

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1943/Del/2023
(Assessment Year: 2018-19)**

ACIT, Central Circle, Ghaziabad (Appellant) PAN: AEKPB5893G	Vs.	Anu Bajaj, House No. 21, Sector-5, Raj Kumar, Ghaziabad (Respondent)
--	-----	--

**CO No. 83/Del/2023
(In ITA No. 1943/Del/2023)
(Assessment Year: 2018-19)**

Anu Bajaj, House No. 21, Sector-5, Raj Kumar, Ghaziabad (Appellant) PAN: AEKPB5893G	Vs.	ACIT, Central Circle, Ghaziabad (Respondent)
---	-----	---

Assessee by :	Shri Somil Agarwal, Adv Shri Deepesh Garg, Adv Shri Shrey Jain, Adv
Revenue by:	Shri Zafarul Haque Tanweer, CIT DR
Date of Hearing	17/01/2024
Date of pronouncement	19/01/2024

ORDER

PER M. BALAGANESH, A. M.:

1. This appeal in ITA No. 1943/Del/2023 is filed by the revenue and the cross objection No. 83/Del/2023 for A.Y. 2018-19 arises out of the order by Id CIT(A)-3, Noida in appeal No. CIT(A)-IV/KNP/11075/2017-18 dated 28.04.2023 (hereinafter referred to as Id CIT(A) in short) against the order of assessment passed u/s 143(3)/ 153a of the Income Tax Act, 1961 (hereinafter referred to as Act) dated

17.06.2021 by the AO, DCIT, Central Circle, Ghaziabad (hereinafter referred to as Id. AO).

2. Identical issues are involved in both the appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. We have heard the rival submissions and perused the material available on record. In this case, a search and seizure operation u/s 132 of the Act was conducted on 28.06.2018 along with Sh. Harish Bajaj & Others Group of cases. The order u/s 127 of the Act assigning jurisdiction over this case to the DCIT CC- Ghaziabad, was passed by Id. PCIT Ghaziabad on 02.08.2019. Notice u/s 153A of the Act was issued on 28.09.2020 and duly served upon the assessee. In compliance to the same, the assessee filed return of income on 11.11.2020 declaring total loss of Rs. 2,99,869/-. Notice u/s 143(2) of the Act was issued on 25.11.2020 and duly served upon the assessee. Later on, notices u/s 142(1) of the Act alongwith questionnaire were also issued and the Id. AO completed the assessment by making addition of Rs. 6,16,730/-being LTCG on the sale of property and further addition of Rs. 87,02,837/- u/s 68 of the Act on account of unexplained unsecured loans taken from M/s. AK Beverages (Rs. 58,26,565/-), M/s. Bajaj Prime Fuels, prop. concern of Sh. UK Bajaj (Rs. 1,76,871/-). M/s. Bajaj Prime Lubes, prop concern of Sh. U K Bajaj HUF (Rs. 7,32,000/-) & Sh Karanvir Bajaj (Rs. 19,67,401/-).

4. Before the Id CIT(A), the assessee reiterated the submissions and also filed additional evidences. The Id CIT(A) called for remand report from the Id AO. The entire remand report has been reproduced in the order of the Id CIT(A). We find that the Id. CIT(A) had addressed the dispute raised in the first issue by observing as under:-

5.9 In the grounds of appeal no. (ii) & (ii)a), the appellant submits that the appellant along with her husband Sh. Umesh Kumar Bajaj had made payment for purchase of residential flat bearing no. C-509, Arihant Harmony, 8, Mall Road, Ahinsa Khnad, Indirapuram in November, 2005 pertaining to A.Y. 2006-07. The sale deed was executed after completion of project in A.Y. 2008-09. And that the appellant had correctly calculated the capital gain on the sale of property. The said transactions were duly recorded in the books of accounts. However the Ld. AO in total disregard of the documentary evidence of the said transactions and there being no incriminating material found during the course of search proceedings to disbelieve the uncontroverted fact of the transactions recorded in the books; went wrong in treating the date of sale deed as date of purchase and recalculating the long term capital gain taking the cost inflation index of A.Y. 2008-09. The appellant submits that the consequent addition of Rs. 6, 16,730/- is erroneous and hence the same deserves to be deleted.

In assessment order, Ld. AO observes that as per the purchase deed submitted by the appellant, the property under consideration was purchased on 16.07.2008 for the total consideration of Rs. 31,31,125/- . Ld. AO states that no details and date of payments have been recorded in the purchase deed and the appellant could not produce documentary evidences to prove that any payment was made in FY 2005-06. Therefore cost of acquisition was taken as Rs. 31,31,125/- in FY 2008-09 and accordingly capital gain amount was recalculated and LTCG was computed at Rs. 6,16,730/- as against the claimed capital loss of Rs. 2,99,869/-.

In the remand proceedings the submission and evidences filed by the appellant were sent to Ld. AO and Ld. AO examined the additional evidences and accepted the payments made in FY 2005-06 as under:-

s. No.	Amount (Rs.)	Date	Mode of payment	Payment made to
1	20,00,000	30/11/2005	Through Cheque No. 453003 date 30/11/2005	Arihant Build dated Con. Pvt. Ltd.
2	50,000/-	16/05/2005	Through cash	Arihant Build dated Con. Pvt. Ltd.
3	1,50,000/-	05/10/2005	Through Cheque No. 112508 dated 29/09/2005	Arihant Build dated Con. Pvt. Ltd.
4	7,81,125/-	09/11/2005	Through Cheque No. 114315 dated 09/11/2005	Arihant Build dated Con. Pvt. Ltd.
5	50,000/-	07/11/2005	[114313 dated 07/11/2005	Arihant Build dated Con. Pvt. Ltd.
6.	1,50,000	24/07/2005	114313 dated 21/11/2005	Arihant Build dated Con. Pvt. Ltd.

Ld. AO states that from the perusal of additional evidences it has been noticed that the appellant had made payments to Arihant Buildcon Pvt Ltd., New Delhi for purchasing flat no. 509 as above. Ld. AO further states that the assessee had made payment of Rs. 31,81,125/- during FY 2005-06, out of which Rs. 50,000/- was deposited through cash. In the assessment order, Ld. AO has considered payment of only Rs. 31,31,125/- and has not considered the cash payment of Rs. 50,000/-. In the sale deed, the sale consideration is mentioned as Rs. 31,31,125/-. Therefore based on the evidences, the purchase consideration is considered as Rs. 31,31,125/- and not as Rs. 31,81,125/-. Further based on the evidences, this payment is accepted to be made in FY 2005-06, therefore indexation benefit is provided accordingly.

Further the stamp duty payment expense of Rs. 2,09,500/- is duly mentioned as Rs. 2,09,500/- in the sale deed, the same has not been accepted by Ld. AO, but based on the evidences, the same is accepted to have been incurred in FY 2008-09 and half amount of the same is considered to be incurred by the appellant. Further in the appellate proceedings the appellant submitted that in FY 2008-09 apart from stamp fee Rs. 11,000/- was also incurred as other expenses, but in absence of documentary evidences the same is not accepted to have been incurred.

Thus the capital gain/ loss amount from the sale of property ie. residential flat no. 509, Arihant Harmony, C Block, Village Mahiuddinpur Kanawani, Pargana Loni, Tehsil Dadri, Dist. Gautam Buddha Nagar, is computed as under:

consideration (half share) = Rs. 37,25,000/-

Less

Cost of acquisition

FY 2005-06 31,31,125/- x 272/117

=72,79,197/- (half share) = 36,39,598/-

Expenses incurred in registration

FY 2008-09 2,09,500/- x 272/137

=4,15,942/- (half share) = 2,07,971/-

= 38,47,569/-

Capital Loss

= 1,22,569/-

From the above computation it can be seen that the capital loss in the sale of property was Rs 1,22,569/-, however the appellant has claimed loss of Rs 2,99,869/- and Ld. AO has computed gain of Rs. 6,16,730/-.

Therefore Ld. AO is directed to consider the Long Term Capital Loss of Rs 1,22,569/- from the transaction of property under consideration and compute the income accordingly.

4.10. Looking to the facts and circumstances of the case, the LTCG computed by Ld. AO as Rs. 6,16,730/- is hereby deleted and it is considered that the appellant deserves claim of LTCL of Rs.1,22,569/- as against claimed LTCL of Rs. 2,99,869/-. All the related grounds of appeal are adjudicated accordingly.

5. From the above, it could be seen that the Id AO had accepted the contentions of the assessee partly in the remand proceedings and the Id CIT(A) had relied on the same remand report and granted relief to the assessee. Once, relief is granted based on the remand report of the Id AO, revenue would be precluded from filing any further appeal before this Tribunal. This view of ours is further fortified by the decision of Hon'ble Madras High Court in the case of Smt B Jayalakshmi Vs. ACIT reported in 96 taxmman.com 486 (Mad). Hence, we do not find any infirmity in the order of the Id CIT(A) granting relief to the assessee qua the assessee under first issue.

6. With regard to second issue, we find that the Id CIT(A) had granted relief to the assessee by observing as under:-

5.10 Looking to the facts and circumstances of the case, the LTCG computed by Ld. AO as Rs. 6,16,730/- is hereby deleted and it is considered that the appellant deserves claim of LTCL of Rs. 1,22,569/- as against claimed LTCL of Rs. 2,99,869/-. All the related grounds of appeal are adjudicated accordingly.)

5.11 In the grounds of appeal no (iii), (iii)a) & (iii)b), the appellant submits that Ld. AO has made addition u/s 68 of Act of Rs. 87,02,837/- on account of unsecured loans taken from M/s. AK Beverages (Rs 58,26,565/-), M/s. Bajaj Prime Fuels, prop. concern of Sh. UK Bajaj (Rs. 1,76,871/-), M/s. Bajaj Prime Lubes, prop concern of Sh. U K Bajaj HUF (Rs. 7,32,000/-) & Sh. Karanvir Bajaj (Rs. 19,67,401/-). The appellant submits that sufficient opportunity was not provided to furnish all the details to prove identity, genuineness of transaction and creditworthiness of the creditors. In the appellate proceedings,

appellant filed detailed submission along with documentary evidences and the same were sent to Ld. AO in the remand proceedings.

In the remand report dt. 22.09.2022, Ld. AO submits that the addition of Rs. 87,02,837/- was made on the basis of fact that during assessment proceedings it was found that the assessee failed to produce the identity, genuineness and creditworthiness of the entities from whom the assessee had received loans amount of Rs. 87,02,837/- as under:-

S. No	Name of the entity	Loan received
1.	M/s A. K. Beverages	Rs. 58,26,565/-
2.	M/s Bajaj Prime Fuels Prop. Sh. U. K. Bajaj	Rs. 1,76,871/-
3.	M/s Baja Prime Lubes Prop. Sh. U. K. Bajaj (HUF)	Rs. 7,32,000/-
4.	Sh. Karanvir Bajaj	Rs. 19,67,401/-
	Total	Rs. 87,02,837/-

In the matter of Unsecured loan taken from M/s A. K Beverages, Ld. AO states that from the perusal of the additional evidences which were not submitted during the course of assessment proceedings i.e. confirmed copy of account in the books of A.K. Beverages, PAN, ITR, audited balance sheet, bank statement of assessee and bank statement of AK Beverages it is found that assessee was a partner in M/s A.K. Beverages and there was opening Credit capital balance of Rs. 21,92,315/- and during the year under consideration, assessee had also made the payments totaling to Rs. 1,68,500/- through banking channel Further Rs. 2,27,000/- had been received back through banking channel On 31.03.2018, there was loss from share of Rs. 57,68,064/- which was booked and closing balance of assessee was credit of Rs. 80,18,880/-. The AO states that submission of the appellant was verified and having considered submission of the assessee as well as examination of additional evidences, the contention of the assessee seems to be acceptable.

In the matter of Unsecured loan taken from M/s Bajaj Prime Fuels Prop. concern of Sh. U.K. Bajaj, Ld. AO states that from the perusal of the additional evidences which were not submitted during the course of assessment proceedings i.e. bank account no 862406 with HDFC Bank, confirmed copy of account, ITR, bank statement of Bajaj

Prime Fuels and bank statement, confirmed copy of account in the books of Bajaj Prime Lubes, PAN, ITR, bank statement of Bajaj Prime Lubes and bank statement of assessee, it has been found that there was opening credit balance of Rs. 10,00,747/- and during the year under consideration, assessee had received unsecured loan totaling to Rs. 1,76,871/- from M/s Bajaj Prime Fuels (Prop. Sh. UK Bajaj) through banking channels and amount was credited in the bank account no

862406 with HDFC Bank. Ld. AO states that the submission of the appellant was verified and having gone through the additional submission as submitted by the assessee as well as examination of additional evidences, the contention of the assessee seems to be acceptable.

In the matter of Unsecured loan taken from M/s Bajaj Prime Lubes Prop. Sh. U. K. Bajaj (HUF), Ld. AO states that from the perusal of the additional evidences which were not submitted during the course of assessment proceedings i.e. Confirmed copy of account in the books of Bajaj Prime Lubes, PAN, ITR, bank statement of Bajaj Prime Lubes and bank statement of assessee, it is found that there was opening credit balance of Rs. 55,000/ and during the year under consideration, assessee had received loan totaling to Rs. 1,70,000/- through banking channels and amount was credited in the bank account no. 862406 with HDFC Bank. Further, it was found that the assessee also returned the amount of Rs. 90,000/- on 06.10.2017 leaving closing credit balance of Rs. 1,35,000/-. Ld. AO states that the submission of the appellant was verified and having gone through the additional submission as submitted by the appellant as well as examination of additional evidences, the contention of the assessee seems to be acceptable.

In the matter of Unsecured loan taken from Sh. Karanvir Bajaj, Ld. AO states that from the perusal of the additional evidences which were not submitted during the course of assessment proceedings i.e. Confirmed copy of account, bank statement of Shri Karanvir Bajaj from where the amount was transferred to assessee i.e. (Account No.- 7113626100000023) and other account No. 711310110009037 which is a joint account of Shri Karanveer Bajaj & Shri Abhishek Bajaj), PAN and ITR of Shri Karanvir Bajaj, bank statement of assessee and the appellant assessee, it is found that assessee had taken total unsecured loan of Rs 20,00,000/- during the year under considerations through banking channel and amount was credited in her bank account no. 862406 with HDFC Bank. Further, total amount of Rs 32,599/- was also repaid through banking channel leaving closing balance of Rs. 19,67,401/-. Ld. AO states that the submission of the appellant was verified and having gone through the additional submission as submitted by the appellant as well as examination of additional evidences, the contention of the assessee seems to be acceptable.

5.12 Looking to the facts and circumstances of the case, the addition of Rs. 87,02,837/- made on account of unsecured loans taken from M/s AK Beverages (Rs. 58,26,565/-), M/s. Bajaj Prime Fuels, prop. concern of Sh. UK Bajaj (Rs. 1,76,871/-), M/s. Bajaj Prime Lubes, prop concern of Sh UK Bajaj HUF (Rs. 7,32,000/-) & Sh. Karanvir Bajaj (Rs. 19,67,401/-) is hereby deleted and relief is allowed to the appellant. All the related grounds of appeal are adjudicated accordingly."

7. Since, the relief has been granted to the assessee based on the remand report by the Id AO, revenue would be precluded from filing further appeal before this Tribunal. Hence, we do not find any infirmity in the order of the Id CIT(A) granting relief to the assessee.

8. Accordingly, grounds raised by the revenue are dismissed.

9. Since, the relief is granted to the assessee by dismissing the revenue's appeal on merits, the legal and factual grounds raised by the assessee in the cross objections are hereby dismissed as infructuous.

10. In the result, the appeal of the revenue is dismissed and the Cross Objection of the assessee is dismissed.

Order pronounced in the open court on 19/01/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:19/01/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi