

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.928/Chny/2018
निर्धारण वर्ष /Assessment Year: 2012-13

Mr.N.Dheenadhayalan,
A2, Fth 2, 4th Floor,VGN
Minerva,No.273, Gurusamy Salai,
Nolumbur, Chennai-600 095.

v. The Income Tax Officer,
Non-Corporate Ward-16(5),
Chennai.

[PAN: AAEPD 2529 H]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.Y.Sridhar, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.D. Hema Bhupal, JCIT
सुनवाई की तारीख/Date of Hearing	:	06.02.2023
घोषणा की तारीख /Date of Pronouncement	:	15.02.2023

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 18.09.2017 and pertains to assessment year 2012-13.

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

1 The Assessment Order of the Income Tax Officer Non Corporate Ward 16(5) and appellate order of CIT (Appeal-4) Chennai is contrary to the facts and circumstances of the case hence bad in law.

2. The CIT Appeal has not considered the agreement of sale of shares and adopted sale consideration of equity shares Rs.4,00,40,384/- instead of Rs.3,03,74,383/- actually received by the assessee.

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3. The Inflated Index Value Rs.1,18,56,770/- as calculated by the Assessing Officer himself was not considered while completing the Assessment but taken Rs.1,00,51,440/- as wrongly calculated by the Assessee.

4. Assessing Officer has disallowed 50% of the renovation expenses which was not contested by the Assessee but the CIT Appeal has only allowed Rs.4,50,000/- as renovation Expenses and enhance the Assessed Income, which is against the law.

5. The CIT Appeal wrongly enhance the income by Rs.36,74,206/-.

6. The Assessee craves the leave adducing additional grounds of appeal at the time of hearing appeal.

3. The brief facts of the case are that during the Financial Year relevant to the AY 2012-13, the assessee had entered into a Memorandum of Understanding (in short "MoU") with M/s.Tecpro Systems Ltd., for transfer of shares in M/s.Ambica Projects (India) Pvt. Ltd., for a consideration of Rs.8,28,47,887/-. The said MoU has been acted upon by entering into Share Purchase Agreement between the assessee and M/s.Tecpro Systems Ltd., on 19.08.2011 and agreed to transfer shares of M/s.Ambica Projects (India) Pvt. Ltd., for a consideration of Rs.8,28,47,887/-. As per Clause-2.3 of said Share Purchase Agreement, it was further stated that shareholders of M/s.Ambica Projects (India) Pvt. Ltd., acknowledged the receipt of a sum of Rs.6,28,47,887/- and shared in the ratio of their shareholding. The assessee has computed capital gains from sale of shares by adopting 48.33% share of consideration of Rs.6,28,47,887/- which works out to Rs.3,03,74,383/-. The assessee, while computing capital gains has claimed deduction towards brokerage paid amounting to Rs.18,85,437/-. The assessee had also claimed indexed cost of acquisition at Rs.1,00,51,440/- and arrived at long term capital gains of Rs.1,12,35,820/- after claiming exemption u/s.54F of the Act, for

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Rs.1,55,98,415/-. The AO, however, was not convinced with the details filed by the assessee for computation of capital gains and thus, on the basis of evidences filed by the assessee has re-computed assessee's share of consideration for transfer of shares at Rs.4,00,40,384/- by adopting Rs.8,28,47,887/- as consideration for transfer of 100% shares of M/s.Ambica Projects (India) Pvt. Ltd. The AO while computing capital gains has allowed deduction towards brokerage expenses of Rs.18,85,437/- to the share of assessee of Rs.9,11,231/- being 48.33% of total brokerage paid for transfer of shares. The AO had also computed indexed cost of acquisition at Rs.1,18,56,770/-, however, restricted the claim of cost of acquisition at Rs.1,00,51,414/- as claimed by the assessee. Thus, the AO has arrived at long term capital gains of Rs.2,90,77,713/- and then, allowed deduction u/s.54F of the Act, at Rs.1,13,27,719/- and determined taxable long term capital gains at Rs.1,77,49,994/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed all details, including MoU between parties followed by Share Purchase Agreement and other relevant details, including computation of indexed cost of acquisition, expenses of transfer being brokerage paid for transfer of shares and amounts spent for purchase of another residential property to claim deduction u/s.54F of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts upheld, full value of consideration adopted by the AO at Rs.4,00,40,384/-

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as against assessee's claim of Rs.3,03,74,383/- by holding that the assessee could not adduce any evidences for non-consideration of balance Rs.2 Crs. consideration withheld by the purchaser for non-fulfillment of certain conditions of Share Purchase Agreement. The Ld.CIT(A) had also restricted indexed cost of acquisition as allowed by the AO at Rs.1,00,51,440/-, although, he had admitted that the correct amount of indexed cost of acquisition works out to Rs.1,18,56,770/-. The Ld.CIT(A) had also upheld deduction u/s.54F of the Act, as allowed by the AO on the ground that the assessee could not adduce any evidence for balance amount spent for purchase of property. However, the Ld.CIT(A) has enhanced the assessment by disallowing deduction claimed u/s.54F of the Act, and also by disallowing total expenditure incurred for brokerage expenses on the ground that the assessee could not file any evidences to prove payment of brokerage amounting to Rs.18,85,437/-. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A).

5. The Ld.Counsel for the assessee submitted that the Ld.CIT(A) erred in upholding the action of the AO in adopting sale consideration transfer of equity shares at Rs.4,00,40,384/- instead of Rs.3,03,74,383/- actually received by the assessee. The Ld.Counsel for the assessee referring to recitals of Share Purchase Agreement submitted that the parties have reduced in writing revised consideration for transfer of shares and as per which, the agreed consideration for transfer of shares is Rs.8,28,47,887/-.

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Out of which, a sum of Rs.6,28,47,887/- has been paid to the sellers. The balance amount of Rs.2 Crs. has been withheld for fulfillment of certain conditions and agreed that in case, the assessee and other sellers does not satisfy the conditions, the balance amount of Rs.2 Crs. shall not be paid to the sellers. The Ld.Counsel for the assessee further referring to letter from M/s.Tecpro Systems Ltd., dated 14.05.2012 submitted that the purchasers have confirmed that the final sale consideration for transfer of shares of M/s.Ambica Projects (India) Pvt. Ltd., has been agreed at Rs.6,28,47,887/- . The AO and the Ld.CIT(A) ignoring the above facts simply computed capital gains on the basis of conditional price agreed by the parties and computed long term capital gains. The Ld.Counsel for the assessee further referring to indexed cost of acquisition submitted that the AO and the Ld.CIT(A) accepted the fact that correct amount of indexed cost of acquisition works out to Rs.1,18,56,770/-. However, allowed a sum of Rs.1,00,51,440/- only on the ground that the assessee has claimed the amount ignoring the fact that while computing capital gains, the AO should allow correct amount of cost of acquisition. The Ld.Counsel for the assessee further referring to enhancement of assessment by the Ld.CIT(A) submitted that although, the AO has allowed brokerage expenses of Rs.9,11,231/-, but the Ld.CIT(A) enhanced the assessment and disallowed entire amount of brokerage expenses of Rs.18,85,437/- without appreciating the fact that the assessee has filed necessary evidences for payment of brokerage.

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6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not adduce any evidences except letter from the buyers that the consideration has been restricted to Rs.6,28,47,887/-. Further, when the assessee has agreed to transfer the shares for consideration Rs.8,28,47,887/-, how it has been reduced to 6.28 Crs. has not been explained, except stating that parties have agreed to reduce the sale price for non-fulfillment of certain conditions. Therefore, the AO has rightly adopted consideration as agreed between the parties and computed capital gains after allowing indexed cost of acquisition and expenses of transfer and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that as per MoU between the assessee and M/s.Tecpro Systems Ltd., dated 30.06.2011, the parties have agreed to transfer 100% equity share capital of M/s.Ambica Projects (India) Pvt. Ltd. for a consideration of Rs.10,28,47,887/-. It was also not in dispute as per Share Purchase Agreement that said consideration has been reduced in writing, to an amount of Rs.8,28,47,887/- for the reasons stated in Share Purchase Agreement vide Clause-2.1(a). It was also not in dispute as per Share Purchase Agreement Clause-2.3 that the purchaser has paid an amount of Rs.6,28,47,887/- only. Further, as per Clause-2.2 of Share Purchase Agreement, a sum of Rs.2 Crs. will be payable by the Purchaser to sellers as variable consideration on fulfilling certain conditions. It was

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the arguments of the assessee before the AO and the Ld.CIT(A) that because of non-fulfillment of conditions prescribed in Share Purchase Agreement, the final price for transfer of shares has been restricted to Rs.6,28,47,887/- only. To this effect, the assessee has filed a letter from M/s.Tecpro Systems Ltd., dated 14.05.2012, where it was confirmed that final sale consideration stands reduced to Rs.6,28,47,887/- after reducing the conditional variable payment of Rs.2 Crs. for non-fulfillment of certain conditions. From the above, it appears that the parties have finally agreed to reduce the price for transfer of equity shares of M/s.Ambica Projects (India) Pvt. Ltd., to Rs.6,28,47,887/- only. But, fact remains that whether letter from the buyer M/s.Tecpro Systems Ltd., was made available to the AO or not, is not forthcoming from the records. Therefore, we are of the considered view that the matter needs to be re-examined by the AO to ascertain correct amount of sale consideration and thus, we set aside the issue to the file of the AO and direct the AO to re-consider the issue of computation of capital gains from sale of shares after ascertaining correct amount of consideration from the buyer and if necessary, the AO may obtain all information by exercising his powers conferred u/s.131 & 133(6) of the Act. As regards deduction towards indexed cost of acquisition, we find that the AO as well as the Ld.CIT(A) did not dispute the fact that the correct amount of indexed cost of acquisition works out to Rs.1,18,56,770/- . However, restricted deduction to the extent of amount claimed by the assessee at Rs.1,00,51,440/-. We find that the AO and the Ld.CIT(A)

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grossly erred in not allowing correct amount of indexed cost of acquisition, even though, both admitted the fact that what was claimed by the assessee is not correct amount of indexed cost of acquisition. In our considered view, the AO while computing capital gains should allow deduction towards correct amount of cost of acquisition, even in a case, where the assessee has made an incorrect claim of cost of acquisition and thus, we direct the AO to allow correct amount of cost of acquisition at Rs.1,18,56,770/- instead of amount claimed by the assessee at Rs.1,00,51,440/-. As regards deduction towards expenses of transfer being brokerage, although, the AO has allowed assessee's share of expenses of Rs.9,11,231/-, but the Ld.CIT(A) enhanced the assessment and disallowed 100% of expenses at Rs.18,85,437/-, even though, the assessee has submitted necessary evidences to prove the claim of expenses of transfer and thus, we direct the AO to allow brokerage expenses incurred by the assessee in connection with share transfer while computing long term capital gains.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 15th day of February, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 15th February, 2023.

TLN

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

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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