

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, 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.: **317/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2018-19

SCL Tradelink and Services
Limited,
No. 9, Cathedral Road,
Chennai – 600 086.

ACIT,
v. Corporate Circle -6(1),
Chennai.

[PAN: AAKCS-5424-R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. R. Vijayaraghavan, Advocate
: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.08.2023

घोषणा की तारीख/Date of Pronouncement

: 30.08.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 12.03.2022 and pertains to assessment year 2018-19.

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

"1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre erred in concluding that

the Appellant invested in Category II funds which turn invest in funds or distressed Assets, real estate funds, debt funds and also funds of funds and the income generated on such is not exempt under Section 10(38) of the Income Tax Act for Conventional Tax Workings.

2. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre erred in concluding that exemption under Section 10(38) is available where income of mutual funds investing directly in equity in Stock exchange.

3. The learned Commissioner of Income Tax ought to have allowed the Appellant's submission of a Copy of Form 64C filed by Paragon Partners Growth Fund showing the Statement of Income distributed to the Unit holder viz SCL Tradelink and Services Limited, the Appellant, under Section 115UB of the Income Tax Act, 1961 evidencing the LongTerm Capital Gains of Rs.43,09,447/- exempt under Section 10(38).

4. The Appellant prays for allowance of Rs.43,09,447/-.

The Appellant craves leave to add, alter or modify the grounds of appeal at any time before or during the hearing of appeal.

For these and other reasons to be adduced at the time of hearing, the Appellant prays for a favourable Order on the points of appeal."

3. The brief facts of the case are that, the appellant filed its return of income for the assessment year 2018-19 on 19.02.2019, declaring a total income of Rs. 9,51,328/- under normal provisions of the Act. The Assessing Officer, CPC, Bangalore, processed the e-return and issued an intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 17.02.2020 and determined taxable income

at Rs. 52,60,772/- under normal provisions of the Act, by making additions towards long-term capital gains at Rs. 43,09,447/- derived by the assessee from sale of mutual fund through venture capital fund and claimed exemption u/s. 10(38) of the Act. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Id. CIT(A), for the reason stated in their appellate order, dated 12.03.2022, rejected arguments of the assessee and sustained additions made by the AO towards long-term capital gains derived from sale of mutual funds, on the ground that when the assessee is invested in Alternative Investment Fund (AIF), gain derived from sale of any investments by said venture capital fund is not exempt u/s. 10(38) of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, referring to Form No. 64C issued by Paragon Partners Growth Fund, in terms of Rule 12CB(1)(i) of Income Tax Rules, 1962, and also referring to provisions of section 115UB of the Act, submitted that income of a person being investor in a AIF (Alternative Investment Fund) out of investment made in the AIF, shall be chargeable

to Income-tax, in the same manner as if it were the income accruing or arising to, or received by, such person had the investments, made by the investment fund, been made directly by a investor. Since, the appellant has invested in mutual fund through venture capital fund and said investment has been sold by the AIF after 12 months and further said shares is suffered Securities Transaction Tax (STT), gain on transfer of such shares is exempt u/s. 10(38) of the Act, in the hands of the assessee. The Id. CIT(A), without appreciating relevant facts sustained additions made by the Assessing Officer.

5. The Id. Sr. AR, Shri. P. Sajit Kumar, JCIT, supporting the order of the Id. CIT(A), submitted that it is purely a legal issue, which needs to be adjudicated in light of provisions of section 115UB of the Act r.w.r 12CB of I.T. Rules, 1962 and thus, the matter may be decided in accordance with law.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the investment with AIF by the assessee and sale of said investment by venture capital

fund is disputed. It was also not in dispute that AIF has sold shares of capacif'e Infra projects Limited, after a period of 12 months and also paid necessary Security Transaction Tax (STT). From the above, it is very clear that, gain received by the assessee from transfer of shares by AIF is a long-term capital asset and income from said sale is taxable under the head long-term capital gains. As per the provisions of section 115UB of the Act, any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investment made in investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by such person had the investments made by the investment fund been made directly by him. In other words, as per provisions of section 115UB of the Act, Alternative Investment Fund is a pass through entity for investors and whatever gain or loss derived by such fund is assessable in the hands of unit holders. To this effect, the assessee has furnished Form no. 64C issued by the AIF in terms of Rule 12CB(1)(i) of the I.T. Rules, 1962 and also Form no. 16A in deducting applicable TDS as per the provisions of law. From the details, it is very clear that income distributed by venture capital fund to unit holders is assessable

in the hands of unit holders as per the provisions of Income Tax Act, 1961. In the present case, the assessee received long-term capital gains from AIF, which is exempt from tax u/s. 10(38) of the Act, if such shares is suffered STT. Therefore, we are of the considered view that, the Assessing Officer and CIT(A) were completely erred in taxing income distributed by AIF to the assessee by rejecting exemption u/s. 10(38) of the Act. The reason is given by the CIT(A) to sustain additions made by the AO is completely irrational and devoid of merits, because as per the provisions of section 10(38) of the Act, any long-term capital gain derived from shares and securities which suffered STT is exempted, whether such fund is invested in equity funds or real estate funds. But what is required to seen is whether the gain derived by the assessee is from transfer of equity shares, which has suffered Security Transaction Tax or not. Since, the long-term capital gains derived by the assessee from mutual fund is out of sale of equity share, which suffered Security Transaction Tax, in our considered view capital gain derived by the assessee is exempt under section 10(38) of the Act. Therefore, we direct the Assessing Officer to delete additions made towards long-term capital gains out of income distributed by AIF.

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

Order pronounced in the court on 30th August, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 30th August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF