

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 105/Ind/2021
(Assessment Year:2012-13)

Manish jai Narayan Karwa 9 Janki Nagar, Indore	Vs.	Pr. CIT-1 Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABCB 2304 E		
Assessee by	Ms. Shreya Jain & Vibha Tiwari ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	19.07.2023	
Date of Pronouncement	27 .07.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the revision order of Pr. Commissioner of Income Tax dated 27.03.2021 passed u/s 263 of the Act for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

“1.That impugned order passed by the Ld. Pr. CIT is bad in law, without jurisdiction, it is based on incorrect interpretation of law and without allowing proper and reasonable opportunity of being heard, moreover the facts have also been incorrectly construed.

2.That on the facts and circumstances of case in law, the Ld. Pr. CIT erred in rejecting the assessee's contention that the initiation of revisionary proceeding u/s 263 is illegal as the order passed by the Ld. A.O. is neither erroneous nor the prejudicial to the interest of

revenue as the Ld. A.O. 5(1)-Indore already assessed the capital gain on sales of shares of Scan Steel Limited amounting to Rs. 9,60,41,245/- in the hands of Manish Jainarayan Karwa (HUF) vide assessment order dated 28.12.2019 by narrating all the facts on Page 12 para 10 of the assessment order.

3.That on the facts and in the circumstances of the case and in law the Ld. Pr. CIT erred in rejecting the assessee's contention that he has no jurisdiction to initiate proceeding u/s 263 and set aside the assessment to the file of Ld. A.O. to re-examine the case since the belief has already been formed and income from long term capital gain amounting to Rs. 9,60,41,245/- is already assessed in the case of Manish Jainarayan Karwa HUF by ITO 5(1)- Indore vide assessment order dated 28.12.2019.

4.That on the facts and in the circumstances of the case and in law the Ld. Pr. CIT has erred in not providing justice to the assessee by not initiating proceeding u/s 263 in the case of Manish Jainarayan karwa HUF in who's hand Income from capital gain amounting to Rs. 9,60,41,245/- on sales of shares of Scan Steel Limited is assessed by the Income Tax Officer 5(1) Indore for which assessee has specifically made the request in writing which is reproduce by the Ld. Pr. CIT on page 4 First Para of his order, particularly when he is having charge of Pr. CIT-1 and Pr. CIT-2-Indore who's having jurisdiction of Manish Jainarayan Karwa HUF.

5.That on the facts and in the circumstances of the case and in law the Ld. Pr. CIT by passing order u/s 263 directed to the Ld. A.O. to assess same income in the hands of two different assessee namely Manish Karwa Individual and Manish Jainarayan Karwa HUF's particularly when it is in his knowledge that the said income is already assessed in the hands of Manish Jainarayan Karwa HUF..”

2. The assessment of the assessee was completed u/s 144 r.w. section 147 on 27.11.2019 whereby the AO assessed total income of the assessee at Rs.97,56,510/- against the return of income of Rs.40,14,762/-. Thereafter ongoing through assessment record the Pr. CIT noted that certain points were not examined and investigated by the AO while completed the assessment. Therefore, the Pr. CIT was of the view that the order passed by the AO is erroneous so far as prejudicial to the interest of revenue for want of requisite inquiry on the part of the AO. Accordingly show cause notice dated 07.02.2020 u/s 263 of the Act was issued wherein Pr. CIT propose to set aside the assessment order on the issue of

long term capital gain arising from purchase and sale of shares of M/s Scan Steels Ltd. amounting to Rs.9,60,41,245/- in assessee's individual capacity. In reply to show cause notice assessee pointed out that long term capital gain arising from purchase and sale of these shares have already been assessed in the hands of Manish Jain Narayan Karwa (HUF) and therefore, the same cannot be assessed in the hands of the assessee. The Ld. CIT(A) was not impressed with the reply of the assessee and held that the AO has not conducted any inquiry on this issue of assessment of long term capital gain arising from sale of shares of M/s Scan Steels Ltd. Consequently he set aside the order of the assessing officer and remanded the matter to the record of the AO for reexamination of the issue discussed in para no.3 of the impugned order.

3. Before the Tribunal the Ld. AR of the assessee has reiterated the contention as raised before the Pr. CIT and submitted that the long term capital gain arising from sale of shares of M/s Scan Steels Ltd. has been assessed by the AO in the case of Manish Jain Narayan Karwa(HUF) and the appeal against the assessment order passed in the case of Manish Jain Narayan Karwa (HUF) is pending before the Ld. CIT(A).

4. Thus, the Ld. AR has submitted that once the said income have already been assessed in the hands of the HUF then the revision order passed by the Pr. CIT would amount to double taxation of the same income. The Tribunal directed the assessee who is also Karta of the HUF to file an undertaking that he shall not raise any ground/issue before the Ld. CIT(A) in the appeals against the assessment order passed in the case of HUF or shall withdraw the said ground if already raised. In response the Ld. AR of the assessee has filed undertaking of Mr. Manish Jain Narayan Karwa, Karta of Manish Jain Narayan Karwa (HUF) which reads as under:

Date of Hearing 19 July

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL

INDORE BENCH, INDORE

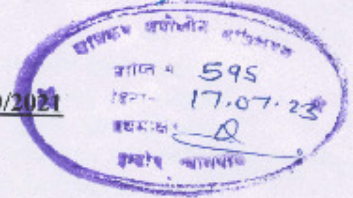
In The case of Manish Jainarayan Karwa,

9, Janki Nagar, Indore

PAN: ALGPK3905P

APPEAL NO. ITA No. 105/IND/2021

Assessment year: 2012-13



Declaration

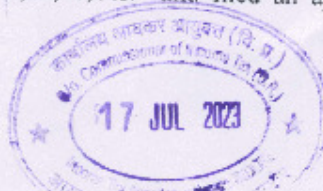
Sub: Undertaking for withdrawal of Ground no. 3 from Memo of Appeal in the case of Manish Karwa HUF pending before Ld. CIT(A), National faceless Appeal Centre, New Delhi

I Manish Karwa, Son of Shri Jainarayan Karwa, resident of 9, Janki Nagar, Indore having Aadhar no. 4987 6759 4418 Karta of Manish Karwa HUF having PAN AAGHM3300M hereby declare as under:

1) That the assessment of Manish Karwa HUF for the Assessment year 2012-13 was completed u/s 147 r.w.s. 143(3) by Income Tax officer 5(1), Indore vide order dated 28.12.2019 by disallowing long term capital gain of Rs. 9,70,60,445/-, details are as under:

- | | | |
|-----|---|-------------------|
| i) | Gain on sales of 56,000 equity shares of M/s Divine Multimedia India Ltd. | Rs. 10,19,200/- |
| ii) | Gain on sales of 4,75,000 equity shares of M/s Scan Steels Limited | Rs. 9,60,41,245/- |

2) The HUF has not accepted the disallowance of long term capital gain u/s 10(38) of Rs. 9,70,60,445/- and filed an appeal before the Ld. CIT(A),



National Faceless Appeal Centre, New Delhi on 07.01.2020 vide e-acknowledgment no. 288486831070120 which is pending for hearing.

3) I hereby declare that in the said appeal I shall not claim/raise the ground no. 3 and withdraw the same which reads as under:

The learned Income Tax Officer 5(1), Indore has erred in making an addition of Rs. 9,60,41,245/- (being the capital gain on sales of 475000 shares of M/s Scan Steel Limited formerly known as Clarus Finance and Securities Limited) to the income of the assessee, by ignoring the fact that the shares sold are owned by some other legal entity, these shares belongs to a separate legal entity i.e. Manish Karwa Individual PAN :- ALGPK3905P, and not of the assessee. It is pertinent to state that Manish Karwa Individual PAN :- ALGPK3905P, has already declared the LTCG on these shares in his income tax return filed for the Assessment Year 2012-13. The assessing officer has treated the entire capital gain as income of the assessee U/s 68 and also initiated penalty proceedings U/s 271(1)(c) for the same.

Copy of memo of appeal in Form 35 filed by Manish Karwa IITF along with e-acknowledgement is enclosed herewith for your Honor's perusal.

This declaration is filed as per the direction of Hon'ble Bench.

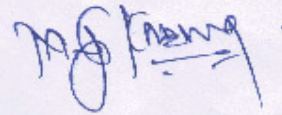
Thanking you,

Yours faithfully,

Date:

Place:

Encl: As Above



5. On the other hand Ld. DR has submitted that if the assessee is avoided by his undertaking then appropriate order may be passed by this Tribunal.

6. We have considered the submission of both parties as well as relevant material on record. The assessee has now file the undertaking that he will

withdraw the ground no.3 before the Ld. CIT(A). Thus, ground no.3 raised before the Ld. CIT(A) is now undertaken by the assessee to be withdrawn and thereby the assessee shall not take a plea before the Ld. CIT(A) that the capital gain arising from sales of shares of M/s Scan Steels Ltd. shall not belong to any other person or assessable to any other person. Accordingly the capital gain has already been assessed in the hands of HUF and in view of the undertaking filed by the Karta of Manish Jain Narayan Karwa (HUF) the impugned order passed by the Pr. CIT u/s 263 becomes infructuous and the same is set aside. The AO is directed to ensure that the assessee shall not raise this issue before the Ld. CIT(A) in appeal arising from the assessment order in case of Manish Jain Narayan Karwa, (HUF). We may clarify that the HUF can raise any other grounds and issues in respect of assessment of long term capital gain except taking the plea that the said income belongs to some other person.

7. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 27.07.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 27.07.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*