

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.84/PUN/2023
निर्धारण वर्ष / Assessment Year : 2016-17

Rajendra Supadu Jadhav,
W 246/164, Ambad, MIDC,
Nashik - 422010

PAN : AAOPJ3997K

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Dr. Vardhaman Jain
Revenue by : Shri Sardar Singh Meena

सुनवाई की तारीख / Date of Hearing : 31-05-2023
घोषणा की तारीख / Date of Pronouncement : 12-06-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 18-11-2021 passed by the National Faceless Appeal Centre, Delhi ("NFAC") for assessment year 2016-17.

2. Ground No. 1 raised by the assessee challenging the finding of CIT(A), NFAC, Delhi in confirming the order of AO in denying the deduction u/s. 54F of the Act.

3. Heard both the parties and perused the material available on record. We note that the assessee is an individual engaged in the business of manufacturing and trading in open gym equipment and also derives income from salary, business and profession and other sources. During the course of assessment proceedings, the AO noticed that the assessee claimed deduction u/s. 54F of the Act and asked the assessee to explain how the conditions mentioned in section 54F are satisfied. It was explained that the assessee purchased residential bungalow on 05-05-2014 which is within one year before the date of sale of plots on 06-07-2015 as Assignment deed dated 10-04-2015 entered thereto to sell the two plots which were finally registered on 06-07-2015. The AO held the said Assignment deed dated 10-04-2015 is self-serving document, prepared in an attempt to justify the untenable claim of exemption u/s. 54F of the Act vide para 6.1 of the assessment order. The CIT(A) in the impugned order held that the assessee has no right to enter into such Assignment deed for transfer of lease rights in the said two plots without obtaining the consent from MIDC, thereby, he confirmed the order of AO in denying the exemption u/s. 54F of the Act.

4. Before us, the ld. AR drew our attention to page No. 51 of the paper book and submitted that the assessee got consent of MIDC to transfer leasehold rights to M/s. Samsun Industries Pvt. Ltd. vide order dated 16-04-2015. Further, he drew our attention to reference of letter dated 18-03-2015 made to the MIDC seeking consent for transfer of such rights letter. On an examination of such letter, the MIDC on 16-04-2015 acting upon letter dated 18-03-2015 granted consent for transfer of assignment of his rights in favour of M/s. Samsun Industries Pvt. Ltd. We note that the contention of ld. AR is that, the assessee made an application to MIDC seeking to permit the assessee to transfer his lease rights to some other

entity on 18-03-2015 and in pursuance of such, anticipating favorable order in his favour entered into deed of Assignment on 10-04-2015 which is within one year prior to the purchase of residential bungalow on 05-05-2014. The ld. DR did not agree for the said proposition made by the ld. AR and vehemently argued that the stamp paper was purchased on 06-09-2014 and made the Assignment deed on 10-04-2015 which is beyond six months of validity of the said stamp paper. He argued that the AO rightly disbelieved the said Assignment deed dated 10-04-2015 as self-serving document entered mainly to justify the untenable claimed u/s. 54F of the Act.

5. The ld. AR placed on record the decision of Hon'ble Supreme Court in the case of Thiruvengada Pillai Vs. Navaneethammal & Anr. in Writ Petition (Civil) 290 of 2001 and submitted there is no impediment for stamp paper purchased more than six months prior to the proposed date of execution, being used for a document. On careful reading of the said decision dated 19-02-2008, we note that the Hon'ble Supreme Court was pleased to examine the provision u/s. 54 of the Indian Stamp Act, 1899 and held that the said provision merely provides that a person possessing a stamp paper for which he has no immediate use can seek refund of the value thereof by surrendering such stamp paper to Collector, provided, if it was purchased within the period of six months next preceding the date on which it was so surrendered. Further, the Hon'ble Supreme Court held that section 54 of Indian Stamp Act, 1899 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, we note that the Hon'ble Supreme Court clearly held that there is no provision in the Indian Stamp Act, 1899 prescribes any expiry date for use of a stamp paper, it is only if the purchaser of the stamp paper has no immediate use can seek refund of the value thereof by surrendering such

stamp paper to the Collector. The deed of Assignment is at page No. 25 of the paper book, on an examination of page 26, para No. (ii) it is clear that the said deed of Assignment entered with M/s. Samsun Industries Pvt. Ltd. anticipating the order of MIDC to transfer the leasehold rights in favour of M/s. Samsun Industries Pvt. Ltd. in pursuance of letter dated 18-03-2015. Therefore, we find the arguments of ld. DR as not acceptable in view of the decision of Hon'ble Supreme Court in the case of Thiruvengada Pillai (supra) and reject his contention that the stamp paper on which the Assignment deed dated 10-04-2015 was executed as invalid.

6. In the present case, the Assignment deed dated 10-04-2015 entered by the assessee with M/s. Samsun Industries Pvt. Ltd. for transfer of his leasehold rights on two plots granted by the MIDC, is valid which is entered in pursuance of his application dated 18-03-2015 which resulted into order dated 16-04-2015 passed by MIDC granting consent to transfer assessee's leasehold rights to M/s. Samsun Industries Pvt. Ltd. if the period reckoned from the date of his application to the MIDC on 18-03-2015 along with the date of Assignment deed on 10-04-2015 agreeing to transfer said leasehold rights to M/s. Samsun Industries Pvt. Ltd., in our opinion, the assessee's case falls under within one year prior to purchase of residential bungalow on 05-05-2015. Therefore, we hold that the assessee is entitled to claim exemption u/s. 54F of the Act and the order of CIT(A), NFAC, Delhi is not justified and it is set aside. Thus, ground No. 1 raised by the assessee is allowed.

7. Ground No. 2 (i) and 2 (ii) raised by the assessee challenging the action of CIT(A), NFAC, Delhi in upholding the addition of Rs.5,01,45,330/- on account of sundry creditor balances in the facts and circumstances of the case.

8. We note that the AO asked the assessee to furnish complete details such as names and address of the parties, detail payment of parties etc. regarding sundry creditors of Rs.7,19,55,956/- as on 31-03-2016 relevant to the assessment year concerned. It was explained that an amount of Rs.5,01,45,330/- was wrongly shown as creditors but in fact the actual creditors are Rs.2,01,79,055/-. The said entry was shown as stock-in-progress wrongly. We note that, it was further explained that the said wrong entry has been rectified in the next subsequent year by reversing the same. The AO did not satisfy with the explanation of the assessee and issued show cause notice why an amount of Rs.5,01,45,330/- should not be added to the total income of the assessee on account of sundry creditors. According to the AO, the assessee reiterated the same submissions and contended that he was not aware about the technicalities of accounting as the said entry was passed by his Chartered Accountant. According to the AO, the sundry creditors are appearing on the liability side of the Balance sheet as there was no proper explanation, added the said amount to the total income of the assessee u/s. 68 of the Act. The CIT(A) observed that the assessee paid taxes on gross profit shown in the trading account basing on the same alleged wrong entry and the contention of the assessee that it was not in his knowledge is misplaced. Accordingly, the order of AO in making the addition u/s. 68 of the Act was confirmed on account of sundry creditors.

9. Before us, the ld. AR submits that the assessee furnished all required information to his Chartered Accountant for filing Income Tax return for the year under consideration. The said Chartered Accountant shown entire purchases of Rs.5,01,45,330/- as stock in hand as on the date of 31-03-2016. The assessee was not aware the said wrong entry and he vehemently submitted that the assessee has not purchased any

material of that value and showing the same as stock in hand, is wrong. He drew our attention to the trading account at page No. 81 of the paper book and argued there is no impact on gross profit as well as net profit. Further, he placed on record Paper Book-II containing VAT return of Quarter 1 to 4 and purchase reconciliation with VAT return. He argued to examine the same as additional evidence as the same were not available with the AO and the CIT(A). The ld. DR relied on the order of CIT(A).

10. We note that the profit and loss account of subsequent year as on 31-03-2017 (A.Y. 2017-18) is at page No. 98 of the paper book-I, wherein it shows the open stock/stock in hand at Rs.24,20,300/- which support the submissions of the assessee which was disbelieved by the AO in his order at Page No. 7 of the assessment order. We note that the signatures of assessee and auditor appended digitally to the said profit and loss account which must have guided the AO to disbelieve the same. On an examination of trading account and profit and loss account which are at page No. 81 of the paper book shows no change in profit as well as net profit after reversing or rectifying the wrong entry. Further, on an examination of page No. 33 of the paper book, wherein, the assessee filed unsigned reconciliation of purchases with regard to VAT return / manufacturing trading profit and loss account for the F.Y. 2015-16 which shows the purchases as per manufacturing trading account to an extent of Rs.8,74,06,260/-. Admittedly, this reconciliation, as that of VAT returns of Quarter 1 to 4 (April, 2015 to March, 2016) were not before the AO, therefore, in our considered view, taking into consideration the facts and circumstances of the case and also the additional evidences in the form of Paper Book-II filed before us for the first time and in the interest of justice, we deem it proper to remand the issue to the file of AO to decide the issue afresh in terms of VAT return and reconciliation of purchases with regard

to the said VAT return and pass order, in accordance with law. Thus, ground No. 2 (i) and 2 (ii) raised by the assessee are allowed for statistical purpose.

11. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th June, 2023.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th June, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune