

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.973/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

Smt. Manju Bai No.24, Perumal Mudali Street, Sowcarpet, Chennai – 600 079.	बनाम / Vs.	ITO Non-Corporate Ward-5(3), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAFPM-8658-P		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri D. Hema Bhupal(JCIT) –Ld. DR
सुनवाई की तारीख / Date of Hearing	:	08-12-2022
घोषणा की तारीख / Date of Pronouncement	:	11-01-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-5, Chennai [CIT(A)] dated 12-02-2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 07-03-2017. The grounds taken by the assessee read as under:

1. The order of the learned Commissioner Of Income (Appeals)-10, is wrong, illegal and opposed to facts of the instant case.
2. The lower authorities erred in disallowing the appellant's claim of relief u/s. 10(38) of Income Tax Act on the basis of suspicion and surmise and not based on uncontroverted documentary evidences.

3. The learned Assessing officer and the first appellate authority erred in disallowing the appellants claim of Long-Term Capital Gain under section 10(38) of the Income Tax Act and assessed the income from purchase and sale of shares under the head unexplained credits.
4. The learned CIT(A)-10 ought to have seen that in the case of the appellant the transaction of purchase and sale of shares are fully supported by uncontroverted Documentary evidences and payment of STT which establish the bona-fide of the appellants claim.
5. The learned CIT(A)-10, erred in law and facts in treating the transaction of purchase and sale of shares as bogus in nature despite providing salient evidences such as off market Purchase of shares vide contract note, sale of shares through recognized stock exchange covered by contract note, payments made through proper banking channels, Holding of shares in D-Mat Account from the instance of purchase till the date of sale and confirmation of payment of STT. The said uncontroverted evidences are overlooked both by the assessing officer and CIT(A) without any rhyme or reason.
6. The learned assessing officer & CIT(A)-10 erred in relying on the statement of third party rather than uncontroverted material evidences to assesses the income share transaction under the head unexplained credits. The investigation in the case of third party has no bearing on the appellant's transaction neither does the appellant have any control over the conduct of third party.
7. The learned CIT(A) erred in confirming the addition of Rs.15,96,385/- made by the assessing officer by invoking section 50C/56(2)(vii)(i) of the Income Tax Act. The learned CIT(A) failed to see that the assessing officer was hypothetical in the assessment order and was not even clear under which provision of the Income Tax Act the said addition is to made.
8. The learned CIT(A) ought to have seen that the agreement for the purchase of impugned property was made in April 2010 and for the purpose of arriving at FMV the assessing officer should have adopted the guideline value as on April 2010.
9. The learned CIT(A) erred in confirming the addition of Rs.71,62,560/- made under the head "Non-Admission on sale of Flats treated as Business income". The learned CIT(A) ought to have seen that the appellant is not in construction business and that the profit on construction activity was already offered in the hands of Shri Ramesh Kumar Jain and Dimple Kumari Jain under the head contract receipt.
10. The learned CIT(A) ought to have seen that a further addition of Rs.71,62,560/- being 6% of the total turnover in the hands of the appellant would tantamount to double jeopardy with the profit on construction activity already been offered by Shri Ramesh Kumar Jain and Dimple Kumari Jain.

As is evident, the assessee is aggrieved by confirmation of certain addition in the impugned order. Ground No.1 is general in nature. Ground Numbers 2 to 6 are related with assessee's claim u/s 10(38). Ground Numbers 7 & 8 concern addition of Rs.15.96 Lacs by invoking the provisions of Sec.50C / 56(2)(vii). Ground Numbers 9 & 10 are

related with addition of estimated income and unexplained investment in property arising out of construction activities.

2. The Ld. AR, referring to various documents, advanced arguments assailing the assessment framed by Ld. AO. The Ld. Sr. DR, on the other hand, justified the impugned additions. Having heard rival submissions and after due consideration of case records, our adjudication would be as under. The assessee being resident individual was assessed u/s 143(3) on 07.03.2017 wherein impugned additions were made. The same, upon confirmation by Ld. CIT(A), is in further appeal before us.

3. Long Term Capital Gains (LTCG)

3.1 The assessee earned LTCG on sale of 4200 shares of M/s Turbo Tech Engineering Ltd. and claimed the same to be exempt u/s 10(38). It was noted that the shares were purchased by the assessee for Rs.1.50 Lacs whereas the same were sold at exorbitant price of Rs.20.11 Lacs. The purchase of shares was made through broker. However, no confirmation was received from share broker despite notices. It was also noted that the share were transferred in assessee's name only on 17.04.2013 and the same were sold within a short span on 08.05.2013. The assessee could not furnish any other details. The Ld. AO also perused findings of Kolkata investigation Wing wherein the shares of M/s Turbo Tech Engineering Ltd. was identified as one of the BSE listed penny stock which was used for generating bogus Long Term Capital Gain (LTCG). The modus operandi to generate such gains was also noted. The share broker was also identified as paper entity. Accordingly, the sale price of Rs.20.11 Lacs was treated as 'income from other sources'. The Ld. CIT(A), confirmed the findings of

Ld. AO and held that the selling rates were hiked artificially in a concerted manner. Aggrieved, the assessee is in further appeal before us.

3.2 From the facts, it emerges that the assessee has reflected exorbitant gain on sale of scrip which has been identified as penny stock by investigation wing. The share brokers through whom the shares were sold could not confirm the transactions and no details could be furnished by the assessee in support of genuineness of the transactions. The scrip was identified as penny stock scrip. Therefore, the orders of lower authorities, on this issue, could not be faulted with. The corresponding grounds raised by the assessee stand dismissed.

4. Short Term Capital Gain (STCG)

4.1 The assessee reflected Short Term Capital Gains (STCG) on sale of retained portion of undivided share of land. The Ld. AO arrived at difference of Rs.15.96 Lacs in terms of Sec.50C and put the assessee to show cause notice. It was submitted by the assessee that the land was purchased under an agreement to sale dated 17.04.2010. The joint sellers of the property, vide power of attorney dated 26.05.2010, appointed assessee's son Shri Praveen Kumar to act on behalf of the principals. The assessee purchased land for Rs.190.59 Lacs which is evident from Trial Balance as on 30.03.2011.

4.2 The construction on the land was done through Shri Ramesh Kumar Jain for construction of shopping complex at Ground, 1st and 2nd Floor under an agreement dated 01.06.2011 with M/s Saroj Foundation. The construction of 3rd, 4th and 5th floor was done through Mrs. Dimple Kumari Jain under an agreement dated 06.06.2011 with M/s Saroj Construction. The profit arising from construction activities

has been reflected by Shri Ramesh Kumar Jain and Mrs. Dimple Kumari Jain in their respective Income Tax Returns. Thus, the land was sold by the assessee whereas constructed area has been sold by other parties, the construction of which has been done by M/s Saroj Construction and Saroj Foundation.

4.3 The Ld. AO, considering the fact that the assessee herself admitted short term capital gains and in view of the fact that the properties were sold by Shri Praveen Kumar, a power agent of the original landlord and not power agent of the assessee, added the amount of Rs.15.96 Lacs to the income of the assessee. The Ld. CIT(A) confirmed the same.

4.4 The facts as noted by lower authorities could not be controverted before us. Therefore, we see no reason to deviate from the orders of lower authorities on this account. The corresponding grounds stands dismissed.

5. Profit on Sale of flats constructed on undivided land sold by the assessee and unexplained investment in property

5.1 It was noted by Ld. AO that total area of the property was 2980 square feet out of which the assessee retained 595 square feet. The land and building in the form of flats and shops was sold to others. Total built-up area as contained in 5 storied building was 16610 square feet out of which an area of 3346 square feet was retained by the assessee. The area sold by the assessee was 13264 square feet and assuming sale rate of 9000 per square feet, the area would have been sold for Rs.1193.76 Lacs apart from the portion retained by the assessee. The Ld. AO, considering the replies of the assessee, held that the assessee and her family members constructed the building but

did not admit any income. Accordingly, Ld. AO estimated profit rate of 6% on the same and added an amount of Rs.71.62 Lacs to the income of the assessee. The Ld. AO made another addition of Rs.26.45 Lacs on the allegation that the assessee did not fully admit the value of construction. The Ld. CIT(A) confirmed both the additions against which the assessee is in further appeal before us.

5.2 From the facts as noted by us in preceding para 4.2, the undisputed position that emerges is that the assessee has merely sold the land and no construction has been done by the assessee. The construction activities have been done by Shri Ramesh Kumar Jain and Mrs. Dimple Kumari. Both these persons have admitted business income from contract receipts which are evident from their respective Income tax Returns as placed on page nos. 45 to 71 of the paper-book. This being so, no income could be attributed to the assessee against construction activities. Therefore, both these additions are not sustainable in law. We order so. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order.

Conclusion

6. The appeal stands partly allowed in terms of our above order.

Order pronounced on 11th January, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 11-01-2023

EDN/-

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF