

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 532/Kol/2022

Assessment Year: 2019-20

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|---|-----|---------------------------|
| B. S Industrial Equipments Pvt. Ltd. (PAN: AABCB 3671 Q) | Vs. | ITO, Ward-9(1), Kolkata |
| Appellant / (अपीलार्थी) | | Respondent / (प्रत्यर्थी) |

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| Date of Hearing / सुनवाई की तिथि | 01.12.2022 |
| Date of Pronouncement/ आदेश उद्घोषणा की तिथि | 05.01.2023 |
| For the Appellant/ निर्धारिती की ओर से | Shri Siddharth Jhajharia, A.R Shri Sujoy Sen, A.R Shri T. Kr. Majumdar, Advocate |
| For the Respondent/ राजस्व की ओर से | Shri P.P. Barman, Addl. CIT |

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 21.07.2022 for the AY 2019-20.

2. The assessee has challenged the order passed by the Ld. CIT(A) upholding the assessment order passed by the ADIT, CPC-Bangalore (hereinafter referred to as the

AO) wherein the AO has made the addition of Rs. 1,05,76,745/- by invoking the provision of Section 50C of the Act.

3. Facts in brief are that the assessee filed return of income on 31.10.2019 declaring total income of Rs. 35,55,038/-. During the year, the assessee has sold a property for Rs. 1,19,60,000/- the stamp value of which as registering authority was Rs. 2,25,36,745/-. The index cost was computed for the said property at Rs. 96,34,800/-. Accordingly, the assessee computed the gain of Rs. 23,25,200/- by subtracting indexed cost from the sale consideration. The assessee also invested Rs. 45,00,000/- in the specified bonds on 31.05.2019 and thus the gain resulting from the sale of property amounting to Rs. 23,25,200/- was adjusted against the said investments in bonds and consequently the gain from the sale property was shown as Nil. However, while processing the return, the AO added long term capital gain amounting to Rs. 1,05,76,745/- to the total income of the assessee by taking the stamp value as the deemed consideration.

4. Aggrieved by the order of assessee, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal by observing and holding as under:

“4.4. The appellant did not prosecute the appeal before me. This appeal has been filed by appellant claiming that the action of assessing officer is not supported by tax and laws and that it is in violation of its constitutional rights. In such a situation it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, in support of its claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant to prove its case, since an appeal is nothing but the claim of the appellant that he has been unduly, unjustifiably taxed. Thus onus is on the appellant to prove its case. The appellant has not availed any opportunity to do so. Total non-compliance on the part of the appellant leaves me with no option other than deciding the appeal judiciously, based on materials available on record.

4.5. Despite being given numerous opportunities of being heard appellant has not filed any written submissions. The intimations u/s 143(1) dated 23.10.2020 filed alongwith Form 35 shows total tax payable at Rs. 21,73,769/-, whereas appellant has stated that tax payable in intimation u/s 143(1)(a) is Rs. 8,31,488/-. Appellant has not furnished any submission in support of the grounds of appeal raised by it. In view of the foregoing discussion, the additions made by the assessing officer are upheld and all grounds of appeal are dismissed.”

5. After hearing the rival submissions and perusing the material on record, we observe that the AO has made addition by taking the value as per Stamp valuation

Authority instead of actual sale consideration which has resulted in an addition of Rs. 1,05,76,745/- to the income of the assessee. In our considered view, the said addition as made by the AO is wrong because if the AO was of the view that any addition was to be made owing the sale consideration being lower than the stamp value, then he is duty bound to refer to the DVO for determining the market value of the property and only then the addition could have been made. We note that Ld. CIT(A) decided the appeal ex-parte when the assessee did not appear on the various dates given. The assessee on the other hand pleads that it could not avail respond as the notices could not be served to the assessee. Under these circumstances, we are of the view that where the AO wants to substitute the value of Stamp Valuation Authority in place of actual sale consideration then the issue has to be referred to DVO first for ascertaining the value of the property, only then the addition can only be made after giving a fair opportunity to the assessee. This is the ratio laid down by the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT in GA No. 3686 of 2013, ITAT No. 221 of 2013 dated 13.03.2014. Considering the above ratio, we are of the view that ends of justice would be met if the case is restored to the file of the AO with a direction to refer the case to DVO and decide the issue after affording a reasonable opportunity to the assessee in accordance with law.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 5th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 5th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- B.S Industrial Equipments Pvt. Ltd., Block-B, Subham, P-267, Lake Town, Kolkata-700089.
2. Respondent – ITO, Ward-9(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata