

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI PAVAN KUMAR GADALE, JM

ITA No. 4343/Mum/2019
(Assessment Year 2013-14)

Sadiya Raof Dhanani 281, 28 th Floor, Kalpatru Heights CHS Ltd., Dr. Nair Road, Agripada, Mumbai-400 011	Vs.	The Asst. Commissioner of Income Tax, Central Circle-21(3), Room No. 209, 2 nd Floor, PiramalChamber, Lalbaug, Parel, Mumbai-400 012
(Appellant)		(Respondent)
PAN No. AADAS2607K		

Assessee by	:	Shri Sarkar Sharma, AR
Revenue by	:	Shri Hoshang B. Irani, DR

Date of hearing:	16.03.2022
Date of pronouncement :	28.03.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the order passed by Commissioner of Income-tax Appeals-48, Mumbai [the ld CIT (A)] for Assessment Year 2013-14 dismissing appeal of the assessee filed against the assessment order passed under section 143(3) of the income-tax Act, 1961 (the Act) passed by the Assistant Commissioner of Income-tax-21(3), Mumbai (the learned Assessing Officer) on 15.02.2016.
02. The assessee has raised the following grounds of appeal:-

“The Ld. CIT (A) erred on facts and in law in confirming action of Assessing Officer in not correcting arithmetic error of Rs. 32,34,937/- crept in computation of capital gains on sale of shares and brought to the notice of Assessing Officer in the course of assessment proceedings leading to unwarranted computation of capital gains at an inflated figure.”

The Ld. CIT (A) erred on facts and in law in not following binding judgements and decisions of jurisdictional High Court as well as Tribunal available on the date of adjudication of appeal.

The Ld. CIT (A) erred on facts and in law in not directing Assessing Officer to refund tax excess amount of tax paid by the appellant together with interest.”

03. The brief facts of the case shows that the assessee is a individual who filed returned of income on 13th July, 2013 declaring income of Rs. 41,32,19,840/-. The case was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS).
04. During the course of assessment proceedings, the claim of the assessee of long term capital gain was examined on sale of shares of M/s Liberty Phosphate Ltd. and M/s Liberty Urvarak Ltd. During the course of assessment proceedings, while calculating the cost of acquisition of 2,02,500 shares of M/s Liberty Urvarak Ltd, assessee pointed out that hat there is an inadvertent mistake and the cost of acquisition was taken at Rs. 2,02,500/- instead of Rs. 20,25,000/-. The assessee submitted the revised computation of income.
05. The Ld Assessing Officer noted that the time allowed for revising the return of income has already expired and therefore, the claim of the assessee was not accepted.
06. Accordingly, the assessed income was determined at Rs. 41,47,99,842/- vide assessment order dated 15th February, 2016.
07. Aggrieved, assessee preferred the appeal before the learned CIT(A), who confirmed the action of the learned Assessing Officer. The learned CIT(A) also concurred with the view of the learned Assessing Officer that since the time for filing of revised return is already lapsed, it is not possible to entertain any claim for deduction. Further, on the merits of the case, he held that assessee only furnished the vouchers which did not have

any authenticity to establish that cost of acquisition was more than what was claimed by the assessee in the original return of income.

08. Thus, the assessee is aggrieved with the order and preferred the appeal before us.
09. The learned Authorized Representative submitted that assessee has not made any fresh claim but has only asked the learned Assessing Officer to correct the arithmetic error in the computation of the capital gain on sale of shares where the cost of acquisition is wrongly punched, which the learned Assessing Officer refused to do and the learned CIT(A) has confirmed the action of the Assessing Officer.
010. The learned Departmental Representative supported the order of the learned lower authorities.
011. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact clearly shows that during the previous year assessee has sold 2,02,500 equity shares of one company which was received by him through gift from her sister. The cost of acquisition of the shares in the hands of the sister was Rs. 20,25,000/-. The above cost of acquisition was indexed to the year of sale at Rs. 35,94,375/-. The claim of the assessee is that at the time of filing of the return of income, the cost of the acquisition of the share by mistake taken as Rs. 2,02,500/-. Before the Assessing Officer, the assessee submitted the complete detail with respect to the cost of acquisition and requested to consider the correct cost of acquisition of Rs. 20,25,000/- instead of Rs. 2,02,500/-. The learned Assessing Officer refused to do the same and the learned CIT(A) also confirmed the same. We find that assessee has not made any fresh claim before the learned Assessing Officer but merely asked to correct wrong punching of the data of the cost of acquisition in the computation of the total income. According to us, only the correct income of the assessee should have been charged to tax. The learned CIT(A) also did not



consider the above claim on merit despite submitting the copy of account of cost of acquisition of those shares from the books of the sister of the assessee. The assessee has submitted that correct cost of acquisition is Rs. 20,25,000/- as shown in that account. The ledger account is also reproduced by the learned CIT(A) in his order but he did not consider the same. We find that the order of the learned CIT(A) itself shows that there is a confirmation available from the sister of the assessee about the correct cost of acquisition of these shares. Therefore, no further proof is required. In the result, we find that the claim of the assessee is correct and therefore, we restore the grounds of appeal before the learned AO with a direction to compute the capital gain on sale of share of M/s Liberty Urvarak Ltd by taking the cost of acquisition of those shares at Rs. 20,25,000/- instead of Rs. 2,02,500/-. Accordingly, the orders of the lower authorities are reversed and appeal of the assessee is allowed.

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

Order pronounced in the open court on 28.03.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.03.2022

Sudip Sarkar, 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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar



Income Tax Appellate Tribunal, Mumbai