

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No. 2913/Chny/2018
निर्धारण वर्ष/Assessment Year:2013-14

M/s. Thirumagal Alloys Pvt Ltd.,
No. 5/95, Cmelbatchhapet,
Sennimalai Gardens, Harur,
Tamil Nadu 636 903.

Vs. The Principal Commissioner of
Income Tax, Salem.

[PAN:AABCK1431D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.3243/Chny/2019
निर्धारण वर्ष/Assessment Year:2013-14

M/s. Thirumagal Alloys Pvt Ltd.,
No. 5/95, Cmelbatchhapet,
Sennimalai Gardens, Harur,
Tamil Nadu 636 903.

Vs. The Assistant Commissioner of
Income Tax,
Circle I, Salem.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri M. Murali, CIT
सुनवाई की तारीख/ Date of hearing : 21.09.2022
घोषणा की तारीख /Date of Pronouncement : 12.10.2022

आदेश /O R D E R

PER V. DURGA RAO,, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the Id. Principal Commissioner of Income Tax, Salem, dated 01.03.2018 passed under section 263 of the Income Tax Act, 1961

["Act" in short] as well as the Id. Commissioner of Income Tax (Appeals), Salem dated 30.08.2019 against the order under section 143(3) r.w.s. 263 of the Act both relevant to the assessment year 2013-14.

2. Facts are, in brief, that the assessee is in the business of trading in iron and steel and filed its return of income declaring total loss of ₹.1,47,33,032/-. After following due procedure, the assessment was completed under section 143(3) of the Act dated 15.03.2015 accepting the returned loss of the assessee.

3. Subsequently, the Id. PCIT issued show-cause notice under section 263 of the Act on the ground that the assessment order passed by the Assessing Officer under section 143(3) of the Act dated 15.03.2015 for the assessment year 2013-14 was found to be erroneous and prejudicial to the interest of the Revenue and called the assessee to explain. One of the Directors of the assessee company Shri Vijay, K.S. appeared before the Id. PCIT and the Id. PCIT asked him to explain in respect of income from business relating to interest and audit fee payment of Rs.1,47,33,032/-. However, no proper explanation was given. It was noticed by the Id. PCIT that the assessee filed the return of loss on 22.02.2014, i.e., after the due date prescribed under section 139(1) of the Act, thereby the assessee is not eligible to carry forward the loss of

₹.1,47,33,032/-. Moreover, Shri Vijay, K.S., Director who appeared on behalf of the company was not able to explain the transaction resulting in capital gains. Regarding the other issues also, he has not produced any material evidence in support of his claim. Therefore, the Id. PCIT set aside the assessment order passed under section 143(3) of the Act dated 15.03.2015 and directed the Assessing Officer to redo the assessment in accordance with law after making necessary enquiries and verifications in relation to the issues stated in the revision order.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Assessing Officer, by order dated 15.03.2015 under section 143(3) of the Act, examined all the details and therefore, the order passed by the Id. PCIT is neither erroneous nor prejudicial to the interest or the Revenue.

5. On the other hand, the Id. DR strongly supported the order passed by the Id. PCIT and submitted that the Assessing Officer has not examined the issues and simply accepted what was submitted by the assessee.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. For the sake of

convenience, the assessment order passed by the Assessing Officer is extracted completely as under:

“The assessee company is a trader dealing in iron & Steel. The assessee has filed its return of income for the assessment year 2013-14 on 21.05.2013 declaring total loss of Rs.1,47,33,032/-. The return was processed u/s. 143(1). The case has been selected for scrutiny under CASS. Notice u/s. 143(2) dated 17.09.2014 was issued and served on the assessee. As there was change in the incumbent, fresh opportunity was accorded to the assessee through notice under section 142(1) dated 26.05.2015, calling for details. In response to the above hearing notices Shri K.S. Vijay, one of the directors of the company appeared from time to time and furnished the details called for. After considering the details submitted and after discussion with the assessee’s authorized representative, the assessment is concluded accepting the returned loss.”

7. By considering the above assessment order, we are of the considered opinion that the Assessing Officer neither examined nor made any enquiry with regard to the issues relating to interest and audit fee payments of ₹.1,47,33,032/- and also the claim of capital gains under section 45 of the Act. Therefore, we find that the Id. PCIT has rightly issued notice by stating that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue and also directed the Assessing Officer to pass fresh order in accordance with law by considering the issues after making proper enquiry and the verifying the details. We find no infirmity in the order passed by the Id. PCIT dated 01.03.2018. Thus, the appeal filed by the assessee is dismissed.

I.T.A. No. 3243/Chny/2019

8. The appeal filed by the assessee is delayed by 10 days in filing the appeal before the Tribunal. By filing a petition for condonation of delay in support of an Affidavit explaining the reasons for the delay, the Id. Counsel for the assessee has prayed for condoning the delay and admitting the appeal for adjudication. The Id. DR has not seriously object to the submissions of the Id. Counsel. Since the assessee was prevented by reasonable cause for the delay in filing the appeal before the Tribunal, the delay is condoned and admitted the appeal for adjudication.

9. So far as consequential order passed by the Assessing Officer and confirmed by the Id. CIT(A), the assessee preferred further appeal before the Tribunal. The present subject matter of appeal before the Tribunal was consequent to the order passed by the Assessing Officer under section 143(3) r.w.s. 263 of the Act dated 30.12.2018.

10. The first issue for consideration is with regard to allowability of expenses claimed in the profit and loss account being TIIC loan interest & charges of ₹.1,47,23,032/- and audit fee of ₹.10,000/- resulting in loss of ₹.1,47,33,032/-. In this regard, the assessee has claimed that the expenditure was incurred for winding up of the business which is

allowable. The Assessing Officer has noted that the assessee company is under lock-out by Tamilnadu Industrial Investment Corporation (TIIC) since 1998 and hence, there is stoppage of business right from that year. Therefore, the Assessing Officer has held that the expenditure claimed under business head was not allowable as computation under this head cannot be made when there is stoppage of business. Section 28(i) of the Act provides that the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year shall be chargeable to income-tax under the head "Profits and gains of business". Since the assessee company has ceased to carry on business right from the year 1998 and income/loss from business cannot be computed under section 28 of the Act, the Assessing Officer disallowed the expenses of ₹.1,47,33,032/- and brought to tax. Moreover, the Assessing Officer has observed that the assessee has filed its return of income after due date prescribed under section 139(3) of the Act and hence loss claimed in the returns cannot be carry forward as per section 80 of the Act.

11. On appeal, by considering the arguments of the AR of the assessee, the Id. CIT(A) has held as under:

"7. The AR argued against the disallowance of loss claimed and taxation of capital gains in the hands of the appellant company. On perusal of the

submissions of the appellant it clearly seen that the claims made are not supported by any evidence/proof. The appellant's claim of expenses claimed in the profit and loss account being TIIC loan interest & charges of Rs.1,47,23,032/- and audit fee of Rs. 10,000/- which resulted in loss of Rs.1,47,33,032/- are not supported by any valid proof. The appellant could not prove these expense were actually incurred before the Pr. Commissioner of Income Tax during the proceedings and U/s. 263 of the Act or before the A.O. during the redo assessment proceedings. Before me also the appellant reiterated the same arguments without any evidences/proof. Hence, I do not find any merit in the argument of the appellant. It is apparent that the appellant company ceased its operations since 1998 and the A.O. has correctly held that as there was no business activities during the previous year relevant to the assessment year and the appellant cannot compute income/loss from business under section 28 of the Act. Further, the return of income was also filed after due date prescribed u/s. 139(3) and hence loss claimed in the return cannot be carry forwarded as per section 80 of the Income tax Act. Hence, I am not inclined to accept the submission of the appellant and dismiss all the grounds of appeal related to this issue."

12. We have heard the rival contentions. It is an admitted fact that the return of income was filed after due date prescribed under section 139(3) of the Act, thereby, the loss claimed in the return cannot be carry forwarded as per section 80 of the Act. Moreover, it is also an admitted fact that the assessee company was under lock-out by Tamilnadu Industrial Investment Corporation (TIIC) since 1998 and thereby, the authorities below have observed that there was no business activities carried during the previous year relevant to the assessment year under consideration and the assessee cannot compute income/loss from business under section 28 of the Act. Under the above facts and circumstances, we find no infirmity in the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the assessee is

dismissed.

13. The next ground raised in the appeal of the assessee relates to capital gain on transfer of property to the GPA holder for a consideration of ₹.3,00,78,887/-. In the assessment order, the Assessing Officer noted that the assessee company has given general power of attorney for immovable properties held by it in favour of Shri P. Parameswaran of Tirupattur and received amount to the extent of ₹.3,00,78,887/-. As per section 2(47)(iv) of the Act, any transaction by way of agreement or arrangement or in any other manner whatsoever has the effect of transferring or enabling the enjoyment of any immovable property will fall under the term "transfer" in relation to such capital asset and is liable for capital gains as per section 45 of the Act. In view of the above, the assessee should have declared capital gains arising from transfer of immovable properties in the return of income for the assessment year 2013-14, but no capital gains was declared and thus, there is an escapement of capital gains from said transaction. After considering the submissions of the assessee, the Assessing Officer has observed that the assessee company has handed over possession to Shri P. Parameswaran for consideration of ₹.3,00,78,887/- and thus satisfies all the ingredients laid down in section 2(47)(iv) of the Act and the said

amount was treated as sale consideration received and brought to tax. On appeal, the Id. CIT(A) confirmed the order passed by the Id. CIT(A).

14. We have heard both the parties. The case of the Assessing Officer is that the assessee has leased out a property through one of the Director. The assessee company has taken a land on lease from one of the directors Shri Sivasamy for 30 years. Subsequently, the company gave a general power of attorney in favour of Shri P. Parameswaran, who is the director of the company. The same property was sold through Shri P. Parameswaran, Tirupattur for a sale consideration of ₹.3,00,87,887/-. In the power attorney, the legal heirs of Shri Sivasamy also signed in the document. Therefore, the legal heirs along with Shri Sivasamy relinquished the rights on the property. We find that Shri Sivasamy, who was the land owner is no more land owner. The company has given general power of attorney to Shri P. Parameswaran and he sold the property and loans were cleared from TIIC. We find that the Id. CIT(A) has categorically decided the issue by observing as under:

“11. I have perused the assessment order, the grounds of appeal and the above submissions of the appellant. The submissions of the appellant are devoid of any merits. As discussed elsewhere in this order, the A.O. has examined this issuer thoroughly. The A.O. has rejected the contention of the appellant that the ownership over the lands transferred does not belong to the company. As per the A.O. there is no provision in Companies Act to show lease-hold land as asset in balance sheet of the company, as only assets which are purchased by the company for consideration or lands transferred to the company in lieu of allotment of shares be shown as asset in the balance

sheet of the company. The A.O. further held that as per section 75(1) of companies Act, 1956 the shares of the company can be allotted either for cash or for consideration other than cash. Before the A.O. the assessee could not explain how there is share capital of Rs.62 lakhs appearing in balance sheet in the name of Directors and whether the company had received cash towards the share capital. Similarly, the appellant was not able to explain how an amount of Rs.32,17,222/- is shown as value of fixed asset in the Balance Sheet (i.e., the lands which is transferred through general power of attorney). In these circumstances, it was held by the A.O. that the share capital of Rs.62 lakhs was allotted in favour of the Director in consideration of transfer of land belonging to the Director in favour of the Company which is in accordance with sec 75(1) Companies Act, 1956. Further, the sale consideration of Rs.3,00,78,887/- in cash was received by the company from Sri P. Parameswaran and even the D.D. was issued by purchaser in favour of THC on behalf of M/s. Kalaimagal Alloys Steel (P) Ltd. only. In view of the detailed discussions in the foregoing paragraphs, I do not find any merits in the arguments of the assessee and hence, I dismiss all the grounds of appeal.”

15. The case of the assessee before us is that the property is lease hold property and the assessee has no right to sale the property. Therefore, no capital gain arises in the hands of the assessee. The property tax also paid by Shri Sivasamy which is pointed out from paper book page 52 to 57 and submitted that the property belonging to Shri Sivasamy. The argument of the assessee is rejected for the reason that simply because Shri Sivasamy who is the owner of the property lease out to the assessee and filed property tax receipt though that receipts are not conclusive proof to consider the ownership rights taken away. In this case, the company has given general power of attorney to Shri P. Parameswaran and in that Shri Sivasamy and his legal heirs are also signed. During the course of hearing, when we asked the Id. Counsel for

the assessee what is the consideration received by Shri Sivasamy and his legal heirs for relinquishment of the very legal rights on the property, he could answer and the reason is best known to him. Under the above facts and circumstances, we are of the considered opinion that the capital gains has to be taxed in the hands of the assessee as has been held by the authorities below. Thus, we find no infirmity in the order passed by the Id. CIT(A) and accordingly, the ground raised by the assessee is dismissed.

16. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on the 12th October, 2022 in Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 12.10.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.