

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH: CHENNAI		
श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं श्री मंजूनाथा.जी, माननीय 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.1006/Chny/2019 निर्धारण वर्ष/Assessment Year: 2014-15		
Shri Narendra Mahendra- Kothari, No.76, Osian Heights, Basin Bridge Road, Mint, Chennai-600 079. [PAN: AMOPK 2535 Q]	v.	The Income Tax Officer, Non-Corporate Ward-5(2), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri ARV Sreenivasan, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	05.02.2024
घोषणाकीतारीख /Date of Pronouncement	:	14.02.2024

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 01.02.2019, and pertains to assessment year 2014-15.

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

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1. *The order of the learned Commissioner of Income (Appeals) is wrong, illegal and opposed to facts of the instant case.*
2. *The learned CIT (A) erred in law in assessing the Long-Term Capital Gain arising from sale of property and reinvestment in new residential property as short term capital gains and disallowance of investment u/s.54 of The Act.*
3. *The learned CIT(A) erred in law in assessing the difference in commission without considering the reconciliation statement between the parties.*
4. *The learned CIT(A) erred in law in assessing the difference in closing balance without considering the reconciliation statement between the parties.*
5. *The learned CIT(A) erred in law in disallowing the expenditure u/s.40A(3) without considering the payment was made within the limits prescribed.*
6. *The learned CIT(A) erred in law in disallowing the expenditure paid to Sales Tax department towards which are normal business expenditure.*
7. *The learned CIT(A) erred in law in disallowing the expenditure paid to Sales Tax department towards which are normal business expenditure.*
8. *The learned CIT (A) .erred in treating the cash deposit as unexplained credit u/s.68, even though the appellant had explained the source.*
9. *The learned CIT(A) erred in law in disallowing the deduction claimed u/s 80C which was rightfully allowable.*
10. *For these and other grounds that may be rendered at the time of hearing.*

3. The brief facts of the case are that the assessee has filed its return of income for AY 2014-15 on 29.11.2014 admitting total income of Rs.2,31,330/-. The case was selected for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") on 24.10.2016 and determined total income of Rs.58,27,360/- by making various additions, including additions towards Short Term Capital Gains derived from transfer of property, additions towards difference in commission paid on sales and debited to P & L A/c, additions on account of difference in closing balance of sundry debtors, additions towards cash payment u/s.40A(3) of the Act, and additions on account of Sales Tax & penalty, Sales Tax paid on behalf of Digitran Prints and also additions

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under the head 'income from other sources' towards cash deposits into bank account. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 01.02.2019, rejected the arguments of the assessee and sustained the additions made by the AO towards Short Term Capital Gains, income from other sources and disallowance u/s.40A(3) of the Act, etc. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The first issue that came up for our consideration from Ground No.2 of the assessee's appeal is assessment of profit derived from transfer of property by way of Release Deed dated 07.08.2013 under the head 'Short Term Capital Gains' and consequent disallowance of deduction claimed u/s.54 of the Act. The facts in brief are that the assessee, Shri Narendra Mahendra Kothari along with four others, has purchased land situated at Sy.No.559/3AI and Sy.No.526 of No.9, Vilankattupakkam Village, Madhavaram Taluk, Thiruvallur District, vide Document No.8348/2010 & 8349/2010, both dated 29.10.2010. The assessee was having 25% share each in both the properties. Subsequently, the assessee along with one of the co-owners, Shri J. Ravindra Jain, vide Release Deed dated 07.08.2013 in Document No.9331/2013, released their 25% right in the above two properties for a total consideration of Rs.91,12,400/- in favour of remaining co-owners and received consideration in full and handed over possession of the property. There is another document by name

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Deed of Declaration by 1) Shri Amritlal Doshi 2) Shri Jayantilal Doshi & 3) Shri Mahendra Jain on 06.03.2014 registered as document No.54/2014 whereby, they made certain declaration in respect of title of the property and consideration paid to the assessee and one more co-owner of the property. The assessee has computed 'Long Term Capital Gain' from transfer of property by way of Release Deed dated 07.08.2013 by taking into account the date of transfer of property as 06.03.2014 with reference to Deed of Declaration executed by three persons and claimed that property was held for more than 36 months, and thus, gain derived from transfer of said land is assessable under the head 'Long Term Capital Gain'. The AO assessed gain derived from transfer of land by way of Release Deed by taking into account date of transfer as per Release Deed dated 07.08.2013. According to the AO, the assessee has released rights in the property and received full consideration and handed over possession of the property, and thus, transfer as per Sec.2(47) of the Income Tax Act, 1961, took place on 07.08.2013 and on that date, the period of holding of the asset by the assessee was less than 36 months and consequently, profit is assessable under the head 'Short Term Capital Gain'. The AO had also rejected deduction claimed u/s.54 of the Act on the ground that there is no provision under the Act to claim any deduction against Short Term Capital Gain, and further, the assessee has not satisfied the conditions prescribed u/s.54 of the Act. On appeal, the

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Ld.CIT(A) sustained the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4.1 The Ld.Counsel for the assessee referring to Release Deed dated 07.08.2013 and subsequent Deed of Declaration dated 06.03.2014 submitted that for the purpose of reckoning the date of transfer, the Deed of Declaration should be considered, because, the assessee has released interest in the property and also handed over possession of the property on 06.03.2014 but not on 07.08.2013. The Ld.Counsel for the assessee referring to recitals of Deed of Declaration dated 06.03.2014, submitted that since there were some difficulties, in handing over the vacant possession of the land at the time of release, and also, entire consideration was not paid, the assessee has released the interest in the land and also handed over the possession by executing Deed of Declaration dated 06.03.2014, and thus, for the purpose of computing period of holding, the date on which the Deed of Declaration was executed, should be considered. If you consider the Deed of Declaration dated 06.03.2014, then, the asset was held for more than 36 months and consequent gain is assessable under the head 'Long Term Capital Gain'. The AO and the Ld.CIT(A) without appreciating relevant facts simply rejected the claim of the assessee and assessed gains under the head 'Short Term Capital Gain' and also rejected deduction claimed u/s.54 of the Act. In this regard, he relied upon the decision of ITAT Jaipur

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Benches in the case of Shri Ijyaraj Singh in ITA No.152/JP/2019 dated 18.06.2020.

4.2 The Ld.DR supporting the order of the Ld.CIT(A) submitted that as per clauses of Release Deed dated 07.08.2013, the assessee has put in possession of the said property to the releasees and handed over all the relevant documents relating to said property on 07.08.2013 itself. Further, the assessee could not explain the reasons for execution of Deed of Declaration. Therefore, the AO has rightly held that transfer as defined u/s.2(47) of the Act, took place when the assessee executed a Release Deed, received full consideration and handed over possession of the property. The Ld.CIT(A) after considering relevant facts has rightly upheld the additions made by the AO and their orders should be upheld.

4.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee along with four other co-owners has purchased property on 29.10.2010 by way of two registered Sale Deeds. It is also not in dispute that the assessee and one more co-owner jointly released their 50% right in the above two properties in favour of remaining three co-owners by way of Release Deed dated 07.08.2013. As per recitals of Release Deed dated 07.08.2013, there is no dispute with regard to fact that the assessee has received consideration and also handed over the possession of the property to the

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releasees on very same day. From the above, it is undoubtedly clear that the transfer as defined u/s.2(47) of the Income Tax Act r.w.s.53A of the Transfer of Property Act, 1882, has satisfied on the date of release. If you consider the date of purchase of the property and Release Deed dated 07.08.2013, then, the period of holding of asset by the assessee is less than 36 months and in fact, this fact has not been disputed by the assessee. But, the only arguments of the assessee to justify the period of holding is more than 36 months is on the basis of Deed of Declaration dated 06.03.2014 executed by Shri Amritlal Doshi, Shri Jayantilal Doshi & Shri Mahendra Jain. The parties to the Deed of Declaration made a claim that there were some difficulties in handing over the vacant possession of the property and further, part of the consideration was held by the releasees. First of all, the Deed of Declaration is unilateral document, wherein, declaration made by the releasees of which, the assessee is not a party. Further, as claimed in the Deed of Declaration, what is the problem in handing over the possession of the property was not proved. In any way, transfer as per Sec.2(47) of the Act takes place, the moment conditions satisfied as per section 53A of the Transfer of Property Act, 1882. In the present case, there is no dispute with regard to fact that the conditions stipulated u/s.2(47) of the Act r.w.s.53A of the Transfer of Property Act, 1882, are satisfied. Therefore, in our considered view, transfer of property took place on the date in which the assessee has released his right in the property by way of Release Deed dated

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07.08.2013. If you consider the date of transfer as 07.08.2013, then the period of holding of the impugned asset by the assessee, is less than 36 months and thus, in our considered view, there is no error in the reasons given by the AO & Ld.CIT(A) to assess the gain derived from transfer of property under the head 'Short Term Capital Gain'. Since, gain on transfer of property has been assessed under the head 'Short Term Capital Gain', the question of allowing deduction u/s.54F of the Act, does not arise, and thus, in our considered view, there is no error in the reasons given by the AO and the Ld.CIT(A) to reject deduction claimed u/s.54/54F of the Act. Thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

5. The next issue that came up for our consideration from Ground No.3 of the assessee's appeal is additions towards difference in commission payment and also difference in closing balance of parties accounts. The assessee claimed to have paid commission to the tune of Rs.40,84,070/- to three parties. The AO obtained confirmation letters from all three parties and noticed that there is a difference between closing balance as per books of accounts of the assessee and balance confirmed by the parties. The AO called upon the assessee to reconcile the difference. In response, the assessee submitted that difference in accounts balance of parties is mainly on account of accounting commission, where the assessee books expenditure as and when the sales took place and other party accounts in the subsequent year. The

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assessee claimed that entire commission payment is subject to TDS. The AO, however, was not satisfied with the explanation furnished by the assessee and according to the AO, mere deduction of TDS on payment, is not sufficient to prove the incurring of expenditure. Therefore, difference in commission payment in respect of three parties has been added to total income of the assessee. On appeal, the Ld.CIT(A) sustained the additions made by the AO.

5.1 The Ld.Counsel for the assessee submitted that the assessee has reconciled the difference and also explained why there is a difference between closing balance as per books of accounts of the assessee and balance as per party's ledger accounts. But, the AO and the Ld.CIT(A) ignored explanation furnished by the assessee and made additions.

5.2 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee could not reconcile the difference and thus, the AO has rightly made addition and their orders should be upheld.

5.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee has paid commission to three parties and also deducted necessary TDS as per applicable provisions of the Act. The assessee had also explained reasons for difference in parties accounts when compared to confirmation filed by the

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parties and balance as per books of accounts of the assessee. According to the assessee, the difference is due to accounting system. The assessee is accounting the commission paid on sales as and when goods are dispatched, whereas, the parties accounts, commission as per Invoice and only after the goods delivered to the customers. We find that the reasons given by the assessee to explain difference between parties balance in the books of accounts of the assessee when compared to confirmations submitted by them appears to be reasonable and **bona fide**. Further, the assessee has deducted TDS on commission payment as per law. In fact, the AO has not disputed TDS deducted on commission payment. Therefore, we are of the considered view that additions cannot be made merely for difference in parties accounts on the basis of confirmation submitted by them, even though, the assessee has explained reasons for difference in party's accounts. The Ld.CIT(A) without considering relevant facts simply sustained additions made by the AO and thus, we reverse the findings of the Ld.CIT(A) on this issue and direct the AO to delete the additions made towards difference in closing balance and difference in commission payment in respect of three parties.

6. The next issue that came up for our consideration from Ground No.5 of the assessee's appeal is disallowance of freight payment in cash u/s.40A(3) of the Act. The AO has disallowed a sum of Rs.22,337/- towards freight expenditure incurred in cash u/s.40A(3) of the Act. It was the arguments of the assessee before the AO that expenditure incurred

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under the head 'freight' in cash is less than the prescribed limit as per Sec.40A(3) of the Act.

6.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The reasons given by the AO to make additions towards cash payment u/s.40A(3) of the Act, is violation of section 40A(3) of the Act. In our considered view, although, the assessee claims to have incurred freight expenses in cash within the prescribed limit, but on perusal of the details given by the AO in the assessment order, it is noticed that the assessee has paid a sum of Rs.22,237/- towards freight expenses in cash in violation of Sec.40A(3) of the Act, which attracts disallowance. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to sustain the addition made towards freight paid in cash u/s.40A(3) of the Act, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

7. The next issue that came up for our consideration from Ground Nos.6 & 7 of the assessee's appeal is addition of Rs.42,898/- towards Sales Tax / Penalty / Sales Tax paid on behalf of Digitran Prints and difference in Sales Tax turnover reported in the Income Tax Return and Sales Tax Return. The AO has made addition of Rs.2,000/- of penalty paid under Sales Tax Act and a sum of Rs.25,000/- which is debited in the P & L A/c. The assessee has also claimed an amount of Rs.13,676/- as Sales Tax paid on behalf of Digitran Prints as stock return but input not

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taken. Similarly, the AO has made addition of Rs.2,222/- towards difference in Sales Tax reconciliation.

7.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The reasons given by the AO to make additions towards Sales Tax / Penalty / Sales Tax paid on behalf of Digitran Prints, is the assessee could not adduce any evidences 'as to how' penalty paid under Sales Tax Act can be allowed as deduction. Similarly, the assessee could not explain as to how Sales Tax paid on behalf of a third party can be claimed as deduction. Therefore, we are of the considered view that there is no error in the reasons given by the AO & the Ld.CIT(A) to make additions of Rs.42,898/- towards Sales Tax payment, penalty payment, and Sales Tax difference, and Sales Tax paid on behalf of Digitran Prints, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

8. The next issue that came up for our consideration from Ground No.8 of the assessee's appeal is additions towards cash deposits into bank account as unexplained credit u/s.68 of the Act. The AO has made addition of Rs.21,22,000/- being cash deposits to RBL Bank & Standard Chartered Bank on various dates on the ground that the assessee could not explain source for cash deposits into bank account. It was the arguments of the assessee before the AO that source for cash deposits is out of advance received from IRIS against sales and also loan received

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from Shri Narendra Kothari (HUF). The AO rejected the explanation of the assessee with regard to cash received from IRIS against sales on the ground that there is no sale transactions between the assessee and IRIS and further, both parties are in different business. The AO has also rejected loan claimed to have been received from Shri Narendra Kothari (HUF) on the ground that Shri Narendra Kothari (HUF) has not filed return of income and also not explained source for cash payment.

8.1 The Ld.Counsel for the assessee submitted that the assessee has received advance from IRIS against sales and the same has been deposited into bank account on various dates. Further, the sales transactions did not taken place between the assessee and IRIS. The assessee has refunded advance received from parties through proper banking channel. Therefore, the AO is erred in making additions towards cash deposits into bank account, even though, the assessee has explained the source. The Ld.Counsel for the assessee further submitted that the assessee has received cash from Shri Narendra Kothari (HUF) and also filed confirmation from the parties, but the AO has made addition towards cash deposits by holding that Shri Narendra Kothari (HUF) has not filed Income Tax Returns to prove the source. But, fact remains that Shri Narendra Kothari (HUF) did not file return of income, because income for the above year is below the taxable limits. Although, the assessee has filed various details, the AO and the Ld.CIT(A) rejected the explanation of the assessee and made addition towards cash deposits u/s.68 of the Act.

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8.2 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee has deposited cash into both bank accounts in Chennai, but claims that he has received cash advance from a party situated at Delhi. Further, there were no sales transactions as claimed by the assessee with IRIS. Further, the AO has given categorical findings that IRIS is rice pulling entity and dealing mainly in iridium. The goods traded by the assessee are different from one dealt by IRIS. Therefore, the claim of the assessee that he has received cash advance from IRIS is unproved. The Ld.DR, further submitted that as regards source of cash loan from Shri Narendra Kothari (HUF), no documentary evidence was furnished by the assessee to prove capacity of the person who advanced loans in cash. The AO after considering relevant facts has rightly made addition towards cash deposits into bank account u/s.68 of the Act and their orders should be upheld.

8.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The fact with regard to impugned dispute are that on 21.06.2013, the assessee has made cash deposits of Rs.60,000/- in Standard Chartered Bank, Rajaji Salai Branch, Chennai. The assessee had also made cash deposits of Rs.20,62,000/- on various dates starting from 09.04.2013 to 09.07.2013 to RBL Bank Ltd., Chennai. The assessee has explained source for cash deposits and claimed that he has received advance from IRIS against sales. The assessee further claimed that he has received amount from

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Shri Narendra Kothari (HUF). In so far as IRIS, the firm is situated in New Delhi. Further, it was the findings of the AO that the assessee did not transact or made any kind of sales to IRIS, even assessee himself claims that he has refunded advance received from IRIS, because, the transaction did not materialize. From the above, it is undoubtedly clear that the assessee has made a vague claim of cash advance received from a party without there being any evidences to say that in fact, there are transactions between the assessee and said party. Further, the AO has made a categorical findings that M/s. IRIS is a rice pulling entity and dealing mainly in iridium. The goods traded by the assessee are different from one dealt by IRIS. Therefore, from the above, it is undisputedly clear that the assessee could not establish any business connection with IRIS to prove cash advance received from the party. Therefore, in our considered view, there is no error in the reasons given by the AO to reject the explanation offered by the assessee with regard to source for cash deposits from IRIS, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

8.4 As regards source for cash deposits from Shri Narendra Kothari (HUF), no documentary evidence was furnished by the assessee. The reasons given by the assessee that Shri Narendra Kothari (HUF) holding sufficient funds is not supported by any documents or Income Tax Returns filed by the assessee for relevant assessment year. Although, the assessee claims that Shri Narendra Kothari (HUF) does not have any

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taxable income for relevant assessment years, in our considered view, since the loan between the assessee and Shri Narendra Kothari (HUF) is in cash, Income Tax Returns filed by the creditor is one of the pointer to creditworthiness of a person. Since, the assessee failed to file necessary evidences to prove the creditworthiness of the creditor, in our considered view, there is no error in the reasons given by the AO to reject source for cash deposits claimed to have been received from Shri Narendra Kothari (HUF). Thus, we reject the arguments of the assessee and uphold the findings of the AO and the Ld.CIT(A) in making additions towards cash deposits into bank account u/s.68 of the Act.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 14th day of February, 2024, in Chennai.

Sd/-
(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 14th February, 2024.

TLN

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकरआयुक्त/CIT

4. विभागीयप्रतिनिधि/DR

5. गार्डफाईल/GF