

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 293/Kol/2023
Assessment Year : 2019-20

Atlas & Union Jute Press Co. Ltd. PAN: AACCA 7133 P	Vs.	Asstt. DIT, CPC, Bengaluru
Appellant		Respondent

Date of Hearing	17.05.2023
Date of Pronouncement	28.07.2023
For the Assessee	Shri Anil Kochar, Advocate
For the Revenue	Smt. Ranu Biswas, Addl. CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the assessee against the order dated 31.01.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

- 1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
- 2 For that the Ld. CIT (A) erred in confirming the action of the A.O. in not deducting the gains on sale of property while quantifying income under the head 'Business & Profession' on alleged grounds.*
- 3. For that the Ld. CIT (A) ought to have directed the A.O. to deduct the gains on sale of property from Business & Profession when the same was being considered as capital gains.*
- 4. For that the Ld. CIT (A) erred in confirming the addition made by the A.O. towards capital gain without deducting the same from the Business & Profession which included the same.*

5. For that the Ld. CIT (A) ought to have properly considered the factual matrix of the case of the appellant in the matter of claim u/s 54EC of the Act and ought to have allowed the same.

6. For that the Ld. CIT (A) erred in allowing deduction of Rs.10,00,000/- while considering the income under the head Long Term Capital Gains' instead of the actual amount of Rs.49,97,227/- on alleged grounds.

7. For that the Ld. CIT (A) ought to have directed the A.O. to deduct the full amount of the cost while determining Long Term Capital Gains.

8. For that the Ld. CIT (A) erred in confirming the action of the A.O. determining income from business at Rs.33,66,218/- instead of loss of Rs.6,31,009/- on alleged grounds.

9. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.

2. Brief facts of the case are that the assessee is a company filed its return of income for the A.Y. 2019-20 by declaring total income of Rs. 51,19,175/- u/s 115JB of the I.T. Act. The return filed by the assessee was processed u/s 143(1) of the Act on 12.08.2020 making following adjustment/disallowance by CPC which is as under:

"i. An income from business or profession of Rs. 3,36,648/- was computed instead of loss of Rs. (-) 6,31,009/-.

ii. An amount of Rs. 10,00,000/- deducted instead of correct figure shown by the assessee of Rs. 49,97,227/- for being separately considered under the head of LTCG."

3. In consequence to the above, assessee filed an application u/s 154 of the Act by which requesting the AO to allow the claim of the assessee. However, the ld. AO has computed the income of the assessee in the same manner as the intimation stated vide order

dated 12.08.2020 without any explanation as to the reason for making such alteration to the computation in the ITR filed by the assessee.

4. Aggrieved by the above order dated 09.09.2020 assessee preferred an appeal before the Id. CIT(A) wherein the appeal of the assessee was partly allowed by the Id. CIT(A) without properly addressing the issues raised by the assessee.

5. Dissatisfied with the above order, assessee is in appeal before this Tribunal raising multiple grounds of appeal since all the grounds of appeal are connected with each other and the core issue is for adjudication before us with regard to disallowance made in the intimation order dated 12.08.2020 by CPC and rectification order passed u/s 154 of the Act order dated 09.09.2020. Therefore, all the issues are clubbed together and adjudicated the same.

6. The main grievance of the assessee here in the appeal is that assessee sold an immovable property 1A K.P. Sinha Street, Kolkata-700002 on 24.09.2018 for a value of Rs. 50,00,000/- as per sale deed and the said sold out property was acquired by the assessee prior to 01.04.2001 for a cost of Rs. 3457/- by claiming depreciation of Rs. 684/- upto the F.Y. 2017-18 and the written down value of the property was of Rs. 2773/- as it is reflected in Note No. 7 of the audited financial statements. As the assessee has earned a profit on the sale of property of Rs. 49,97,227/- which was duly reflected under Part A-P&L in clause 14(v) and was duly deducted from net profit as per profit and loss account in computing income from business and profession in Schedule BP in

clause 3(b) and appropriately considered under Schedule CG of the return filed by the assessee. The assessee after considering further adjustment made there was a total loss from business or profession arising to the assessee of Rs. (-) 6,31,009/-. The assessee while filing the return of income in Schedule CG of the ITR under point 1 of Part B, long term capital gain was calculated in respect of the sale of property which is as under:

<i>“(a) Sale value of property (also value for stamp duty purposes)</i>	<i>Rs. 50,00,000</i>
<i>(b) Fair value of property on 01.04.2021 as per valuer’s report</i>	<i>Rs. 18,59,000</i>
<i>(c) Indexed cost of acquisition based on fair value of 01.04.2001</i>	<i>Rs. 28,28,913</i>
<i>(d) Long Term Capital Gains –(d)=(a)-(c)</i>	<i>Rs. 21,71,087</i>
<i>(e) Investment made on 31.10.2018 in long term specified asset u/s 54E</i>	<i>Rs. 40,00,000</i>
<i>(f) Taxable long term capital gains (d)-(e)</i>	<i>NIL</i>

No addition has been made in the intimation so far as aforesaid NIL LTCG is concerned”

7. However, the intimation issued by CPC while computation of income from business or profession under Schedule BP in point 3(b) for some of the reason not known to assessee an amount of Rs. 10,00,000/- has been deducted instead of correct amount of Rs. 49,97,227/- claimed by the assessee under the head of long term capital gain. Further, the calculation of the capital gain has not been made in the intimation to clarify how the Rs. 10,00,000/- has been considered for the purpose of computation of LTCG. Due to instant mis-computation and short deduction of Rs. 39,97,227/- (i.e. Rs. 49,97,227/- - Rs. 10,00,000/-) an incorrect profit from business & profession of Rs. 33,66,218/- has been arisen in the intimation instead of a loss of Rs. 6,31,009/- as claimed by assessee in ITR. The ld. AR also stated that a rectification petition

has been filed u/s 154 before the AO to rectify the defect as made by the AO while processing the return filed by the assessee vide order dated 12.08.2020. However, grievance of the assessee was not redressed by CPC and has computed the income in the same manner as reflected in the intimation order dated 12.08.2020.

8. The ld. AR to substantiate his argument he stated that there is no justifiable reason for making the aforesaid deduction of Rs. 10,00,000/- instead of correct amount as claimed by the assessee in his return of income by claiming of Rs. 49,97,227/-. While computing the income from business and profession and the computation made by the AO in the intimation as well as in the rectification order dated 09.09.2020 are arbitrarily and without any reason therefore the impugned order passed by the ld. CIT(A) partially allowing the claim of the assessee without considering the claim of the assessee is liable to be set aside and direction may be given to AO to accept the return of income filed by the assessee.

9. On the other hand, ld. DR relied on the order passed by the authorities below and prayed before the bench to reject the claim made by the assessee.

10. We after hearing the rival submission of the parties and on perusal of material available on record, we find that while processing the return of income by CPC has allowed an amount of Rs. 10,00,000/- deduction instead of correct amount of Rs. 49,97,227/- as claimed by the assessee. Further CPC has not clarified how Rs. 10,00,000/- has been considered for the purpose of computation of LTCG in the hands of assessee and due to the

above reason short deduction of Rs. 39,97,227/- made by CPC an incorrect profit from business and profession arrived in assessee at Rs. 33,66,281/- arisen in the intimation order dated 12.08.2020 as well as rectification order dated 09.09.2020 respectively instead of loss claimed by the assessee of Rs. (-) 6,31,001/- in its ITR. We, therefore, found that there is no justifiable reason for making the aforesaid deduction of Rs. 10,00,000/- instead of correct amount of Rs. 49,97,227/- as claimed by the assessee in his return of income in computing the income from the business and profession. Therefore, the intimation as computed by the ld. AO vide its order dated 12.08.2020 and in the rectification order dated 09.09.2020 as well as the impugned order passed by the ld. CIT(A) is hereby set aside with the direction to the AO to allow the claim of assessee an amount of Rs. 49,97,227/- to be considered under the head of income from LTCG in computation of profits and gains from business and profession under point 3(b) of Schedule BP. In terms of the above direction, the appeal filed by the assessee is hereby allowed.

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

Order pronounced in the open court on 28.07.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 28.07.2023
Biswajit

Copy of the order forwarded to:

1. Appellant- Atlas & Union Jute Press Co. Ltd., 8, BBD Bag (East), Kolkata-700001.
2. Respondent – Asstt. DIT, CPC, Bengaluru.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata