

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.932/Chny/2020
निर्धारण वर्ष /Assessment Year: 2011-12

M/s.Apex Transworld Pvt. Ltd.,
38, 2nd Main Road,
R.A. Puram,
Chennai-600 028.
[PAN: AADCA 7034 L]
(अपीलार्थी/Appellant)

v. The Dy. Commissioner of
Income Tax,
Corporate Circle-1(1),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.K. Ramesh Babu, CA
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing : 03.01.2023
घोषणा की तारीख /Date of Pronouncement : 11.01.2023

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 07.08.2020, and pertains to assessment year 2011-12.

2. At the outset, we find that there is a delay of 38 days in appeal filed by the assessee. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and which needs to be excluded for

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computing limitation in view of judgment of the Hon'ble Supreme Court in Miscellaneous Petition No.21 of 2022 in **Suo Motu** Writ Petition (C) No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

2.1 The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

2.2 Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in Miscellaneous Petition No.21 of 2022 in **Suo Motu** Writ Petition (C) No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

3. The assessee has raised the following grounds of appeal:

1. The learned appellate authority has erred in considering the claim as fresh claim during the course of assessment.

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2. *The learned appellate authority, has erred in considering the claim which is mistake apparent from the return filed and ought to be addressed even the claim is not made the appellant.*

3. *The appellate authority considers that the proceedings u/s.148 is for the benefit of the revenue and should not consider mistake apparent on record is against the law.*

4. *Appellate authority erred in not considering building as long term capital asset which is held for more than three years and depreciation has not been claimed, only because the claim has been made during 148 proceedings.*

5. *Appellate authority erred in considering case laws " Taxman 442(SC) Commissioner of income tax vs sun engineering works (p) ltd " in Supreme court and "Satyamangalam Agriculture Cooperative Marketing Society Ltd vs Income tax officer" in Madras High Court is against facts of the present case, in both the cases there are claims being made, and in this present case, the mistake has to be rectified.*

6. *Your appellant insist on the CBDT circular 14{XL-35) dated 11th April 1955, where the department should not take advantage of ignorance of an assessee as to his rights, which has not considered.*

7. *Your appellant emphasize order of National Thermal Power Co. Ltd. vs CIT229 STR P.2S3 (SC) " The purpose of the assessment proceedings before the tax authorities is to assess correct the tax liability of an assessee accordance with law."*

8. *For the above reasons, the order of the learned assessing officer has to directed to modify accordingly.*

4. The brief facts of the case are that the assessee is engaged in the business of computer rentals and filed its return of income for the AY 2011-12 on 30.09.2011 admitting a loss of Rs.42,42,155/-. The assessment for the impugned assessment year was completed u/s.143(3) of the Act, on 18.03.2014 and assessed loss at Rs.31,42,155/-. The assessment has been subsequently re-opened u/s.147 of the Act, for the reasons recorded, as per which, income chargeable to tax had been escaped assessment on account of computation of short term capital gains from sale of asset. The assessment has been completed u/s.143(3) r.w.s.147 of the Act, and determined total income of Rs.85,16,913/- by re-computing short and long term capital gains derived on account of sale of asset. The AO while completing the assessment, has rejected the fresh claim made by the assessee towards computation of long term capital gains on building by

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relying upon the decision of the Hon'ble Supreme Court in the case of CIT v. M/s.Sun Engineering Workings (P.) reported in [1992] Supp. 1 SCR 732

a. The relevant findings of the AO are as under:

5. Disallowance of Excess claimed cost of acquisition:

5.1. The assessee company purchased 3rd floor and 4 floor of capital tower, 180 Kodambakkam High Road, Nungambakkam, Chennai-34 from FLSMIDTH Private Limited during the year 2006 and the assessee company also acquired cubicles, workstation and electrical and electronic items from the same company.

5.2. The assessee company sold the above properties as under:

Third floor (Building and undivided share of land) to M/s.Venkatabalaji Automobile Private Limited, Chennai for a consideration of 7, 00, 98,000 / -(Rupees seven crore ninety eight thousand only)

Fourth floor (Building and undivided share of land) to M/s.Keyam Properties, Chennai for a consideration of Rs.6, 30,00, 000/-(Rupees six crore thirty lakh only).

5.3. While offering the same as income for the Assessment year 2011-12 under capital gain, the assessee company made the following:

Particulars	Amount(Rs.)	Amount (Rs.)	Amount (Rs.)
sales consideration of land 3rd floor	3,68,00,000	-	-
Less: Indexed cost of acquisition	2,25,09,323	1,42,90,677	-
Sales consideration of land 4th floor	3,63,45,000	-	-
Less: Indexed cost of acquisition	2,22,38,007	1,41,06,993	-
Total long term capital gain	-	-	2,83,97,670
Sales consideration of building 3 rd floor	3,32,98,000	-	-
Less: Cost of acquisition	4,64,47,318	-	-
Short term capital loss	-	-1,31,49,318	-
Sales consideration of building 4th floor	2,66,55,000	-	-
Less: Cost of acquisition	4,31,77,658	-	-
Short term capital loss	-	-1,65,22,658	-
Total short term capital loss	-	-	-2,96,71,976
Net short term capital loss	-	-	-12,74,306

5.4. While doing so the assessee company has considered the cost of acquisition in respect of building erroneously @ Rs.4,64,47,318/- in respect of third floor and @ Rs.4,31,77,658/- in respect of fourth floor by including the cost of cubicles workstations, furniture, electrical and electronic items twice since the same was already considering in fixing the cost of building at the time of acquisition. The original cost of acquisition; building was only Rs.4,15,53,578/- in respect of third floor and Rs.38280179/- in respect of fourth floor and thereby claimed excess cost of acquisition to the extent of Rs.48,93,740/- for third floor and Rs.48,97,479/- for fourth floor.

5.5. As per the above discussion, the excess claimed cost of acquisition amounting to Rs.97,91,219/- (Rupees ninety-seven lakh ninety one thousand two hundred and nineteen only) is hereby disallowed and the income under capital gain for the assessment year 2011-12 is recomputed as under:

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Particulars	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
sales consideration of land 3 rd floor	3,68,00,000	-	-
Less: Indexed cost of acquisition	2,25,09,323	1,42,90,677	-
Sales consideration of land 4 th floor	3,63,45,000	-	-
Less: Indexed cost of acquisition	2,22,38,007	1,41,06,993	-
Total long term capital gain	-	-	2,83,97,670
Sales consideration of building 3 rd floor	3,32,98,000	-	-
Less: Cost of acquisition	4,15,53,578	-	-
Short term capital loss	-	-82,55,578	-
Sales consideration of building 4 th floor	2,66,55,000	-	-
Less: Cost of acquisition	3,82,80,179	-	-
Short term capital loss	-	-1,15,25,179	-
Total short term capital loss	-	-	-1,98,80,757
Taxable long term capital gain	-	-	85,16,913

5.6 The assessee's fresh claim of long term capital gain on buildings against the short term capital gain originally is not considered in this order in view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Income-Tax vs M/S. Sun Engineering Works (P.) 1992 Supp 1 SCR 732 a, dated 17 September, 1992 in which the Hon'ble Apex Court has held as under:

"Therefore our answer to the question formulated by the High Court and noticed in the earlier part of this judgment is that in the reassessment proceedings it is not open to an assessee to seek a review of the concluded item, unconnected with the escapement of income, for the purpose of computation of the escaped income."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its arguments and submitted that when the assessee has made a fresh claim by correcting certain mistakes in filing original return of income, then the same needs to be entertained by the AO to determine correct tax payable for the relevant assessment year. The assessee had also taken support from the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT reported in [1998] 229 ITR 383 (SC). The Ld.CIT(A) after considering relevant submissions of the assessee and also taken into certain judicial precedents, including the

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decision of the Hon'ble Supreme Court in the case of M/s.Sun Engineering Workings (P.) (supra) held that re-assessment proceedings u/s.147 of the Act, is for the benefit of Revenue and not for assessee and further said proceedings are aimed at gathering escarpment of assessment and same cannot be allowed/converted as revisional or review proceedings. Thus, the Ld.CIT(A) rejected the arguments of the assessee and sustained the findings of the AO in rejecting fresh claim made by the assessee. The relevant findings of the Ld.CIT(A) are as under:

5. I perused the grounds of appeal, Assessment Order, AR's submission and material available on record. My observations in respect of the grounds raised by the appellant are as follows:

6.1 Assessee filed the original return of income for the AY 2011-12 on 30/09/2011 admitting NIL income and declaring short term capital loss from the sale of the property and claiming current year loss of Rs.42,42,155/-. Assessing Officer passed order u/s 143(3) on 18.03.2014 assessing the total loss at Rs.31,42,155/-.

Assessing Officer issued notice u/s 148 on 27/03/2018. In response to the said notice, the appellant company filed its return of income for the AY 2011-12 on 17/04/2018 admitting NIL Income and declaring short term capital loss from the sale of the property and claiming current year loss of Rs.42,42,155/-,

During the reopened assessment proceedings, the assessee claimed that the property sold was a long term capital asset. Assessing Officer did not consider the claim in view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs M/s.Sun Engineering Works (P.) 1992 Supp 1 SCR 732 dated 17 September, 1992.

6.2 In the grounds of appeal, the appellant contested that the Learned Assessing Officer had not appreciated that building was held for more than three years and in spite of request made, the capital asset was not considered as long term which is against the law,

6.3 In the written submission, the A.R stated that when the A.O has the power to disallow or modify a claim of the assessee on the basis of enquiry u/s.142 before assessment, the assessee will also have a right to make a fresh claim or to modify a claim before the completion of assessment.

6.4.1 In [1992] 64 Taxman 442 (SC) In Commissioner of Income-tax vs Sun Engineering Works (P.) Ltd, Hon'ble Supreme Court of India held -Proceedings under section 147 are for benefit of revenue and not an assessee and are aimed at gathering 'escaped income' of an assessee, and same cannot be allowed to be converted as 'revisional' or 'review' proceedings. Claims which have been disallowed in original assessment proceeding cannot be permitted to be reagitated on assessment being reopened for bringing to tax certain income which had escaped assessment,

6.4.2 In [2013] 40 taxmann.com 45 (Madras) Satyamangalam Agricultural Producer's Co-operative Marketing Society Ltd vs Income-tax Officer- Assessee, a co-operative society, claimed exemption under section SOP from sale of consumer goods and on sale of liquor.

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Noticing exemptions claimed by assessee were not eligible, Assessing Officer reopened assessment after issuing notice to assessee under section 148. In response to said notice, assessee filed adjusted statement claiming deduction under section 80P(2)(d) on interest income on investment from a Co-operative Bank and on reserve fund interest received from above bank. These fresh claims made by assessee were rejected by Assessing Officer -

Hon'ble High Court of Madras held - Since claim made by assessee with regard to interest income on investment was not made in original return and only a fresh claim was made for first time in return filed in pursuance of notice under section 148, such fresh claims could not be allowed as proceedings under section 147 were for benefit of revenue,

6.5 Respectfully following above stated decisions of the Hon'ble Supreme Court and Hon'ble High Court of Madras, not considering the fresh claim of the assessee in the reassessment proceedings is upheld.

6. The Ld.AR for the assessee submitted that the Ld.CIT(A) is erred in appreciating the fact that the assessee can correct mistakes in reporting certain incomes in the return of income filed u/s.139(1) of the Act, when such mistakes have been noticed even during re-assessment proceedings. Since, the AO is required to compute legitimate tax payable by the assessee for any assessment year, he ought to have admitted fresh claim made by the assessee by correcting computation of long term capital gains and determined correct amount of tax payable by the assessee. However, the AO as well as the Ld.CIT(A) rejected the fresh claim made by the assessee without assigning proper reasons. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of M/s.National Thermal Power Co. Ltd. (supra).

7. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the re-assessment proceedings are for the benefit of the Department to assess escapement of income for tax. However, same cannot be allowed as beneficial provision for the assessee to make a fresh

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claim. The AO as well as the Ld.CIT(A) after considering relevant facts has rightly rejected the claim of the assessee and their orders should be upheld.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts with regard to the impugned disputes are that during the Financial Year relevant to the AY 2011-12, the assessee has sold land and building and other assets and computed short term capital gains while filing return of income for the impugned assessment year. The assessment has been originally completed u/s.143(3) of the Act, and accepted income returned by the assessee. The assessment has been subsequently re-opened to tax escaped income on account of excess claim of cost of acquisition and during the course of assessment proceedings, the AO has re-computed short term capital gains derived from sale of assets by taking into correct cost of acquisition for the asset. Up to this point, there is no dispute. In fact, the assessee has accepted the fact that there is an escapement of income on account of excess claim of cost of acquisition, but the only dispute is with regard to fresh claim made by the assessee for computation of long term capital gains on sale of building as against short term capital gains computed while filing return of income. The assessee has made a fresh claim by filing a revised computation of long term capital gains on sale of building on the ground that asset is a long term asset which is held for more than specified period. The AO rejected the fresh claim made by the assessee by following the decision of the Hon'ble Supreme Court in the case of M/s.Sun Engineering

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Workings (P.) (supra), wherein, it has been clearly held that re-assessment is for the benefit of the Department and the assessee cannot make any fresh claim which is against the interest of the Department. Now, the Ld.Counsel for the assessee argued that even if assessee makes a wrong claim, it is the duty of the AO to determine correct amount of tax payable by the assessee in accordance with law. Therefore, when the assessee has corrected mistakes in computing tax payable for the relevant assessment year, the AO ought to have admitted fresh claim and determined correct tax payable for the relevant assessment year. We find that the assessment has been re-opened to assess income escaped from tax on account of excess claim of cost of acquisition of asset. The assessee has made a fresh claim with regard to the issues which are not part of re-assessment proceedings and further which had attained finality at the time of original assessment proceedings itself. Therefore, in our considered view there is no scope for the assessee to make a fresh claim which is not beneficial to the interest of the Revenue has held by the Hon'ble Supreme Court in the case of M/s.Sun Engineering Workings (P.). (supra). Further, the Hon'ble jurisdictional Madras High Court in the case of Satyamangalam Agricultural Producer's Co-operative Marketing Society Ltd. v. ITO [2013] 40 taxmann.com 45 (Madras), has considered an identical issue and held that fresh claims which are detrimental to the interest of the Revenue, could not be allowed in proceedings u/s.147 of the Act, because said proceedings are for the benefit of the Revenue. Therefore, we are of the considered view

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that there is no error in the reasons given by the Ld.CIT(A) to reject the arguments of the assessee and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced on the 11th day of January, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 11th January, 2023.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF