

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आ.अ.सं.3078/मुं/2023 (नि.व. 2018-19)
ITA No.3078/MUM/2023 (A.Y.2018-19)

R P Soonawala Family Trust
121, Khushnuma CHS,
Carmicheal Stores, Pedder Road,
Mumbai - 400026
PAN: AADTR1540F

..... अपीलार्थी /Appellant

बनम Vs.

Deputy Commissioner of Income Tax, Circle- 19(3),
Room No. 206,
Piramal Chambers, Lalbaug,
Parel, Mumbai - 400012

..... प्रतिवादी /Respondent

Assessee by : Shri Manish Ranka
Revenue by : Smt. Mahita Nair

सुनवाई की तिथि/ Date of hearing : 26.12.2023
घोषणा की तिथि/ Date of pronouncement : 23.02.2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (in short ' the CIT(A)'), dated 15.7.2023, for the Assessment Year 2018-19.

2. Shri Manish Ranka appearing on behalf of the assessee submitted that the assessee is a trust. The assessee has earned long time capital gain on

sale of shares during the Financial Year 2017-18. The said long time capital gain is exempt from tax u/s 10(38) of the Income Tax Act, 1961 (in short 'the Act'). The assessee while filing return of income inadvertently offered the long time capital gain on sale of shares to tax. The return of income of the assessee was processed under section 143(1) of the Act, on 29.6.2019 accepting the income offered to tax by the assessee.

2.1 Against the order passed under section 143(1), the assessee filed appeal before the CIT(A). He submitted that appeal of the assessee was dismissed merely for the reason that the assessee did not file revised return of income and appeal of the assessee in pursuance to assessment order passed u/s 143(3) of the Act for the impugned Assessment Year is still pending for adjudication. The Learned Authorised Representative (in short 'Ld. AR') of the assessee stated that the assessee has not so far filed any appeal against the assessment order dated 07.01.2021. He further stated that the assessee had filed return of income for Assessment Year 2018-19 on 13.8.2018 and the assessee received intimation u/s 143(1) on 29.6.2019. By the time the assessee received aforesaid intimation, the time for filing revised return of income had already expired. The assessee realized its mistake in offering long term capital gain to tax only on receipt of intimation u/s. 143(1) of the Act. Immediately, on receipt of the said order, the assessee filed appeal before the CIT(A) on 25.7.2019. The assessment order u/s. 143(3) was passed much later on 7.1.2021. The assessee was under bonafide belief that no separate appeal is required to be filed against the assessment order dated 07.01.2021, as the assessee has already filed appeal against the order u/s 143(1) of the Act seeking same relief. The Ld. AR submitted that the long term capital gain on sale of shares is exempt from tax is an un-disputed legal position. The assessee inadvertently offered long time capital gain on sale of shares to tax. The Ld. AR thus prayed for reversing the order of CIT(A) and allowing the relief.

3. Per contra, Smt. Mahita Nair, representing the Department strongly supported the impugned order. She submitted that the assessee should have filed appeal against the assessment order dated 7.1.2021 passed u/s. 143(3) read with sec 143(3A) and 143(3B) of the Act and prayed for dismissing the present appeal.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The income returned by the assessee in its return of income was accepted by the Department in proceedings u/s143(1) of the Act. The assessee offered to tax long term capital gain on sale of shares which is stated to be exempt u/s 10(38) of the Act. No revised return of income was filed by the assessee rectifying the mistake. Purportedly, the assessee realized its inadvertent mistake only after receiving intimation u/s 143(1) of the Act. By that time limitation for filing revised return had already elapsed. Subsequently, the assessment of the assessee was selected for complete scrutiny. In scrutiny assessment proceedings, the income offered to tax was accepted by the Department thus, no fresh additions were made. The assessee did not file any appeal against the order passed u/s 143(3) read with sec 143(3A) and 143(3B) of the Act. Although in the impugned order the CIT(A) has mentioned that the appeal against the order passed u/s 143(3) is pending for adjudication, the Ld. AR of the assessee made a statement at Bar that no such appeal has been filed by the assessee.

5. Taking into consideration the facts of case and in order to avoid multiplicity of litigation, we direct the AO to consider assessee's claim of exemption on Long Term Capital Gains and decide the same in accordance with law.

6. The present appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on Friday the 23rd day of February, 2024.

Sd/-
(SHRI GAGAN GOYAL)
लेखाकार सदस्य / ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 23.02.2024
Mini, Sr. PS

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai