

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

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

आयकर अपील सं./ITA No.790/Chny/2020
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.Archean Realty P. Ltd.,
(Now known as
M/s.Archean Industries Pvt. Ltd.),
New No.2, Old No.32,
North Crescent Road,
G.N.Chetty Road,
T. Nagar,
Chennai-600 017.

v. The Dy. Commissioner-
of Income Tax,
Central Circle-1(1),
Chennai.

[PAN: AADCR 4383 D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.M.Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 01.03.2023
घोषणा की तारीख /Date of Pronouncement : 31.05.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 30.07.2020 and pertains to assessment year 2015-16.

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

1. The order of the Commissioner of Income Tax (Appeals) - 1, Chennai dated 30.07.2020 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

:: 2 ::

2. The CIT(Appeals) erred in sustaining the quantification of capital loss amounting to Rs.19,94,46,822/- upon negating the claim of transfer happened relating to the property transaction under scrutiny relating to the previous year relevant to the assessment year under consideration and consequently erred in re-computing the taxable total income without assigning proper reasons and justifications.

3. The CIT (Appeals) failed to appreciate that the transfer within the scope of Section 2(47) of the Act took place during the assessment year under consideration for the purpose of validating the reckoning capital gains/loss especially in view of the possession being handed over during the previous year relating to the assessment year 2015-16.

4. The CIT (Appeals) failed to appreciate that the sale agreement entered into during the assessment year 2014-15 was unregistered thereby vitiating the presumption of transfer within the scope of Section 2(47)(v) of the Act and further ought to have appreciated the judicial trend in this regard would negate the presumption of transfer during the assessment year 2014-15 especially in view of the ownership being intact with the Appellant during assessment year 2014-15.

5. The CIT (Appeals) failed to appreciate that in any event the Assessing Officer having not disputed the claim of the capital loss, the denial of such claim on technical stand was wrong, erroneous, incorrect and unsustainable in law and ought to have appreciated that having not disputed the fact of handing over the possession during the assessment year under consideration which extinguished the right of the Appellant over the property, the denial of the claim of making the computation of long term capital loss in relation thereto was wrong and incorrect.

6. The CIT (Appeals) failed to appreciate that the provisions of Section 2(47) (v) of the Act was wrongly interpreted and ought to have appreciated that the provisions of Section 53A of the Transfer of Property Act, 1882 was not bodily lifted and incorporated in Section 2(47)(v) of the Act while fortifying the reckoning of transfer based on possession was correct and sustainable in law in so far as the present assessment year under consideration.

7. The CIT (Appeals) erred in sustaining the denial of TDS credit to the tune of Rs.40,00,000/- on the presumption that the transfer did not take place during the assessment year under consideration while computing the tax liability without assigning proper reasons and justifications.

8. The CIT (Appeals) failed to appreciate that the Assessing Officer having noticed the fact of not claiming the TDS credit during the assessment year 2014-15 despite the same being reflected in Form No. 26AS, ought to have allowed the claim for such refund of TDS credit for which the Appellant was otherwise entitled to, thereby negating the relating findings in the impugned order.

9. The CIT (Appeals) failed to appreciate that having not disputed the transaction and the loss arising from the said transaction, the action of the Assessing Officer to deny the grant of refund on TDS credit from such transaction was wholly unjustified and not sustainable in law.

10. The CIT (Appeals) failed to appreciate that the provisions of Rule 37BA r.w.s 199 of the Act had no application to the facts of the case and further ought to have appreciated that the wrong interpretation of the said provisions while the said provisions in the Income Tax Rules, 1962 having not specifically debarred the claim for the TDS credit in the assessment year under consideration while permitting the carry forward of such TDS credit from the earlier assessment year even if the income is assessable in the said earlier assessment year, the entitlement of such TDS credit in the subsequent assessment year namely the assessment year under consideration would get fortified thereby negating the interpretation attempted in the impugned order.

11. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

:: 3 ::

12. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts of the case are that the assessee company is engaged in the business of real estate development filed its return of income for AY 2015-16 on 29.09.2015 admitting total income of Rs.NIL after claiming current year loss of Rs.19,96,80,144/-. The case was selected for scrutiny and during the course of assessment proceedings, it is seen from the P&L A/c that the assessee company had debited a sum of Rs.14.77 Crs. towards loss on sale of land and disallowed the same in the statement of computation of total income. It was further noted that the assessee had claimed long term capital loss of Rs.19,94,46,822/- towards sale of land. The AO called upon the assessee to furnish necessary details. In response, the assessee company has submitted copy of the agreement dated 12.06.2013 with M/s.Appaswamy Real Estate Ltd., towards sale of property at Porur Village, Ambattur Taluk, Thiruvallur District, comprising of 1.25 acres, for a consideration of Rs.40 Crs. The assessee had also filed ledger extracts of sale of land in the books of accounts and necessary consideration received from the buyer and claimed that although, full consideration has been received in the FY relevant to the AY 2014-15, but possession of the property has been handed over in all respects to the buyer in the FY 2014-15 relevant to the AY 2015-16, and thus, it has computed long term capital loss from sale of property for AY 2015-16. The AO, however, was not convinced with the explanation of the assessee and according to the AO, entire sale consideration of Rs.40 Crs. was received by the assessee in the FY 2014-15 relevant to the AY 2014-15. The last

:: 4 ::

payment was received on 28.03.2014. Therefore, the AO opined that transfer of property took place in terms of provisions of Sec.2(47)(v) of the Act, for AY 2014-15 only, and thus, rejected arguments of the assessee and disallowed long term capital loss claimed amounting to Rs.19,94,46,822/-.

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 detailed written submissions on the issue, which has been reproduced at Para No.4 on page Nos.6-12 of the order of the Ld.CIT(A). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that transfer as defined u/s.2(47)(v) r.w.s.53A of Transfer of Property Act, 1882, had taken place in the FY relevant to the AY 2015-16, because, the assessee had handed over possession of the property to the buyer with necessary documents, even though, full amount of consideration has been received in the FY 2013-14. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of fact that entire sale consideration has been paid in the FY 2013-14 relevant to the AY 2014-15 only, observed that transfer as defined u/s.2(47)(v) r.w.s.53A of Transfer of Property Act, 1882, had taken place for AY 2014-15 only, but not for AY 2015-16 as claimed by the assessee. Therefore, rejected arguments of the assessee and sustained disallowance of capital loss for AY 2015-16. In so far as disallowance of credit for TDS, the Ld.CIT(A) by referring Rule 37BA(1) of Income Tax Rules, 1962, and Sec.199(3) of the Act, opined that

:: 5 ::

credit for TDS can be given only in the year in which income pertains to said TDS is offered to tax. Since, capital loss is not included in the income for AY 2015-16, the credit for TDS cannot be allowed to the assessee. Therefore, rejected arguments of the assessee and upheld rejection of credit for TDS for AY 2015-16. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.Counsel for the assessee submitted that the Ld.CIT(A) erred in sustaining disallowance of capital loss amounting to Rs.19,94,46,822/- upon negating the claim of transfer happen relating to the property and scrutiny for the previous year relevant to the AY under consideration ignoring specific provisions of Sec.2(47)(v) r.w.s.53A of Transfer of Property Act, 1882, where, it has been clearly held that any transaction which involves transfer of possession of property shall be regarded as transfer which allows possession of any immovable property in part performance of contract of nature referred to sec.53A of Transfer of Property Act, 1882. He further submitted that if you go through the details of transaction of sale of property, the assessee has transferred the property by way of an unregistered agreement dated 12.06.2013 and also received consideration for FY 2013-14 relevant to the AY 2014-15. However, the buyer and seller both confirmed that the possession of the property was handed over to the buyer on 18.04.2014, which falls under AY 2015-16 only. Further, the Sale Deed is not executed even in the AY 2015-16. Therefore, when the assessee has computed capital gains from transfer of

:: 6 ::

property on the basis of hand over of possession, there is no reason for the AO to disallow capital loss for AY 2015-16. In so far as credit for taxes, he submitted that as per provisions of Sec.199(3) r.w.r.37BA(1) of the Income Tax Rules, 1962, credit for TDS shall be given for assessment year for which such income is assessable. Since, the income is assessable for AY 2015-16, the assessee has rightly claimed credit for TDS and same needs to be allowed.

6. The CIT-DR, Mr.M.Rajan, supporting the order of the Ld.CIT(A), submitted that as per agreement dated 12.06.2013, the assessee has received entire sale consideration of Rs.40 Crs. in the FY 2013-14 relevant to the AY 2014-15. The purchaser has deducted TDS u/s.194IA of the Act, for AY 2014-15 only. Therefore, transfer as defined u/s.2(47)(v) r.w.s.53A of Transfer of Property Act, 1882, took place for AY 2014-15 only but not for AY 2015-16 as claimed by the assessee. The AO after considering relevant facts has rightly disallowed capital loss and consequent credit for TDS for AY 2015-16 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. The factual matrix of the impugned dispute is that the assessee has entered into an agreement for sale of property at Porur Village, Ambattur Taluk, comprising of 1.25 acres to M/s.Appaswamy Real Estate Ltd., for a consideration of Rs.40 Crs. The buyer has paid entire sale consideration of f Rs.40 Crs. in the FY 2013-14 relevant to the AY 2014-15 and has also deducted applicable TDS as per

:: 7 ::

the provisions of Sec.194IA of the Act. The assessee computed capital gains from transfer of property for AY 2015-16 and declared long term capital loss of Rs.19,94,46,822/- on the ground that the possession of the property has been handed over to the buyer in the FY 2014-15 relevant to the AY 2015-16 alone and to justify their stand filed confirmation from the buyer, where it has been stated that the possession of the property has been taken over on 18.04.2014. The AO disallowed capital loss computed by the assessee from transfer of property for AY 2015-16 on the ground that transfer as defined u/s.2(47)(v) of the Act, took place for AY 2014-15, because, entire sale consideration of Rs.40 Crs. has been paid by buyer to the seller in the FY 2013-14 itself.

8. We have given our thoughtful consideration to the reasons given by the AO to disallow capital loss for AY 2015-16 in light of arguments advanced by the Ld.Counsel for the assessee and we ourselves do not subscribe to the reasons given by the AO, for the simple reason that as per definition of transfer as defined u/s.2(47)(v) of the Act, any transaction involving allowing of the possession of any immovable property to be taken or retained in part performance of contract of the nature referred to sec.53A of Transfer of Property Act, 1882, or any transaction which has the effect of transferring or enabling the enjoyment of any immovable property is considered as transfer. As per provisions of Sec.53A of Transfer of Property Act, 1882, defines the term part performance, as per which, where any person contracts to transfer for consideration any immovable property by

:: 8 ::

writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract. If you go by definition of the transfer as is u/s.2(47)(v) of the Act, it is clearly envisages that transfer takes place only when the transferee takes possession of the property or any part thereof and further, the transferee has performed or is willing to perform his part of the contract. Therefore, from the above, it is clear that the transaction shall be treated as transfer only when the possession has been taken or retained by the buyer. In this case, there is no dispute with regard to fact that agreement between the parties dated 12.06.2013 coupled with payment of entire sale consideration of Rs.40 Crs. was taken place in the FY 2013-14 relevant to the AY 2014-15. But, fact remains that possession of the property has been handed over to the buyer on 18.04.2014 only and this has been confirmed by both seller and buyer in writing. Since, the possession of the property has been handed over to the buyer in the FY 2014-15 relevant to AY 2015-16, in our considered view, the transfer has been defined u/s.2(47)(v) r.w.s.53A of Transfer of Property Act, 1882, took place in the AY 2015-16 only. Therefore, we are of the considered view that the assessee has rightly computed capital

:: 9 ::

gains/loss from transfer of property for AY 2015-16. The AO & the Ld.CIT(A) without appreciating relevant facts and also on wrong appreciation of relevant provisions of the Act, has disallowed capital loss computed by the assessee from transfer of property for AY 2015-16. Thus, we direct the AO to delete additions made towards disallowance of capital loss for AY 2015-16.

9. In so far as denial for credit for taxes for AY 2015-16, we find that as per the provisions of Sec.199(3) of the Act r.w.r.37BA(1) of the Income Tax Rules, 1962, credit for TDS shall be given for assessment year for which such income is assessable. Since, the income pertains to transfer of property is assessable for AY 2015-16, the assessee has rightly claimed for credit for taxes for AY 2015-16 only. Therefore, we direct the AO to give credit for TDS for AY 2015-16 only.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 31st day of May, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st May, 2023.

TLN

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

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

5. गार्ड फाईल/GF