

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.731/PUN/2023

निर्धारण वर्ष / Assessment Year : 2014-15

Nawab Pashasaheb Jamadar, Global Panacea Hospital, Gross Golden Jubilee, B-Block, Mahaebob Nagar, Ambajogai Road, Latur – 413 512, Maharashtra PAN : AAOPJ3902E	Vs.	ITO, Ward-1, Latur
Appellant		Respondent

Assessee by Shri Hari Krishan
Revenue by Shri Kumar Arvind Bhardwaj

Date of hearing 05-10-2023
Date of pronouncement 06-10-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee, involving a short but interesting point, is directed against the order dated 21-04-2023 passed by the National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2014-15.

2. The only issue raised herein is against the confirmation of addition of short term capital gain of Rs.31,31,850/-.

3. Pithily put, the factual panorama of the case is that the assessee is a doctor running hospital in a building, which was partly (1/4th) used for residence as well. The said building was transferred on 29-10-2013 for a total consideration of Rs.35,51,000/-. The assessee started constructing a new hospital-cum-residential building, on which a sum of Rs.78,39,068/- was incurred during the year. The said amount was added to the block of building and depreciation was accordingly claimed. On being called upon to substantiate as to why the capital gain on transfer of old building should not be charged to tax, the assessee submitted that construction of the new hospital-cum-residential building was completed. On examining the Completion Certificate, the AO noticed that the construction of the new building got completed in the year 2016. He, therefore, held that the new building could not be considered as part of block of building. Applying the provisions of section 50(2), he computed the short term capital gain by reducing the written down value and value of the block from the sale consideration of Rs.35,51,000/-, for determining short term capital gain at Rs.31,31,800/-. Since the benefit of depreciation was claimed by considering the construction of new building as part of the block, the AO refused to give any benefit u/s.54. The Id.

CIT(A) affirmed the action of the AO, against which the assessee has come up in appeal before the Tribunal.

4. I have heard the rival submissions and gone through the relevant material on record. It is seen that the block of building of the assessee had only one item at the beginning of the year with opening written down value at Rs.2,42,200/-. The only hospital building, falling in that block, was transferred during the year for a total consideration of Rs.35,51,000/-. The assessee started construction of a new hospital-cum-residential building and showed the addition to the block of building by a sum of Rs.78,39,068/-. The point for determination is as to whether the action of the AO in applying section 50(2) is in order?

5. Section 50 of the Act is a special provision for computation of capital gain in case of depreciable assets. Right now, we are not concerned with sub-section (1) of section 50, which deals with a case where the full value of consideration on transfer of one or more assets of the block of assets, is more than the opening written down value plus addition made during the year to the block, subject to the condition that at least one asset remains in the block at the end of the year. In other words, the block of assets continues at the end of the year. Per contra, the question in the appeal is that the block ceased to exist on the transfer of hospital building, which was the only asset in

the said block. Here it is pertinent to mention that the extinguishment of a block is looked at the end of the previous year. If all the assets in a block are sold and thereafter another new asset is purchased before the close of the year, then it cannot be treated as a case of cessation of block, so as to be ruled by section 50(2) of the Act. It is only where all the assets in a block are transferred and the block ceases to exist that the short term capital gain is computed under section 50(2) by considering the sale price of the assets transferred during the year as reduced by the opening written down value and the addition made during the year.

6. The claim of the assessee is that he started construction of new hospital-cum-residential building on which a sum of Rs.78.39 lakh was incurred during the year, which constituted a part of the same block and since the block did not cease to exist on the rationale of the inclusion of a new asset into the block, provisions of section 50(2) are not attracted. The undisputed position is that the new hospital-cum-residential building was under construction at the end of the year and was not put to use because the construction itself got completed much later in the year 2016. The moot point is as to whether the assessee was right in including the cost of construction etc. in respect of

hospital building in the block of building whose construction had not completed?

7. Section 32(1) deals with the grant of depreciation. Clause (ii) of section 32(1) states that the depreciation shall be allowed: “in the case of any block of assets, such percentage on the written down value thereof as may be prescribed”. After introduction of the block system for allowing depreciation, the individual assets lose their separate entity on their entry into the block. Depreciation is granted at the closing balance of the block. However, in order to enter into block of assets for depreciation, section 32(1) categorically provides that the building etc. is “owned, wholly or partly by the assessee and *used for the purpose of business or profession*”. Thus, it is manifest that a particular asset can enter into a block only when it is “*used for the purpose of the business*”. If a particular asset is not used for the purpose of business, there can be no question of including such asset into the block. Here is a case in which the assessee started constructing a new hospital-cum-residential building, which was admittedly not put to use for the purpose of profession. Once the position is so that the under-construction building was not put to use, there could have been no question of permitting it to enter into the block of building, which was left without any asset on the transfer of

the only asset during the year. Since in the instant case, the only asset in the block of building was transferred by the assessee during the year and no new building legally gained entry into the block, the provisions of section 50(2) were attracted and the assessee became liable to be visited with short term capital gain, as has been computed by the AO. I, therefore, find no reason to interfere with the impugned order on this score.

8. The assessee has raised an additional ground claiming exemption u/ss.54 and 54F of the Act. It is noticed from page four of the assessment order that the assessee raised claim for exemption u/s.54 towards investment in the new proposed hospital-cum-residential building, which was denied by the AO on the ground that the provisions of section 50(2) were attracted. No reprieve was allowed in the first appeal as well.

9. In this regard, it is relevant to note that section 50 deems capital gain in respect of depreciable asset as short term capital gain. The ambit of section 50 is limited to the treatment of gain arising from the transfer of asset in the circumstances given in sub-sections (1) and (2) as short term capital gain. Once the computation is done u/s.50, the matter of computation of capital gain till that stage ends. However, any further provision, which is otherwise applicable in the case of

normal computation, does not cease to operate. To put it simply, if an assessee has made investments out of the full value of consideration etc. on the transfer of a capital asset, which, in the absence of the concept of block of assets and the resultant computation of short term capital gain, would have entitled it to exemption under the relevant sections of Chapter IV-ED, the same would apply. The crux of the matter is that the computation of short term capital gain u/s 50 does not disentitle an assessee to any exemption under Chapter IVE, which is otherwise available in respect of a long term capital asset. Simply put, the computation of short term capital gain u/s.50 is not the computation of income under the head 'Capital gains', but is subject to exemptions u/s.54, 54F etc., if the requisite conditions of such sections are fulfilled.

10. Here is a case in which the assessee claimed exemption u/s 54 before the AO, which was denied on the ground of the mandate of section 50(2) being attracted. In my opinion, this approach of denial of exemption at the threshold, if otherwise available, as per law, cannot be countenanced. I, therefore, set-aside the impugned order on this score and remit the matter to the file of the AO for examining the claim of the assessee for exemption u/s.54 and/or 54F subject to the fulfillment of the conditions set out in these sections. At the same

time, the AO should ensure that no depreciation gets allowed on the block of building, as was claimed by the assessee in the return of income by treating new under-construction building as part of the block, leaving some positive figure of the block at the end of the year before depreciation. Needless to say, the assessee will be allowed a reasonable opportunity of hearing.

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

Order pronounced in the Open Court on 06th October, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 06th October, 2023
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
SMC, Pune / DR, ITAT, Pune
5. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	05-10-2023	Sr.PS
2.	Draft placed before author	06-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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