

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-1', NEW DELHI**

**BEFORE SH. H. S. SIDHU, JUDICIAL MEMBER  
AND, SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 6113/Del/2015  
(for Assessment Year : 2007-08)

Sh. Mahesh Prakash Sharma, 430, Hawa Singh Block, Asiad Village, New Delhi-110049  PAN : AAAPS 3525 F	Vs.	ITO, Ward – 37(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri P. C. Yadav, Advocate
Revenue by	Shri Prakash Dubey, Sr. D.R.

Date of hearing:	17.12.2020
Date of Pronouncement:	19.01.2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-20, New Delhi passed under section 143(3)/147 of the Act, 1961 order dated 18.08.2015 for Assessment Year 2007-08.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual stated to be Doctor deriving income from profession, salary, house property and other sources. Assessee filed his return of income for A.Y. 2007-08 declaring total income at Rs.5,84,935/- and the same was initially processed u/s 143(1) of the Act. Subsequently, the case was reopened for reassessment u/s 147 and accordingly notice u/s 148 was issued and served upon the assessee. Thereafter, the case was selected for scrutiny and assessment was framed u/s 147/143(3) of the Act vide order dated 11.03.2014 and the total income was determined at Rs. 15,84,940/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 18.08.2015 in Appeal No.89/2014-15 dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), assessee filed the appeal before the Tribunal. The Co-ordinate Bench of Tribunal vide order passed in ITA No.6173/Del/2015 order dated 16.08.2016 had dismissed the appeal of the assessee on account of non prosecution. Thereafter, assessee filed Miscellaneous Application requesting for recalling of the order passed by the Tribunal. The Tribunal vide MA order dated 03.04.2019 (MA No.26/Del/2018) recalled the order of Tribunal and thus the assessee is now before us and has raised the following grounds:

- “1. That the CIT(A) has erred on the facts and in the circumstances of the case and in law, in confirming the action of the AO of reopening the assessment u/s 148 of the IT Act, 1961.
2. That the CIT(A) has erred on the facts and in the circumstances of the case and in law, in confirming the addition of Rs.10,00,000/- (representing 5000 Sweat Equity shares of Rs.10/- each issued at premium of Rs.190/- each).
3. That the CIT(A) has erred on the facts and in the circumstances of the case and in law, in confirming that shares issued as ‘Sweat Equity shares’ is income of the assessee u/s 28(iv).
4. That the CIT(A) has erred on the facts and in the circumstances of the case and in law, in confirming the value of shares issued as ‘Sweat Equity shares’ at Rs.200/- per Share.
5. That the CIT(A) has erred on the facts and in the circumstances of the case and in law, in confirming that the conditional issue of shares is a perquisite.
6. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.
7. That the appellant craves leave to add/ alter any/all grounds of appeal before or at the time of hearing of the Appeal.”

6. AO has noted that a search and seizure operation u/s 132 of the Act was carried out by the Directorate of Income Tax (Investigation) on 06.09.2011 on Rockland Group of cases. After going through the information received as well as the documents available, it was found that Rockland Hospital Ltd. had issued Sweat Equity shares without any amount being paid as consideration to the directors/ employees and professionals and

assessee is also stated to be one of the persons who also received Sweat Equity Shares without any consideration. The assessee was asked to submit the details and the Sweat Equity shares allotted to him and its taxability u/s 28(iv) of the Act to which assessee made the submissions *inter alia* contending that he had received 5000 Equity shares of Rs.10 each at Sweat Equity and the value of the shares comes to Rs.49,400/- only. The submission of the assessee was not found acceptable to AO. AO was of the view that the value of each share was Rs. 200/- share and the total value of Sweat Equity share (perquisite) received by the assessee was Rs. 10,00,000/-. He accordingly treated the value of Sweat Equity as income u/s 28(iv) and made addition of Rs.10,00,000/-.

7. Before us, assessee in the 1<sup>st</sup> ground is challenging the validity of reassessment proceedings u/s 148 and in subsequent grounds challenging the addition on merits.

8. With respect to the challenge to the reopening of assessment, before us, Learned AR submitted that notice has been issued purely on the borrowed satisfaction of DIT (Investigation) and no belief has been recorded in the reasons for reopening the case. He submitted that it has been held in various decisions that the report received by the AO may be a source of investigation and after the receipt of report, the AO has to apply

his mind independently and thereafter come to a belief of escapement of income. In the present case, ld AR submitted that the AO has merely proceeded on the basis of report of the ADIT for initiating the reassessment proceedings.

9. He thereafter, submitted that the Sweat Equity agreement was entered between Rockland Hospital and the various Doctors on 26.02.2007 by virtue of which shares were allotted to the assessee and other doctors/persons at the premium of Rs.190 without any consideration. He pointed to the copy of the Sweat Equity agreement which is placed at page 33 to 39 of the paper book. He further submitted that the Hon'ble Delhi High Court in Company Petition No 399/2009 order dated 26.02.2010 had held that the shares issued by Rockland Hospital were wrongly issued and hence directed the Company to reverse the entries of Sweat Equity shares. He pointed to the copy of the High Court order which is placed on page 22 to 32 of the paper book. As a result of the High Court order, he submitted that the assessee surrendered all the shares.

10. He submitted that since the action of the Rockland Hospital in allotting of Sweat Equity share to the assessee and others were held to be not as per law and when the Hon'ble High Court has directed to reverse the share premium account and it was brought to nil then the very basis to assume any employee and

employer relationship was missing for valuing taxable value of perquisite. He therefore submitted that in such a situation it can be concluded that no effective transaction have taken place and since income did not result at all, there cannot be tax on hypothetical income. He further pointed to the fact that one Shri Umesh Upadhyay was also allotted Sweat Equity by Rockland Hospital which is noted by the AO in the copy of the Sweat Agreement reproduced in the assessment order at Page 6. He submitted that in the case of Umesh Upadhyaya also the reopening was initiated for similar reasons. When the matter was carried before the CIT(A) in that case, CIT(A) had decided the issue in assessee's favour. Against the order of CIT(A), Revenue had carried the matter before the Tribunal and the Tribunal in ITA No.4054/Del/2015 and CO No.166/Del/2018 order dated 19.02.2019 had dismissed the appeal of the Revenue. He pointed to the copy of the order of CIT(A) and the Tribunal placed in the paper book. He therefore submitted that since on identical facts and under similar circumstances in the case of Umesh Upadhyaya, the matter has been decided in assessee's favour, then following the order of the appellate authorities, the issue be decided in assessee's favour.

11. Learned DR on the other hand supported the order of lower authorities and submitted that the Sweat Equity issue by Rockland Ltd. remained with the assessee and since the shares have not been cancelled and that assessee continues to hold the

Sweat Equity, the submissions of AR are misplaced. He further submitted that in the case of Umesh Upadhyaya, it was Revenue's appeal and the issue was different. He thus supported the order of lower authorities.

12. We have heard the rival submission, perused the relevant materials available on record. The issue in the present ground is with respect to reopening of assessment. The assessee is challenging the initiating of reassessment proceedings. The case of the assessee was reopened u/s 147/148 of the Act for bringing to tax the value of Sweat Equity issued by Rockland Hospital Ltd. to the assessee and which assessee was stated to have received without any consideration.

13. It is also a fact that Hon'ble Delhi High Court vide order dated 26.02.2010 in Company Petition no 399/2009 had held the share issued by Rockland Hospital to various persons (including the assessee) to be wrongly issued and directed Rockland Hospital to reverse the entries of Sweat Equity shares. It is the contention of the assessee that as a result of the aforesaid order of Hon'ble Delhi High Court, it had surrendered all its shares. Thereafter, the search and seizure action had taken place at Rockland grouping in 2011, wherein the Sweat Equity agreement entered between Rockland Hospital and various other persons was found and based on the aforesaid Sweat Equity agreement,

the reasons for reopening were recorded and reopening was initiated against the assessee by issuance of notice u/s 148 on 20.5.2011. In view of the aforesaid facts, we find force in the submissions of Ld AR that when the taxation of the value of sweat equity shares which is alleged to have escaped the assessment has itself been set to nought by the order of Hon'ble High Court in the company petition, then its taxability does not remain on the date of issuance of initiation of reassessment proceedings. We further find that by the same Sweat Equity agreement apart from assessee, Shri Umesh Upadhaya was also allotted Sweat Equity shares and in his case also the reopening was initiated on identical facts. When the matter in the case of Umesh Upadhaya was carried before CIT(A), CIT(A) had noted the aspect of reversal of share account, that was used to derive valuation and he has noted that as per the order of Hon'ble High Court, it was clear that no effective transaction can be said to be taken place and the reversal of share premium account were automatically related back to date of allotment. In such a situation, he noted that it was the case of hypothetical income and since the income did not result at all, there cannot be a tax and notional hypothetical income was not amenable to tax as 'perquisite'. He accordingly decided the issue in favour of the assessee. We further find that against the aforesaid order of CIT(A) in the case of Shri Umesh Upadhaya the matter was carried by the Revenue before the Tribunal. Considering the factual situation as noted by the CIT(A) in the case of Umesh Upadhaya, the Coordinate Bench of Tribunal has upheld the order of CIT(A) and dismissed the appeal

of Revenue. We find that the facts of the case in the case of Umesh Upadhyaya (supra) and assessee are identical and in such a situation the decision in the case of Umesh Upadhaya would be squarely applicable to the present assessee's case also. Considering the totality of these facts we find force in the argument of the assessee that the AO was not justified in invoking the reassessment proceedings. We therefore, set aside the reassessment proceedings and thus **the ground of the assessee is allowed.**

14. Since we have held the reassessment order passed by the AO to be null and void, the other grounds raised by the assessee on merits have been rendered academic and therefore do not require any adjudication.

15. **In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 19.01.2021**

**Sd/-  
(H. S. SIDHU)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date- 19.01.2021

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Copy forwarded to:

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