

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 226/JP/2020
निर्धारण वर्ष/Assessment Year :2009-10

M/s Osho Industrial Company, F-87, Matsya Industrial Area, Alwar	बनाम Vs.	ITO, Ward 1(2), Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAAF02308M		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 09/02/2021
उदघोषणा की तारीख/Date of Pronouncement: 15/02/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)- 22, Alwar dated 21.06.2016 wherein the assessee has raised the following grounds of appeal.

- "1. That the Id. assessing officer has erred in law as well as on the facts and circumstances of the case in considering the sale consideration of Rs. 46,64,700/- in place of Rs. 32,51,000/- as claimed in the return of income and Id. CIT(A) has erred in sustaining the same.*
- 2. That the Id. assessing officer has erred in law as well as on the facts and circumstances of the case in not considering the short*

term capital loss on account of sale of machinery of Rs. 3,45,423/- and the Id. CIT(A) has erred in sustaining the same.

3. That the Id. assessing officer has erred in law as well as on the facts and circumstances of the case in not considering the short term capital loss on account of sale of furniture of Rs. 33,083/- and the Id. CIT(A) has erred in sustaining the same.

4. That the Id. assessing officer has erred in law as well as on the facts and circumstances of the case in not considering the improvement in building of Rs. 1,83,251/- and the Id. CIT(A) has erred in sustaining a sum of Rs. 63,566/- out of the same."

2. At the outset, the Id. AR submitted that the assessee does not want press Ground Nos. 1 and 4 of its appeal. Hence, these two ground of appeal are dismissed as not pressed.

3. In Ground Nos. 2 and 3, the assessee has challenged the action of Id. CIT(A) in sustaining the action of Assessing Officer in disallowance of short term capital loss on sale of machinery amounting to Rs. 3,45,423/- and short term capital loss on sale of furniture amounting to Rs. 33,083/-.

4. In this regard, the Id. AR submitted that the assessee was engaged in the business of sale and supply of marble tiles which was discontinued since last 3-4 years and there is no business activity during the year under consideration. As the assessee was running in losses, it sold the land & building as also plant & machinery and furniture. In respect of sale of plant & machinery and furniture, the assessee claimed short term capital loss as under:-

Particulars	Plant & machinery	Furniture
Opening WDV	3,72,923/-	40,583/-
Sale Value	27,500/-	7,500/-
Short term capital loss	3,45,423/-	33,083/-

5. It was submitted that the opening WDV is verifiable from the assessment records and in support of the sale, the receipt from the purchaser of these items was furnished before the Ld. CIT(A). The Ld. CIT(A) called for a remand report reproduced at Para 4.3, Pg 12 of the CIT(A) order. The AO in the remand report observed that assessee has submitted handmade kachha receipt/ voucher regarding sale of furniture & machinery dt. 10.08.2008 & 14.08.2008. For verification, summons were issued to Sh. Kamal Chand Garg who purchased these items but it is informed by the A/R of Sh. Kamal Chand Garg that he has since expired on 25.01.2009. In response to the remand report, the assessee furnished his explanation which is reproduced at Para 4.4, Pg 13 of the CIT(A) order where it is contended that AO in the remand report has not stated that assessee has not sold plant & machinery or furniture or amount on sale of these items is not received or that after sale of land & building, plant & machinery/ furniture remained at site. Further when as per the sale deed only land & building is sold, it cannot be presumed that plant & machinery/ furniture is not sold or discarded and therefore, only because the purchaser of these items has expired cannot be a reason not to allow the short term capital loss.

6. It was submitted that the Ld. CIT(A) at Pg 14, Para 4.10 however observed that assessee has not filed the return by the due date, no evidence was brought on record that old plant & machinery and furniture was ever sold and return of income was not filed for the preceding year as

well and therefore, in the absence of sufficient evidence that old machinery and furniture was sold, he disallowed the claim of short term capital loss.

7. It was submitted by the Id A/R that the finding of Ld. CIT(A) are illegally and factually incorrect. There is no law that short term capital loss for the year under consideration can be allowed only when the return is filed before the due date or the return of preceding year has been filed. Hence, for this reason, the short term capital loss cannot be disallowed. Further, the assessee has filed evidence by way of receipt from the purchaser regarding the old machinery and furniture sold to him which is admitted by the AO in the remand report. Otherwise also, when the entire factory land & building is sold, it is incorrect to assume that old machinery and furniture are not sold. Therefore, the disallowance of short term capital loss confirmed by Ld. CIT(A) is not correct and the same be directed to be allowed.

8. Per contra, the Id. DR submitted that the assessee has failed to file the return of income by the due date and no evidence was brought on record that old machinery and furniture was ever sold and even in the remand proceedings, the claim of the assessee of sale of old machinery & furniture could not be verified by the Assessing Officer. Further, no return of income was filed by the assessee for the preceding year. Therefore, the Id. CIT(A) has rightly held that the assessee has not submitted sufficient evidence that old furniture & machinery was sold and disallowance of short term capital loss on sale of old furniture and machinery has rightly been confirmed by him. The Id. DR accordingly relied on the order of lower authorities.

9. We have heard the rival contentions and perused the material available on record. We find that there is no finding of the AO regarding

the claim of short term capital loss in the assessment proceedings and only during the remand proceedings, the matter was examined by the AO wherein the assessee submitted that since it has sold land and building, it has also sold old plant and machinery, and furniture. In its submissions, the assessee also submitted that opening written down value of plant and machinery and furniture is verifiable from the assessment records and regarding sale consideration, sale receipts were submitted. During the remand proceedings, the AO, in order to verify the handmade sale receipts, issued summons dated 23.05.2016 to Shri Kamal Chand Garg and it was informed to him through the authorized representative that Shri Kamal chand Garg had since expired on 25.01.2009. The AO in his remand report thereafter stated that the claim of the assessee is not verifiable and hence, not acceptable. We therefore find that the AO had some apprehension about the value of such plant and machinery and furniture and in order to verify the same, had issued the summons to the purchaser, however due to death of the purchaser, the sale consideration could not be verified. However, he has not disputed the fact that such assets have been found recorded in the assessee's books of accounts as on the beginning of the year and have since been disposed off way back in 2008, therefore, mere apprehension cannot be a basis to deny the fact that these assets have been sold at the stated consideration as evidenced by the sale receipts. Similarly, the findings of the Id CIT(A) that no evidence for sale of plant and machinery was brought on record is incorrect as the assessee has submitted the sale receipts in support of such transactions which have infact been taken on record by the Id CIT(A) and sent for AO's comments and verification. Lastly, non-filing of the return of income by due date can be basis for denial of claim for carry forward of losses as per section 139(3) of the Act, therefore, in the instant case, where

admittedly and undisputedly there is no such claim by the assessee in terms of carry forward of such losses on account of sale of plant and machinery and furniture, the reasoning adopted by the Id CIT(A) is not sustainable as the same is not in accordance with law. In the result, the AO is directed to allow the claim of short term capital loss on sale of plant and machinery and furniture for being set off against other income as per provisions of law for the impugned assessment year. The ground no. 2 and 3 of the assessee's appeal are thus allowed in light of aforesaid directions.

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

Order pronounced in the open Court on 15/02/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 15/02/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Osho Industrial Company, Alwar
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(2), Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 226/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar