

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 5/Ind/2022
Assessment Year: 2015-16

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| Shri Vighnesh Warehouse and Distributors Private Limited | <u>बनाम/</u> | DCIT, CPC Bangaluru |
| (Appellant/Assessee) | Vs. | (Respondent/ Revenue) |
| PAN: AAACB 8511 C | | |
| Assessee by | Shri K.P. Dewani, AR | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 09.11.2022 | |
| Date of Pronouncement | 06.12 .2022 | |

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 09.12.2021 passed by Ld. Commissioner of Income-Tax (Appeal), NFAC, Delhi [in short "Ld. CIT(A)"] which in turn arises out of rectification-order dated 23.11.2019 passed by Ld. DCIT, CPC, Bangaluru [in short "Ld. AO"] u/s 154 of Income-tax Act, 1961 [in short "the Act"] for assessment-year [in short "AY"] 2015-16, the assessee has preferred this appeal on following grounds:

"1. Addition made by AO at Rs. 51,40,795/- in respect to profit on sale of depreciable assets even though block of assets is not ceased to exist is unjustified, unwarranted and bad in law.

2. The Addition made by AO at Rs. 51,40,795/- and sustained by the CIT(A) NFAC in respect of profit on sale of depreciable asset

under the head business and profession is unjustified, unwarranted and bad in law.

3. The Ld. CIT(A) at para 8 erred in observing that appeal is dismissed.

4. The appellant denies liability to pay interest under section 234B and 234C of the I.T. Act 1961. Without prejudice, levy of interest under section 234B and 234C of the I.T. Act 1961 is unjustified, unwarranted and excessive.

5. Any other ground shall be prayed at the time of hearing.”

2. Briefly stated the facts leading to the present appeal are such that the assessee-company filed return of income which was processed u/s 143(1) of the act, wherein the Ld. AO made certain additions. The assessee filed rectification-application u/s 154 which was decided by Ld. AO vide order dated 23.11.2019 but the Ld. AO did not grant the rectification as applied for. Being aggrieved, the assessee filed first appeal to Ld. CIT(A). The Ld. CIT(A) decided appeal vide order dated 09.12.2021 without giving desired relief. Now the assessee has filed this appeal assailing the order of Ld. CIT(A).

Ground No. 1 to 2:

3. These grounds relate to the addition of Rs. 51,40,795/- made by Ld. AO in respect of profit on sale of building.

4. Apropos to these grounds, Ld. AR carried our attention to the Ledger A/c of Office Building extracted from the books of account of assessee, placed at Page No. 31 of the Paper-Book, to demonstrate that during the relevant previous year, the assessee sold a building for Rs. 71,00,000/- having cost of acquisition of Rs. 19,59,205/- in the books of account, which resulted in an accounting-profit of Rs. 51,40,795/-. Ld. AR carried us to Page No. 18 and 24 of the Paper-Book where a copy of the Profit and Loss A/c of assessee is placed and demonstrated that the assessee has credited the aforesaid accounting-profit of Rs. 51,40,795/- to this Profit & Loss A/c. Learned AR then carried us to Page No. 9 of the Paper-Book where a copy of

the Computation of Total Income as per the provisions of Income-tax Act, 1961 is placed wherein the working of depreciation and capital gain as per section 50 read with section 32 of Income-tax Act, 1961 is given, according to which the cost of the block of asset comprising of the impugned building was Rs. 58,03,857/- against the sale price of Rs. 71,00,000/- and the resultant short-term capital gain taxable u/s 50 of the act came to Rs. 12,96,143/-. Finally, the Ld. AR carried us to Page No. 8 of the Paper-Book and successfully demonstrated that the while computing income for taxation under Income-tax, the assessee had excluded the accounting-profit of Rs. 51,40,795/- and included the short-term capital gain of Rs. 12,96,143/-. In short, Ld. AR submitted that the assessee has excluded the accounting-profit on sale of building which was not taxable and included the short-term capital gain which was taxable, and this way the assessee correctly offered proper taxable income and paid correct amount of tax as per provisions of Income-tax Act, 1961. Ld. AR submitted that despite such correct calculations, Ld. AO has taxed both amounts i.e. the Ld. AO has kept the inclusion of Rs. 12,96,143/- intact and at the same time also made a further addition of Rs. 51,40,795/- while passing assessment-order u/s 143(1). Ld. AR submitted that this approach of Ld. AO is patently wrong because it is known to everyone who is concerned with accounting and taxation that it is only the short-term capital gain computed as per section 50 which is taxable under Income-tax law and the accounting-profit as per books of account is not taxable. Having said so, Ld. AR also pointed out that the Ld. CIT(A) has not granted relief to the assessee vide Para No. 5 of his order for the sole reasoning that he was not able to conclude as to whether or not the accounting-profit of Rs. 51,40,795/- was in fact same amount or on the sale of same asset on which short-term capital gain of Rs. 12,96,143/- had been taken into consideration by the assessee in computation of income. Ld. AR submitted that having perused all documents placed in the Paper-Book, as narrated earlier, the confusion raised by Ld. CIT(A) stands fully dispelled. Hence, it is quite clear that what

is taxable under income-tax was just Rs. 12,96,143/- and not Rs. 51,40,795/-. Ld. DR was fair enough to accept the submission of Ld. AR.

5. We have considered submission of both sides and perused the documents referred to by Ld. AR. We observe that there is hardly any dispute remaining after perusal of documents that the assessee has already offered the taxable short-term capital gain of Rs. 12,96,143/-. It is further manifest that the profit of Rs. 51,40,795/- was just an accounting-profit which had been credited to Profit & Loss A/c as per books of account but the same was not taxable at all. Hence the assessee has made a correct working of taxable income. We do not find any fallacy in the computation made by assessee and offered to revenue authorities for taxation. Being so, we are inclined to hold that the addition of Rs. 51,40,795/- made by Ld. AO in the assessment-order and confirmed by Ld. CIT(A) in first appeal, is wrong and unwarranted. We, therefore, direct the Ld. AO to delete the same. Thus, the assessee succeeds in Ground No. 1 and 2.

Ground No. 3 to 5:

6. These grounds are general in nature and also not pleaded by either side during hearing. Hence they are not taken for adjudication and accordingly treated as dismissed or not pressed.

7. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of ITAT Rules, 1963 on 06.12.2022.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 06.12..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

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| 1. | Date of taking dictation | 14.11.22 |
| 2. | Date of typing & draft order placed before the Dictating Member | 14.11.22 |
| 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 | |