

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 4168/Mum/2019
(Assessment Year 2010-11)

Seshatalpa Sai Boddupalli A-11, Sunil Tulsiram CHS, Devidayal Nagar, Mulund(W) Mumbai-400 080 PAN : AAIPB1894M (Appellant)	Vs.	ITO-23(3)(3) Room No.-118, Matru Mandir, Tardeo Road Mumbai-400 007 (Respondent)
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Assessee by	Satya Prakash
Department by	Anil Gupta
Date of Hearing	15.11.2021
Date of Pronouncement	14 .01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-40 dated 22.03.2019 and pertains to assessment year 2010-11.

2. Grounds of appeal read as under:-

Ground No. 1:

On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred in considering Income from Business of Rs. 70,000/- on adhoc basis and the same is invalid and contrary to the provisions of law.

Ground No. 2:

Alternatively, on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in considering Income from Business at Rs. 70,000/- as against Rs. 70,000/- as against Rs. 38,640.

Ground No. 3:

On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred in taxing interest income of Rs. 38,640/- under the head Income from Other Sources in Rs. 1,61,570/- and under the head Income from Business.

Ground No. 4:

On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred in considering the entire Long-term Capital Gains as Short-term Capital Gains and subjected the same to higher slab rates of tax.

Ground No. 5:

On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred . in considering entire Sale consideration of Rs. 45,00,000/- as Short-term Capital Gains without ' allowing deduction for Cost of acquisition.

Ground No. 6:

On the facts and in the circumstances of the case and in law, the learned CIT (A) grossly erred in not considering that the Appellant had acquired the property under a will from his father and therefore as per the provisions of Section 49(1), he cost of acquisition of previous owner / becomes cost of acquisition of the Appellant and the period of holding of the previous owner has to be considered while determining the period of holding in the hands of the Appellant as held by the Hon'ble Bombay High Court in the case of Manjula Shah 204 Taxman 691 (Bom).

3. Brief facts of the case are that the assessment in this case was framed under section 143(3) read with section 147 of the I.T.Act. In the order AO noted that there was no cooperation from the assessee and hence, he was passing order under the provisions of section 144 of the I.T.Act.

4. The basic observation of the AO in the addition made read as under;-

As regards the Long Term Capital Gain on sale of residential flat, the assessee had worked out the taxable gain at Rs. 7, 56,615/- by taking the date of acquisition as on 1st of April, 1981 on purchase value of Rs.4, 00,000/-. Further, the assessee had also claimed indexation on Rs. 3, 50,000/- being repairs & renovation. Despite giving copious opportunity, the assessee had not adduced any supporting evidence to substantiate his claim in regard to cost of acquisition and cost of repairs & renovation.

Since no explanation/documentary evidence etc., was forthcoming from the assessee as regards to the working of Long Term Capital Gain, the assessee's claim for indexation of cost of acquisition and repair and renovation are declined and the entire sale consideration of Rs. 45, 00, 000/- was adopted as taxable short term capital gain.

Further, as regards the business income shown by the assessee at Rs. 38,640/-, in the computation that the income so shown is based on Income & Expenditure account. However, the assessee has not filed any statement of account like Income & Expenditure Account, balance sheet etc. in the absence of which the genuineness in

regard to quantification of Business Income made by the assessee cannot be relied upon. In this view of the matter, the assessee's business income is estimated at Rs. 70,000/- as against Rs. 38,640/- declared by the assessee.

In the computation of income, assessee has claimed deduction under chapter VIA as sum of Rs. 75,508 u/s. 80C of the I.T.Act. However, in the absence of any documentary evidence in support of the claim, the same is disallowed and added to the total income of the assessee.

5. Upon assessee's appeal, Ld.CIT(A) noted that assessee has submitted additional evidences. These were remanded to the AO. But, the AO objected to the admission of additional evidences, Ld.CIT(A) confirmed the addition of short term capital gain of Rs. 45 lacs. The order of Ld.CIT(A) can stand as under:-

However, on perusal of evidences furnished being share certificate of Shri Shraddhanandh Coop Hsg. Soc Ltd and will and testament of Bordpalli Vivekanandam, father of assessee, a conclusion can be drawn that the immovable property under reference was acquired by the assessee through will of his father. The father acquired the property after his wife expired on 23.9.1982. Thus, the cost of acquisition of the property should be adopted as on 1.4.1981 and the capital gain if any would be a LTCG.

As per Exhibit C which is a valuation report issued by B.C. Shah, registered architect, it is seen that the fair market value of the property as on 1.4.1981 has been determined at Rs.4,11,000/-. The comparison for valuation of the old building constructed in around 1950 to that of the valuation rates in 1982 -83 at Rs. 584 per sq.ft is illogical and hence cannot be accepted. The AO has also objected for valuing the property as on 1.4.1981 as the value of flats in Dinabad building would be more since a lift has been provided for use of upper floors i.e. 2nd and 4th floor. The assessee's flat is on the 2nd floor but there is no lift facility for the assessee. The AO has also pointed out in her remand report that the will of the father directing his elder son to pay a compensation of Rs. 10 lacs in lieu of the rights to the said flat and garage. Thus, from the above inference, the value of the property could be approximately Rs. 20 lacs for the F.Y. 2009-10. If so, as per cost inflation index, the value as on 1.4.1981 could be approximately Rs. 3,16,500/-which is the maximum. Therefore, the valuation report furnished now by the assessee cannot be relied upon and the value as determined therein of the property cannot be incorporated. The appellant's AR has not extended any evidence even now in respect to the cost of improvement nor there is any mention of the sale in the application.

Similarly, the AO with regard to Exhibit E which is in support of claim of deduction under chapter VIA of Rs.20,508/- which could be considered for allowance out of the total gross income. After considering the remand report received from the AO has been forwarded to the appellant vide letter dt. 27.2.019 but there was no reply received from the appellant as on date of finalizing of appellate proceedings. Thus, the documentary

evidence now furnished in the form of valuation report with regards to determination of LTCG, has no evidential value and hence the same is rejected. Keeping in view of the comments of the AO in remand report, the addition made by the AO at Rs. 45 lacs is hereby confirmed.

Regarding estimating business income of Rs. 70,000/- on adhoc basis against Rs. 38,640/-, interest income taken by the AO at Rs.38,640/- under the head income from other sources treating the same as income from business is also confirmed, rejecting these grounds of appeal.

The AO has also disallowed deduction claimed for tax saving investments under the provisions of chapter VIA including tuition fees of Rs. 25,000/-, LIC premium of Rs. 30,508 and medi-claim premium of Rs. 22,508. The AO may verify the contentions of the appellant and if found true allow the claim statutorily. Subject to the above remark this ground is allowed for statistical purpose.

Regarding levy of interest u/s. 234A, 234B and 234C amounting to Rs. 8,49,525/- which is mandatory and hence AO is justified in levying interest as mentioned above. Therefore, this ground of appeal is also dismissed.

6. Against the above order, assessee is in appeal before the ITAT

7. I have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that assessee was not properly presented before the authorities below. He submitted that the additional evidences were submitted before the Ld.CIT(A). The AO objected to the same. Despite accepting that assessee's claim should be accepted as long term capital gain, in the concluding portion Ld.CIT(A) has confirmed the addition as short term capital gain. He pleaded that an opportunity may be granted to the assessee to present the case properly along with the evidences to the AO. On the other hand, Ld. DR relied upon the orders of the revenue authorities.

8. Upon careful consideration, I note that the AO has not commented upon the additional evidences. Ld. CIT(A) is taking cognizance of the additional evidences and has observed assessee's claim should be accepted as long term capital gain. However, he has concluded that assessment as short term capital gain is confirmed. Hence, the

order of Ld.CIT(A) is contradictory. Furthermore, assessee has submitted a valuers report regarding the valuation and cost of improvement, which have been rejected by the Ld.CIT(A) without AO's comment or any cogent reasoning.

9. Hence, on the facts and circumstances of the case, in the interest of justice, the issues raised in the appeal are remitted to the file of AO. The AO shall consider the issue afresh after giving the assessee proper opportunity of being heard. The Ld. Counsel of the assessee has undertaken to cooperate before the AO in the assessment.

10. In the result, this appeal by the assessee stands allowed statistical purposes.

Pronounced in the open court on 14 .01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14 .01.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai