

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6066/DEL/2019

[Assessment Year: 2010-11

Amit Oberoi, 156, Shakti Vihar, Pitampura, New Delhi-110034 PAN- AAAP05013D	<u>Vs</u>	ACIT, Circle-71(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	24.02.2022	
Date of pronouncement	18.04.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-21, New Delhi, dated 29.04.2019, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

“1. That the Ld. CIT(A) has erred in law and on the facts of the case in not quashing the illegal, arbitrary, fallacious and unlawful assessment order and also rejecting the additional grounds filed without issuing of notice/ chance to the appellant for providing cogent reasons, which in the opinion

of the Ld. CIT(A) were necessary to satisfy him for considering the additional grounds while passing the above order. The above act of not giving a fair chance to the appellant before rejecting the additional grounds for appearance is erroneous, illegal and unwarranted and bad in law and must be quashed with specific directions not giving a fair chance.

2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not holding that:

a) The reopening of the assessment by issue of notice under Section 148 of the Act was illegal and bad in law. On the facts and in the circumstances of the case he ought to have accepted the returned income and therefore merits to be quashed with the directions for appropriate relief to the appellant.

b) The ld. Assessing officer ward 1(1), Noida has erred in issuing notice u/s 148 without having jurisdiction on appellant.

c) The ld. Assessing officer Circle 71(1), New Delhi has erred in not issuing fresh notice u/s 148 after recording fresh reason for reopening and recording his satisfaction.

d) That the CIT(A) has erred in law and on facts in not holding that in the circumstances of the case and in law the ld. Assessing officer has erred in passing assessment order before disposing off and passing speaking order on application of appellant raising objection on re-opening assessment proceedings u/s 147/148.

3. That on the facts and in the circumstances the CIT(A) has erred in law and on facts in not holding the action of the ld. Assessing officers' which are illegal bad in law and are erroneous, illegal and unwarranted and must be quashed with specific directions on the facts and circumstances of the case that the ld. Assessing officer ward 1(1), Noida has erred in transferring case to jurisdictional assessing officer circle 71(1), New Delhi without providing opportunity to be heard u/s 127 before transferring the case.

4. *That the CIT(A) has erred in law and on facts in not holding that the circumstances of the case the ld. Assessing officers' action as illegal and that he has erred in issuing notice u/s 143(2) and asking filing of documents before filing of return of income in response to notice under section 148 thereby making the whole of the re-assessment proceedings illegal and need to be quashed.*

5. *That the Ld. CIT(A) has erred in law and on the facts of the case in upholding the addition of Rs. 4,80,000/- out of addition of Rs. 5,00,000/- by Ld. AO being long term capital gains on sale of shares of M/s Lotus Technosoft Pvt. Ltd. and failed in determining actual date of sale of shares and considering the follow-up agreement to sale over original sale agreement is erroneous, illegal and unwarranted and must be quashed with specific directions for appropriate relief to the appellant.*

6. *That the appellant leaves, craves to alter, amend, add, substitute any ground of the appeal of the appellant at any time during the pendency of the appeal.”*

2. At the time of hearing no one appeared on behalf of the assessee. It is seen from the record that since 21.12.2020, the appeal was fixed for hearing many times. However, no one attended the proceedings on behalf of the assessee. From the record it is seen that the notices sent are returned by the postal department with remark that the assessee is not residing at the given address now. The assessee has not provided his current address to the Registry. It was incumbent upon the assessee to provide current address/ changed address to the registry for the purpose of service of notice. Under these circumstances, the appeal of the assessee is taken up for hearing in the absence of the assessee and is being decided on the basis of the material placed on record.

3. Facts giving rise to the present appeal are that the assessee filed his return of income on 26.7.2010 declaring income of Rs. 30,70,360/-. Thereafter the Assessing Officer received information regarding the sale of shares by the assessee of M/s Lotus Technosoft Pvt. Ltd. for Rs. 1,83,00,000/- and thereby sold the immovable property owned by the company. The Assessing officer thereafter obtaining approval from the Competent Authority issued notice u/s 148. In response to the notice issued u/s 142(1) of the Act, the Authorized Representative of the assessee attended the proceedings. The Assessing Officer noticed that on going through the deed of exchange in shareholding it was found that out of Rs. 1,83,00,000/- Rs. 1,58,00,000/- was paid by new management in the account of the company for repayment of loan of outgoing management for construction of plot required to be completed by 30.06.2009 and Rs. 25,00,000/- was paid to the company for relinquishment of share holding of 20% by Shri Amit Oberoi. Therefore, the Assessing Officer was of the view that Rs. 5,00,000/- was paid to the assessee which the assessee had not disclosed. Hence, the Assessing Officer made addition of Rs. 5,00,000/- and assessed the income of the assessee at R. 35,70,360/- against the returned income of Rs. 30,70,360/-.

4. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions partly allowed the appeal.

Thereby the learned CIT(Appeals) sustained the addition made by the Assessing Officer, however, granted benefit of cost of acquisition and indexation to the assessee. Now the assessee is in appeal before this Tribunal.

5. Ground No. 1 is general in nature, needs no specific adjudication.

6. Ground no. 2 is against reopening of the assessment. Learned DR supported the orders of the authorities below and submitted that the assessment was reopened on the basis of the information available with the Assessing Officer regarding concealment of income by the assessee. He, therefore, submitted that reopening is justified under the facts and circumstances of the present case. The assessee has not provided any supporting evidence in respect of the ground taken by the assessee. Therefore, in the absence of any supporting evidence, I do not see any reason to interfere in the finding of learned CIT(A). Ground is dismissed.

7. Ground no. 3 is against non-providing opportunity to the assessee before transferring the jurisdiction by the Assessing Officer from Ward 1(1) Noida to Circle 71(1), New Delhi.

8. Learned DR submitted that the ground is baseless. No such ground was taken before the learned CIT(Appeals) regarding not providing opportunity of being heard. He supported the orders of the authorities below.

9. I have heard the learned DR and perused the material on record. The assessee has not filed any evidence in support of the allegation that he was not given opportunity before transfer of jurisdiction u/s 127 of the Act. In the absence of such evidence I do not see any merit in the ground raised by the assessee. Accordingly, ground no. 3 is dismissed.

10. Ground no. 4 is against issuance of notice u/s 143(2) before filing of return of income in response to the notice u/s 148. Learned DR submitted that the objection of the assessee is misplaced as from the record it may be verified that notice u/s 148 was issued on 30.3.2017 and notice u/s 143(2) was issued on 13.9.2017. It is recorded by the Assessing Officer that in response to notice dated 8.9.2017, the authorized representative of the assessee attended the assessment proceedings and filed copy of ITR. Therefore, it is not a case where notice u/s 143(2) was issued even prior to filing of the income-tax return.

11. I have heard learned DR, perused the material on record. I find that the Assessing Officer in the assessment order has categorically stated that Shri R.K. Tayal, CA and AR of the assessee attended the assessment proceedings and filed copy of ITR and thereafter statutory notice u/s 143(2) of the Act was issued on 13.9.2017. Hence, this ground is devoid of any merit and stands rejected accordingly.

12. Ground no. 5 is against upholding the addition of Rs. 4,80,000/- out of Rs. 5,00,000/-. Learned DR supported the orders of the authorities below and submitted that the decision of the learned CIT(Appeals) is just and in accordance with law. He submitted that the assessee was provided opportunity of hearing and was also allowed benefit of indexation.

13. I have heard learned DR. I find that the learned CIT(Appeals) has given a finding of fact in para 6.2 of the order as under:

“6.2 From the facts on record and submissions made, it is evident that there are two agreements dated 26.11.2008 and 26.06.2009. Appellant, relying on the basis of agreement dated 26.11.2008, is claiming that the transfer of shares took place in the F.Y. 2008-09 according to which the capital gain is taxable in the assessment year 2009-10. It is noted that above agreement is not a registered document and as per the submissions of Ld AR it was partly complied as the final consideration of Rs. 20,000/- towards sale of shares was received by the appellant at the time of completion of agreement i.e. change of name of new investors in the records of Noida Authority took place on 26.06.2009 vide deed of change in share holding duly executed on this date. A perusal of above registered deed of change in share holding pattern reveals that the Board of Directors of M/s Lotus Technosoft Private Limited authorized the appellant to transfer the shares of the company vide Board Resolution dated 18.04.2009. Further the appellant along with the other share holders (transferors) moved an application on to the Noida Authority for change in constitution / share holding. It is further noticed from perusal of assessment record that the appellant has transferred 2000 equity shares in favor of Mr. Sameer Wadhwa vide share transfer form dated 20.04.2009 and has tendered his resignation from the post of Director of the Company before the Registrar of Companies vide letter dated 20.04.2009. Thus from these facts and evidences on record it is inferred that there is no merit in the submissions of Ld AR that the agreement dated

26.06.2009 is not a valid agreement and the shares were transferred in the previous year 2008-09 , therefore the Long Term Capital Gain was taxable in the A.Y 2009-10. It is clearly evident from the copy of deed of change in share holding that the change in share holding replacing the earlier directors namely Amit Oberoi, Rosy Mehta and Rajiv Mehta with Ravi Wadhwa and Sameer Wadhwa took place vide above deed which was executed on 26.06.2009. no doubt an agreement dated 26.11.2008 was entered into between the seller and buyers for transfer of share holding, but the finality reached only upon registration of change in share holding deed with the Noida Authority vide agreement dated 26.06.2009 and the final payment has also been received by the appellant - as per submissions of appellant himself, at the time of completion of agreement i.e. change of name of new investors in the records of Noida Authority. All these changes and affairs took place in the F.Y 2009-10 thus the taxability of capital gain on account of sale of shares pertains to A.Y 2010-11 when the change in share holding pattern got registered, appellant transferred the shares vide transfer deed 20.04.2009, and resigned from the directorship of the company vide resignation letter dated 20.04.2009. Thus no interference is called for to the addition made by the AO brining to tax the amount of Long Term Capital Gain of Rs.5JD0.000/-. In the submissions it has been stated that the benefit of cost of acquisition and indexation has not been allowed while taxing the Long Term Capital Gain. Though it has been claimed that benefit of cost of acquisition and indexing is allowed, Ld AR has failed to furnish any supporting evidence with regard to the above submissions. Therefore Assessing Officer is directed to allow the benefit of cost of acquisition and indexation as per the provisions of Act after verifying the claim of the appellant at the time of giving effect to the appellate order. Thus the above ground of appeal stands partly allowed to the extent of claim of cost of acquisition and indexation.”

14. The above finding of fact by the learned CIT(Appeals) is not controverted by the assessee by placing any adverse material on record. Therefore, this ground of the assessee is rejected.

15. Ground no. 6 is general in nature and needs no separate adjudication.

16. In the result, assessee's appeal is dismissed.

Order pronounced in open court on 18th April, 2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI