the F.Y. under consideration, that too just in a span of three days i.e. on 9th, 11th and 12th Oct. 2007.

6. Initially the shares of all these three companies Sahara green realtors P.Ltd., Sahara Flagship Real Estates P. Ltd. and Sahara Property Construction P. Ltd. were held by Sh. Subrata Roy, and other three individuals. The total paid up capital of three companies was just Rs. 15L. Subsequently the assessee company Sahara India Prime City, purchased total shareholding of 3 newly incorporated companies, e.g. Sahara green realtors P. Ltd., Sahara Flagship Real Estates P. Ltd. and Sahara Property Construction P. Ltd., and as a result all these companies became subsidiary company of assessee company.

7. Subsequently the shares of M/s Sahara India Commercial Corporation Ltd (M/s SICCL) and M/s Sahara Airlines, held by the assessee company were sold to these three newly incorporated companies (Sahara green realtors P. Ltd., Sahara Flagship Real Estates P. Ltd. and Sahara Property Construction P. Ltd), companies at a whopping price of Rs. 668 Cr. as a result of which, assessee company earned LTCG of Rs. 97.38 Cr., which were claimed as exempt u/s 47(iv).

8. The Learned Assessing Officer in his order recorded that because three companies to whom the shares were transferred were formed simultaneously on 9th, 11th and 12 October 2007; that initially the shares of these three companies were held by Shri Subrata Roy, Smt. Swapna Roy, Shri Om Prakash Srivastava and Shri J.B. Roy and two companies M/s.Sahara India Infrastructure & Housing Limited & M/s.Sahara India Commercial Corporation Limited.; that after the formation of the three companies all these shares of the share holders were transferred in the name of M/s.Sahara Prime City Limited, i.e. the appellant company and the shares held by M/s.Sahara Prime City Limited were transferred in joint name of assessee company and one individual each mentioned in sub para (b) above; and that in the month of January, 2008 the shares of M/s.SICCL which were held by the appellant company have been sold to these three newly formed companies which has resulted in long term capital gain at Rs.97,38,26,400/- after indexation which has been claimed as exempted under section 47(iv) of the Income tax Act. On this premise, the Learned Assessing Officer concluded that the entire transaction was arise in such a way so that on sale of shares capital gain is not subjected

to tax and entire planning in this regard has been attempted to circumvent the provisions of capital gain to avoid payment of tax.

9. Argument of the Learned DR is that, the book value of each share of M/s Sahara India Commercial Corporation Ltd, at the time of sale, as per financial statements of M/s Sahara India Commercial Corporation Ltd. is required to be justified by the assessee, in order to prove the genuineness of exorbitant sale price of each share, which the assessee could charge from the subsidiary companies. Same exercise is required to be done in the case of shares of M/s Sahara Airlines. In other words, it is required to be examined, whether the sale price of each share of these companies, which the assessee could charge from the subsidiary companies was justified as per financial statements of these companies (M/s Sahara India Commercial Corporation Ltd and M/s Sahara Airlines). He further argued that the source of funds in the hands of three newly incorporated companies, which later on became the subsidiary companies of the assessee company, are also required to be examined, as to how these subsidiary companies could generate/collect such huge funds to pay the purchase consideration, as high as Rs. 668 Crores, to the assessee company. According to him, the important point to be observed is that all three subsidiary companies were formed during F. Y. 2007-08 itself, which is the F.Y under consideration, just in a span of three days i.e. on 9th, 11th and 12th Oct. 2007 and initially the shares were held by Sh. Subrata Roy, and other three individuals, the total paid up capital of three companies was just Rs. 15L, however the shares of M/s SICCL were sold by the assessee company to these three companies at a whopping price of Rs. 668 Crores.

10. Per contra, the submission of the AR is that law does not permit the authorities to entertain such suspicion or doubt in view of the clear provision of section 47(iv) r.w.s. 45 of the Act. He submitted that the in the light of the law in section 47(iv), the findings of the Ld. CIT(A) cannot be found fault with.

11. We have gone through the impugned order in the light of these submissions on either side. It could be seen from the impugned order that the Learned CIT(A) adverted to this aspect and made an observation that nowhere in the Act it is provided that certain time difference is required before which the provision of section 47(iv) could not be invoked with reference to the case of the assessee. It was the observation of the Learned CIT(A) that sale of shares by holding company, i.e. the assessee company to the subsidiary companies is not in the nature of a transfer as provided by section 47(iv) of the Act. Therefore, the same cannot be subjected to capital gain as per provision of section 45 of the Act.

12. A bare reading of the provision of section 45 and 47(iv) of the Act clearly shows that the law does not require any time can gap between the formation of the companies and the transfer of shares to them. However, the suspicion of the Assessing Officer that inasmuch as the company was formed in the month of October, 2007 and within the span of three months in January, 2008 the shares were transferred, the same was construed as a same transaction. But in the absence of any law such finding is unwarranted and the finding of the Learned AO on this aspect cannot be sustained. We do not find any illegality or irregularity in the

finding of the Learned CIT(A) that in view of the provision of section 47(iv) of the Act the process of sale of shares by holding company to the subsidiary company cannot be subjected to capital gain u/s 45 of the Act. We, therefore, do not find anything illegal or irregular in the finding of the Learned CIT(A) and accordingly they are confirmed.

13. Now coming to the second addition, it relates to the addition of Rs.1,13,90,550/- in respect of the professional expenses on the ground that those are not verifiable. By placing reliance on the report of the auditors in form 3CD, Learned AO were called for the details of the professional expenses and held that if the liability of these expenses was received by the assessee on transfer from its sister concern M/s. Sahara India, the assessee company which is claiming the expenses in its profit and loss account was required to substantiate its claim by production of relevant bills, vouchers along with justification for the expenses and since same was not being done, mere production of form 16A is not assessee's claim.

14. Learned CIT(A) recorded that assessee argued before him that at no stage of proceedings the Learned AO required the assessee to produce such material, and as a matter of fact the assessee produced all the materials like certificate from M/s. Sahara India showing that they have deducted tax at source on the payments and they have not claimed the expenditure in their books of accounts, and the claim which was not made in respect of expenses incurred by them for and on behalf of the assessee company and, therefore, no disallowance was called for in this respect.

15. The Learned CIT(A) considered the material and opined that obviously when the payment was made by account payee cheque, due tax was deducted at source and was squarely proved that the payment was made on behalf of the assessee by M/s. Sahara India who also claimed the payment as an expenditure in their account.

16. No material is brought on record by the Revenue running contrary to this factual findings written by the Learned CIT(A) on verification of the record. Since it is a factual finding basing on the material proceed by the assessee like the certificate from M/s. Sahara India and in the absence of any contrary allegation made by the Revenue, we are of the considered opinion that no interference is warranted with such finding. We, accordingly find this ground of appeal is devoid of any merit and is liable to be dismissed.

17. The fourth ground of appeal is in respect of the deletion of Rs.58,365/- made by the Learned AO u/s 14A of the Act, the facts are that the Assessing Officer disallowed 10% of the dividend income earned by the assessee as expenditure relatable to earning of such income by invoking the provisions of section 14A of the Act. The facts remains that the assessee claimed to have disallowed such amount voluntarily, but these submissions were overlooked by the Learned AO. Learned CIT(A), however,observed that since the assessee had already disallowed the relatable expenditure voluntarily, the same cannot be disallowed.On the fact of voluntary disallowance made by the assessee, no further disallowance is warranted. We agree with the Learned CIT(A) and dismiss this ground of appeal.

18. Lastly coming to the allegation of the assessee that the Learned AO is not justified in not entertaining the claim of expenses of Rs.34,90,243/- which was accounted for in the subsequent year but was claimed as deduction during the year under assessment, as per mercantile system of accounting, it has been the case of the assessee that at the time of the finalization of the accounts of the subsequent year a sum of Rs.34,90,243/- on account of expenses was found relatable to the year under assessment and, therefore, in the revised return of claim was made by the assessee. As per mercantile system of accounting, the expenditure was allowable in the year to which it relates too.

19. The impugned order shows that Learned CIT(A), on a consideration of this submission made by the assessee, directed the Learned AO to allow the expenditure of Rs.34,90,243/- after verification of the fact that the same relates to the previous year relevant to the A.Y. 2008-09 which is under appeal. Since the Learned CIT(A) gave a direction to allow such an expenditure only after verification, no prejudice is caused to Revenue and it is always upon for the Revenue to verify whether are not such expenditure relate to the previous year relevant to the A.Y. 2008-09. Hence, we do not find any merit in this ground and same is accordingly dismissed.

20. In the result, appeal of the revenue is dismissed.

Order pronounced on this the 31st day of October, 2019.

Sd/-
(SHRI G. S. PANNU)
VICE PRESIDENT

sd/-
(SHRI K. N. CHARY)
JUDICIAL MEMBER

New Delhi; Dated 31.10.2019/Priti Yadav, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23.10.2019
Date on which the typed draft is placed before the dictating Member	25.10.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	