

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 568 /Chd/2022
निर्धारण वर्ष / Assessment Year : 2020-21

Shri Rajiv Garg, 61-A, Sant Nagar, Civil Lines Ludhiana	बनाम	The DCIT CPC, Bengaluru / DCIT, CC-2, Ludhiana
स्थायी लेखा सं./PAN NO: AAZPG5575F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashwani Kumar, CA
राजस्व की ओर से/ Revenue by : Shri Akashdeep, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 28/11/2022
उद्घोषणा की तारीख/Date of Pronouncement : 01 /12/2022

आदेश/Order

PER VIKRAM SINGH YADAV, AM

This is an appeal filed by the assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 11/07/2022 pertaining to A.Y. 2020-21, wherein the assessee has taken the following grounds of appeal:

"1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-5, Ludhiana is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assessing Officer/Centralized Processing Centre, Bengaluru in not reducing a sum of Rs. 19,90,000/- from working of the profits of business or profession as the said sum represented sale proceeds of immovable property which had been credited to the Profit and Loss Account and while filing the return, the same had been duly considered under the head income from capital gains.

2. That action of the Learned CIT(A) in upholding the addition made by the Learned Assessing Officer/Centralized Processing Centre, Bengaluru has resulted in double addition of the same amount.

3. *That the Learned CIT(A) was not justified in holding that the action of the Learned Assessing Officer/Centralized Processing Centre, Bengaluru in making the adjustment of Rs. 19,90,000/- was not a mistake apparent from record."*

2. Briefly the facts of the case are that the assessee, an individual, filed his return of income declaring income of Rs. 30,42,940/-. Thereafter the return of income so filed by the assessee was processed and intimation dt. 06/04/2021 was issued by CPC, Bengaluru wherein the income was computed at Rs. 44,53,240/- as against declared income of Rs. 30,42,940/- by making an adjustment of Rs. 19,90,000/- under the head "Profit & Loss from the Business and Profession". The assessee subsequently filed a rectification application under section 154 of the Act dt. 05/05/2021 which was rejected by CPC, Bengaluru by order dt. 29/09/2021.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has sustained the order of the CPC, Bengaluru.

4. Against the said findings of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. During the course of hearing, the Ld. AR submitted that during the financial year relevant to impugned assessment year, the assessee has sold an immovable property for a total consideration of Rs. 19,90,000/- which stands credited to profit and loss account and our reference was drawn to Balance Sheet and Profit & Loss account, copy thereof placed on record. It was submitted that while filing the return of income, the assessee had reduced the amount of sale consideration from the net profit of business to be computed separately as capital gains (refer Schedule BP of ITR3 Form). The appellant had separately computed Long-Term Capital Gain on sale of the said immovable property for a consideration of Rs. 19,90,000/- and computing the long term capital gains at Rs of Rs. 5,79,703/- and had shown the same in the return of Income in (refer Point no. 10B of ITR-3 Form). It was further submitted that there

was also a Brought Forward Long-Term Capital Loss of Rs. 35,38,925/-for A.Y. 2019-20, thus the Long-Term Capital Gain of Rs. 5,79,703/- was set-off with this Brought Forward Long-Term Capital Loss. Hence, Long-Term Capital Loss carried forward to future years after set off was Rs. 29,59,222/- (refer Schedule CFL of ITR-3 Form). It was submitted that while processing the return of income, the amount of sale proceeds from Immovable property credited to profit & loss account which were considered under the head capital gain by the appellant, has not been considered by the CPC Bengaluru and arbitrarily added Rs. 14,10,297/- (difference of sale consideration of property Rs. 19,90,000/- minus Long Term Capital Gain declared Rs. 5,79,703/-) in the business income of assessee. Thereby, the income under the head profit and gains from business and profession has been computed in excess by the Rs. 14,10,297/- and recomputed the total income of the appellant at Rs.44,53,240/- as against income declared at Rs. 30,42,940/-. It was submitted that it is therefore a case where the AO has made addition of Rs. 14,10,297/- under the head Profit and Gains from Business and Profession, despite the fact that the appellant has fully disclosed all the incomes in his return of income.

5.1 It was further submitted that as per section 154 of the Act, a rectification under this section can be made with a view to rectifying any mistake which is apparent from the record and accordingly AO can amend any order passed by it under the provisions of this Act. It was submitted that as it is clear from above, the appellant has disclosed all the incomes correctly under the relevant heads of income. Hence, the mistake was apparent from record and requires rectification. Based on this, the action of AO in passing order u/s 154 of the Act is not warranted and against law and facts.

5.2 It was further submitted that the Ld. CIT(A) has not decided the matter on merits however the appeal of the assessee has been rejected for the sole reason that the remedy against the action of the AO/CPC lies by way of an

appeal to the CIT(A) under section 246A and not by way of filing application under section 154 of the Act. In this regard, it was submitted that relevant documents were on record before the CPC and given the nature of adjustment so made by CPC, the assessee was of the believe that it clearly qualifies as mistake apparent from the record and therefore the assessee filed an application under section 154 as soon as he received the intimation under section 143(1) of the Act. It was accordingly submitted that merely non- filing of the appeal and taking recourse to rectification under section 154 cannot be a reason to deny the lawful claim of the assessee where the income under the head capital gain has already been offered and brought to tax by the AO/CPC and where the said action of AO/CPC and that of the Ld. CIT(A) is upheld, the same will amount to double taxation which cannot be sustained in the eyes of law. Further reliance was placed on the Coordinate Chandigarh Benches decision in the case of Amrik Singh Bhullar Vs. ITO, Sangrur reported in 190 ITD 355.

6. Per contra the Ld. Sr. DR relied on the order of the lower authorities and it was submitted that since the matter has not been decided on merit by the Ld. CIT(A), the same may be set aside to the file of the Ld. CIT(A) to decide the same on merit.

7. In his rejoinder, the Ld. AR strongly objected to the submissions made by the Ld. Sr. DR and it was submitted that all the facts on record as evident from the paper book filed before the Bench and it would not be appropriate in such a situation to set aside the matter to the file of the Ld. CIT(A) which will only add up to the pendency before the Ld. CIT(A) and in the interest of justice, the matter may be decided by the Bench.

8. I have heard the rival contentions and pursued the material available on available. On perusal of the assessee's return of income, computation of

income, balance sheet, income and expenditure account as well as intimation issued by the CPC, I find merit in the contention advanced by the Id AR. The assessee had reduced the amount of sale consideration of Rs 19,90,000/- which is credited to the profit/loss account and to be considered under the head of capital gains" as evident from the return of income, Schedule BP 3(b) and in Schedule CG: Capital Gains 10(B), full value of consideration has been declared at Rs 19,90,000/- and after reducing cost of acquisition of Rs 14,10,297/-, net capital gains of Rs 5,79,703/- has been reflected and offered to tax. In the intimation u/s 143(1), there is an acknowledgment by CPC that the assessee has carried out said adjustment to the profit/loss account to the tune of Rs 19,90,000/-, however, while processing the return of income, adjustment has been reflected by CPC to an extent of Rs 5,79,703/- which has resulted in differential of Rs 14,10,297/- which has been retained as part of the profit/loss account and consequent net adjustment of Rs 14,10,297/-. At the same time, there is an acknowledgement by CPC that the assessee has offered net long term capital gains of Rs 5,79,703/-. I therefore find that it is clearly a case where the sale consideration of Rs 19,90,000/- as credited in the profit/loss account has been reduced while computing the income under the head "Profit/gains of business/profession" and income under the head "Capital gains" has been computed separately taking into consideration the sale consideration of Rs 19,90,000/- and cost of acquisition of Rs 14,10,297/- offering net capital gains of Rs 5,79,703/-. The CPC has however processed the return of income holding that the separate treatment towards capital gains is to the tune of Rs 5,79,703/- rather than of Rs 19,90,000/- effectively ignoring the cost of acquisition of Rs 14,10,297/- and thus making the adjustment to the tune of Rs 14,10,297/-. I find that the same is clearly a mistake emerging from the record as no two views are possible for allowing the cost of acquisition while computing the capital gains and that too, while processing the return of income in absence of any material to the contrary available on record. In the facts and circumstances of

the present case, I find that no useful purpose would be solved in remanding the matter and the adjustment so made by the CPC is hereby directed to be deleted.

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

(Order pronounced in the open Court on 01/12/2022)

Sd/-

विक्रम सिंह यादव

(VIKRAM SINGH YADAV)

लेखा सदस्य / ACCOUNTANT MEMBER

AG

Date: 01/12/2022

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File