

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE 'A' BENCHES:: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.2193/PUN/2017  
(A.Y. 2014-15)

ACIT, Circle-3, Aurangabad	vs	Amit Bhaskarrao Sanap, A-2, N-2, CIDCO, Aurangabad.  PAN: AVIPS 4177 L
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Ramnath P. Kurkunde,DR
Date of hearing	:	08/11/2023
Date of pronouncement	:	09/11/2023

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of Commissioner of Income Tax [Appeals]-2, Aurangabad (for short, 'CIT(A)'), dated 03.07.2017 for A.Y.2014-15 as per the following grounds of appeal:

- "1. On the facts and circumstances of the case, whether the Id. CIT(A) was right in deleting the addition of Rs. 69,04,126/- made u/sec. 56 of the Act which was based on disallowance of exemption claimed u/sec. 10(38) of Rs. 69,04,126/-*
- 2. On the facts and circumstances of the case the order of the CIT(A) may be vacated and the order of the AO may be restored.*
- 3. On the facts and circumstances the appellant craves leave to add, amend or alter any grounds of appeal."*

2. At the time of hearing, none appeared for the assessee, however, the notices were served in the registered address and there is no evidence on record to show that assessee was not aware about the

date of hearing. Neither adjournment petition nor written submissions have been filed by the assessee. This being the third opportunity of hearing as per the order sheet, resultantly, the submission of the Id.DR and the documents/materials on record were considered and the matter was discussed and heard on merits.

3. The grievance of the Revenue in this appeal is the deletion of addition by the Id. CIT(A) of Rs. 69,04,126/- which was made by the Assessing Officer (AO) u/sec. 56 of the Income Tax Act, 1961 (for short, 'the Act') by disallowing exemption claimed u/sec. 10(38) of the Act.

4. The relevant facts, as emanating from the assessment order, are that the AO had referred to a letter written by the DDIT (Inv.), Aurangabad intimating that assessee has admitted Rs. 67,58,422/- as bogus long term capital gain earned through the sale of scrips of M/s. P.S. IT Infrastructure & Services Ltd. and M/s. Advanced Remedies Ltd. In his statement given to DDIT (Inv.), Aurangabad, the assessee in answer to question No.13 had admitted that he had revised the return of income for A.Y. 2014-15 without claiming exemption on the amount of Rs. 67,58,422/- and that, he shall pay all the taxes on such income. That, further the AR of the assessee vide letter dated 27/10/2016 stated that assessee had withdrawn the claim of exemption u/sec. 10(38) of the Act and the income has been offered

as per proviso to sec.112 of the Act @10%. Since the assessee had withdrawn the claim of exemption, the AO held that the so-called capital gains were established as non-genuine long term capital gains. The AO further held that assessee had wrongly computed the tax @10% and the AO calculated that, the income has to be taxed u/sec. 56 of the Act as 'income from other sources', and accordingly, Rs.69,04,126/- was added to the total income of the assessee.

5. When the matter reached before the Id. CIT(A), it was submitted by the assessee that he had earned long term capital gain of Rs.67,58,422/- on sale of scrips of equity shares of M/s. P.S. IT Infrastructure & Services Ltd. and M/s. Advanced Remedies Ltd., thus eligible for exemption u/sec. 10(38) of the Act and hence, it was claimed as exempt in the original return of income filed by him. It was further contended by the assessee that during enquiry conducted by the ADIT, Aurangabad, due to misguidance by the tax consultant of the assessee and strenuous circumstances and misconception of mind, the assessee in the revised return filed, had withdrawn the claim of exemption u/sec. 10(38) of the Act and had paid taxes thereon under the provisions of sec. 112 of the Act. It was further contended by the assessee that though he was eligible for exemption u/sec. 10(38), but because of misguidance of his tax consultant and also because of strenuous circumstances he had withdrawn such exemption in the revised return filed and had offered Rs. 67,58,422/- for the purpose of

taxation. The assessee had filed an affidavit before the Id. CIT(A) narrating all the aforesaid situations and therefore, have retracted the amount of tax paid through the revised return filed.

6. We observe from the order of the Id. CIT(A) that in this scenario, he had not called for any remand report from the AO and has simply accepted the affidavit of the assessee retracting the revised return filed and the consequent taxes paid therein. We are of the considered view, this is a case where in the original return, the assessee had claimed deduction under long term capital gain earned through the sale of scrips of M/s. P.S. IT Infrastructure & Services Ltd. and M/s. Advanced Remedies Ltd. Thereafter, before the DDIT (Inv.), Aurangabad, the assessee had admitted that Rs. 67,58,422/- was a bogus long term capital gain earned through sale of such scrips and in answer to question No.13 in the statement recorded before the DDIT (Inv.), Aurangabad, the assessee had himself admitted that in the revised return of income, he would not claim any exemption for the amount of Rs. 67,58,422/- and he shall pay all the taxes on such income. Now before the Id. CIT(A), the assessee had filed an affidavit retracting the tax offered in the revised return by saying that he was misguided and he was under pressure by the DDIT(Inv.), Aurangabad. In such background of facts, it becomes mandatory and essential on the part of the Id. CIT(A) to refer the contents of the affidavit to the AO calling for a remand report. In the present case, the Id. CIT(A) has

not called for any remand report and thereby, no opportunity has been provided to the AO for verification of the claim of the assessee as contended in the said affidavit. Further, it is observed by the Id. CIT(A) that the AO has not brought out any evidence to tax the income of the assessee u/sec. 56 of the Act as the income from other sources, and without conducting any enquiry, it ultimately gives the colour of such determination of income as merely a guess work and surmises which is not permissible within the realm of Income Tax Act. However, in our humble view, the Id. CIT(A)'s power being coterminous with that of the AO, could have independently conducted enquiry and necessary verification about the genuineness of facts. Instead of doing this necessary exercise, the Id. CIT(A) simply accepted the submissions of the assessee along with affidavit and has shifted the onus to prove the genuineness entirely on the AO whereas he himself could have examined and adjudicated specifically on this aspect also. We also observe at para 15 of the order of Id. CIT(A) that he has completely accepted the version of the assessee's explanation without giving any basis. It has been stated by the Id. CIT(A) that the DDIT (Inv.), Aurangabad had compelled and insisted the assessee to offer the said surplus for taxation, in answer to question Nos.13 & 14 of the statement recorded before the DDIT (Inv.), Aurangabad. The Id. CIT(A) also writes that the assessee was under strain of mind and under misconception of the facts and law. However, in the entire paragraph, the Id. CIT(A) has failed to provide any basis and

justification for these statements that he has accepted and recorded. It has been stated that DDIT (Inv.), Aurangabad had compelled the assessee, but this statement have not been corroborated by any documentary evidences by the Id.CIT(A). That, because of these stated reasons it is difficult to accept the decision of Id. CIT(A) as emanating from his order since the true nature of facts are not coming out. It would be appropriate and judicious in the interest of justice, if the Id. CIT(A) calls for a remand report regarding the affidavit filed by the assessee, it would also serve the purpose of justice, if the Id. CIT(A) conducts independent enquiry whether the action of the AO was correct in making the addition as income from other sources and specifically at para 15 whatever statements have been asserted and made by the Id.CIT(A) they are without any corroboration either through facts or law and therefore it would be also pertinent if the findings are brought out much more specifically by the Id. CIT(A) in the given facts and circumstances of the case of the assessee. In view thereof, we set aside the order of the Id. CIT(A) and remand the matter back to his file for re-adjudication as per law and in accordance with the directions given by this Tribunal as aforesaid. The Id.CIT(A) shall pass a speaking order complying with the principles of natural justice. The grounds raised by the Revenue stands allowed for statistical purposes.

7. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in open Court on 09<sup>th</sup> November, 2023.

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

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 09<sup>th</sup> November, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

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Senior Private Secretary  
ITAT, Pune.