

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No. 713/Ind/2019
Assessment Year: 2011-12

ITO, 5(2), Indore	<u>बनाम/</u> Vs.	M/s Bafna Commerce Industries, Indore
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AAFFB 1081 P		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.10.2022	
Date of Pronouncement	13.10.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 18.03.2019 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore [**Ld. CIT(A)**], which in turn arises out of assessment-order dated 27.12.2018 passed by learned ITO, Ward-5(2), Indore [**Ld. AO**] u/s 143(3) read with section 147 of the Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2011-12, the revenue has filed this appeal on following grounds:

- “(1) *On facts and in the circumstances of the case, the order of the Ld. CIT(Appeals) is contrary to the facts and the law.*

- (2) *On the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in deleting the addition of Rs. 2,10,58,793/- on account of Long-Term Capital Gain without appreciating the facts of the case.*
- (2.1) *While holding so, the Ld. CIT(A) erred in not appreciating the fact that the Senior Deputy Registrar, Indore-1 through his letter dated 11/12/2018, has also certified that the registry of the said property has been done on 05/06/2020 i.e. F.Y. 2010-11 during assessment proceedings.*
- (2.2) *The purchase has affirmed that the took possession alongwith registered-deed, which was registered by the Stamp Authority on 05/06/2010. Accordingly, transfer of property took place on 05/06/2010, which falls in F.Y. 2010-11.*
- (3) *The appellant craves leave to add or otherwise amend the above grounds of appeal.”*

2. None appeared on behalf of assessee. However, it is observed that the present appeal is preferred by revenue being represented by Ld. DR who was ready for arguments and the revenue's grievances can be resolved on hearing him and the material held on record. Accordingly, the appeal was proceeding for hearing.

3. By means of various grounds, the revenue has challenged the action of Ld. CIT(A) in deleting the addition of Rs. 2,10,58,793/- on account of long-term capital gain assessed by Ld. AO in assessment-order.

4. Briefly stated the facts are such that the assessee is a partnership-firm, which filed original return of income of the relevant AY 2011-12 on 22.03.2015 declaring a total income of Rs. 98,727/-. Subsequently, the revenue received an information, filed by Registrar of Stamps in AIR, which demonstrated that the assessee had sold an immovable property during the Financial Year **["FY"]** 2010-11 relevant to the AY 2011-12 under consideration for a sum of Rs. 1,91,00,000/-, valued by Stamps Authority at Rs. 3,94,75,000/-, through a registered-deed dated 05.06.2010. On verification of assessee's records of AY 2011-12, Ld. AO found that the assessee had not disclosed capital gain resulting from this transaction, hence the Ld. AO took action by issuing notice u/s 148 of the Act. In

response to notice, the assessee repeated return declaring the same income of Rs. 98,727/- as shown in original return. Ld. AO issued statutory notices u/s 143(2) and 142(1) of the Act enquiring the assessee about the transaction of sale of property and resultant capital gain. The assessee made repeat submissions, on more than one occasions, to Ld. AO which are reproduced in Para No. 7.1, 7.3 and 8.1 of the assessment-order. The assessee's stand was such that the impugned property was sold on 25.03.2010 which is clearly mentioned in the registered-deed; that full payment had been received from buyer by then; and the possession of property was also given to the buyer by then. Hence the impugned sale transaction was carried out on 25.03.2010 falling in FY 2009-10 relevant to AY 2010-11 and the resultant capital gain was taxable in AY 2010-11. Accordingly, the assessee had already worked out taxable gain of Rs. 1,40,03,184/- and offered in the return of AY 2010-11 which stood assessed by revenue too. The assessee also relied upon the definition of "transfer" as prescribed in section 2(47) and certain judicial decisions to canvass the point that the transfer had already taken place on 25.03.2010 i.e. the date on which registered-deed was actually executed between the parties and presented to the office of Sub-Registrar for registration and not on 05.06.2010 i.e. the date on which the registered-deed was released, and therefore, the resultant capital gain was taxable in AY 2010-11, not in AY 2011-12. The assessee also submitted that the sub-registrar had withheld the deed for payment of some more stamps-duty which was duly paid and the document got released. With these submissions, the assessee requested Ld. AO to close the proceeding of AY 2011-12 since the capital gain did not fall in the domain of AY 2011-12. But, however, the Ld. AO placed much weightage on the point that the registered-deed was dated 05.06.2010 and, therefore, the transaction was taxable in FY 2010-11, AY 2011-12, which had escaped assessment. Ld. AO also made enquiries from purchaser, stamps vendor, sub-registrar and assessee-firm's partner. Finally, while completing assessment u/s 147 read with section 143(3) of AY 2011-12, Ld. AO made an addition of Rs. 2,10,58,793/- on account of long-term capital

gain, as per working made by him in assessment-order. On perusal of working, it is observed that the Ld. AO gave credit of long-term capital gain of Rs. 1,40,03,184/- already taxed by revenue in AY 2010-11.

5. Being aggrieved by order of Ld. AO, the assessee filed appeal to Ld. CIT(A). During first-appeal before Ld. CIT(A), the assessee again made a detailed submission almost on the same lines as made before Ld. AO. After a careful consideration of the material before him in the light of certain judicial rulings, Ld. CIT(A) deleted addition.

6. Now assailing the order of Ld. CIT(A), the revenue is in appeal before us.

7. Before us, Ld. DR argued the case at length and supported the order of Ld. AO. He submitted that on a bare perusal of the registered-deed, it is quite manifest that the same was finally registered and released on 05.06.2020. According to Ld. DR, the subject-property being an immovable property and the registered-deed bearing date of 05.06.2020, there could hardly be any dispute with the conclusion that the sale was completed only and only on 05.06.2020. Ld. DR strongly contested that 25.03.2020, the date on which the assessee is claiming to have presented the document to the office of Sub-Registrar for registration, is of no avail to the assessee. Therefore, the capital gain was rightly assessed by Ld. AO in the FY 2010-11, AY 2011-12 taking into account 05.06.2020 as the date of transfer. Ld. DR also relied upon certain decisions and filed copies of orders. With these submissions, Ld. DR prayed that the action of Ld. AO be upheld.

8. We have considered the contentions of Ld. DR and also perused the record. We have also given a mindful consideration to the order passed by Ld. CIT(A) in first-appeal. We observe that the Ld. CIT(A) has taken into account entire material available before him including the assessment-order, the enquiries made by Ld. AO from different sources, the registered-deed, the facts emerging therefrom and the relevant law. We have also examined, analysed and co-related the findings made by Ld. CIT(A) in

operative paragraph i.e. Para No. 4.7 of the appeal-order vis-à-vis the observations made by Ld. AO in assessment-order, in the presence of Ld. DR, and derive conclusion that the Ld. CIT(A) has well-crystallized assessee's position with respect to the attending facts as well as applicable law and thereafter concluded that the capital gain was taxable in AY 2010-11 and not in AY 2011-12. Therefore, we only suffice to reproduce the said operative Para No. 4.7 of the order of Ld. CIT(A):

“4.7 The capital gain would be taxable in the year in which such transactions were entered into, even if the transfer of the immovable property is not complete by way of registration under the general law. Under the provisions of section 2(47)(v) of the IT Act, 1961, it is clear that any transaction involving allowing of possession to be taken over or retained in part performance of a contract of the nature referred to in section 53A of the 1882 Act would come within the ambit of this section. In order to attract section 53A, there should be an agreement for consideration, it should be in writing, it should be signed by the transferor, it should pertain to transfer of immovable property; the transferee should have taken possession of the property and the transferee should be ready and willing to perform his part of contract. In the instant case, all these requirements have been met and fulfilled. Therefore, the capital gain would be taxable in the financial year 2009-10 (relevant to A.Y.2010-11) in which such transaction were entered into, even if the transfer of the immovable property was not effective or complete for want of registration under the general law. The AO had made the addition only on the basis of the fact that extra stamp duty was paid in F.Y. 2010-11 and sale deed was released on 05.06.2010 after payment of extra stamp duty. In the instant case, the payments were received fully and possession of the land and tin shed were given to Indison Agro Foods Private Ltd during the F.Y. 2009-10 (A.Y. 2010-11). Further, the transaction was done through cheques. During the course of statement of both Shri Arun Jain and Shri Vijay Jain, they had also reiterated and accepted these facts of payments. Thus, in the present case, the transfer of property had taken place in F.Y. 2009-10. In light of the above decision and language of the said sections and therefore, the tax liability arising under the head capital gain had to be subjected to tax in that particular financial year i.e. F.Y.2009 10. Hence, in view of the above undisputed facts and clear judicial decisions so discussed above especially that of Hon'ble Jurisdictional. ITAT, Indore decision in the case of Manoj Yadav(supra), it is clear that the transfer was done in F.Y. 2009-10 which pertained to A.Y.2010-11, thus, the tax liability on the same would also be charged in that particular year i.e. 2010-11. Hence, the addition so made by the AO is

hereby deleted and accordingly, these grounds of appeal are hereby allowed.”

9. Thus, in nutshell, the controversy between parties can be directly settled by the undisputed facts themselves i.e. (i) the transaction had been done by a written-document in the form of deed; (ii) the deed was actually signed, executed and presented to Sub-Registrar on 25.03.2010 but released on 05.06.2010; (iii) the consideration had been received / paid by 25.03.2010; and (iv) the possession had also been given by 25.03.2010. On perusal of case-records, we also observe that the assessee had been repeatedly claiming these facts, since beginning, before Ld. AO. It was also pointed out repeatedly to Ld. AO that the resultant capital gain had already been offered in the income-tax return of FY 2009-10 relevant to AY 2010-11 and assessed by revenue too. It is true that initially the Ld. AO was not sure whether the assessee had declared capital gain in AY 2010-11 or not because on verification of records of AY 2010-11, Ld. AO observed that though the assessee had offered capital gain of Rs. 1,40,03,184/- but it was on the sale proceed of Rs. 1,86,00,000/- which does not match with the sale value of Rs. 1,91,00,000/- shown in the registered-deed. But that confusion was also dispelled by assessee through reply-letter (as clearly mentioned by Ld. AO in Para No. 8.1 of the assessment-order) in which the assessee mentioned “... Thus, the capital gain liability arises in AY 2010-11 and not in AY 2011-12. In continuation to our earlier submission, we do hereby further state that the assessee has sold its property at Sajan Nagar, being land an old shed for Rs. 1,91,00,000/-. In the computation of income, the assessee has shown capital gain of Rs. 1,86,00,000/- for the land and Rs. 5,00,000/- for the old shed. The assessee has claimed depreciation on the shed regularly, so the same was considered under the head Short Term Capital Gain and the assessee has shown Long Term Capital Gain for the sale of land.....”. The matter does not step here. Going further, on perusal of working made by Ld. AO in Para No. 12.3 of assessment-order, we clearly find that the Ld. AO has himself given credit of taxable gain of Rs. 1,40,03,184/- already assessed by revenue in AY 2010-11 and taxed only

remaining gain in AY 2011-12. In such peculiar circumstances, even without going into the controversy whether the registered-deed released on 05.06.2010 would relate back to 25.03.2010 or not, we agree that the Ld. AO had himself accepted that the transfer had already taken place on 25.03.2010. In such a case, even otherwise the revenue could not re-tax the same transaction in AY 2011-12 just by giving credit of the capital gain already assessed in AY 2010-11. In a simpler wording, Ld. AO is trying to tax the same transaction in AY 2011-12 which had already been taxed in AY 2010-11. We do not find any provision in Income-tax law which supports such an approach of Ld. AO. In the result, we are not persuaded to endorse the action of Ld. AO. The decisions relied upon by Ld. DR are not relevant in view of these peculiar facts of the case, therefore we need not discuss them. We simply uphold the order of Ld. CIT(A) by which the addition made by Ld. AO has already been deleted. The assessee succeeds in grounds.

10. In the result, this appeal of revenue is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 13/10/2022.

Sd/-

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

Dated : 13.10.2022

Patel/Sr. PS

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	