

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.1539/Ahd/2019
Assessment Year : 2013-24

The ITO Ward-4(2)(1) Ahmedabad	Vs	Arvindkumar Shrishrimal 401, Narayankrupa Square Nr.Mithakhali Railway Crossing Off Ashram Road Ahmedabad - 380 009 PAN:AJVPS 1082 Q
अपीलार्थी/ (Appellant)		
प्रत्यर्थी/ (Respondent)		
Assessee by :	Shri M.K.Patel, AR	
Revenue by :	Smt. Malarkodi. R, Sr. D.R.	

सुनवाई की तारीख/Date of Hearing : 28/02/2024
घोषणा की तारीख /Date of Pronouncement: 06/03/2024

आदेश/O R D E R

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Revenue against the order dated 14/08/2019 passed by the Commissioner of Income-tax (Appeals)-4, Ahmedabad ["CIT(A)" in short] for Assessment Year (AY) 2013-14.

2. Grounds of appeal are as under:

"1) That the Ld.CIT(A) has erred in law and on the facts in deleting the addition of Rs.44,69,147/- without appreciating the fact that the shares in question pertains to a 'Private Limited Company' and even though the shares had been purchased on the same date i.e. 28/08/2010, the cost of acquisition adopted by the assessee is different in each case.

2) That the Ld.CIT(A) has erred in law and on the facts in deleting the addition of Rs.44,69,147/- made under the head 'Short Term Capital Gains' by the Assessing Officer by substituting the cost adopted by the assessee with the 'Average Price' of each share which the AO determined to be Rs.6.54 per share."

3. The assessee filed his return of income for A.Y. 2013-14/2013-14 on 09/01/2014 declaring his total income at Rs.13,13,170/-. The assessment was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" in short) on 29/03/2016 assessing total income at Rs.16,29,140/-. On verification of the case records, the Pr.CIT noticed that assessee bought the shares of Prabhav Hotels & Motels Pvt.Ltd., subsequently known as Origin Hotels and Resorts Pvt.Ltd., from four different persons at different prices on the same date. The Assessee sold 27,12,350 shares out of 58,72,350 on 10/11/2012 and 05/11/2012 for amount totalling to Rs.2,22,60,040/- and showed "Short Term Capital Gain" (STCG) of Rs.52,909/-. The assessee has taken cost of acquisition of shares at Rs.2,22,07,131/- which comes to average of Rs.8.19 per share, whereas cost of acquisition for shares is Rs.6.54 per share. Thus, computation of capital gain was done on lower side. The Commissioner of Income Tax, Ahmedabad, in view of these discrepancies, selected this case for revision u/s.263 of the Act and set aside the assessment order u/s.143(3) of the Act dated 23/03/2016 and directed the Assessing Officer to make fresh assessment order, after issuing statutory notices which were not replied by the assessee. The Assessing Officer observed that the assessee failed to produce any documentary evidence which could substantiate the claim of assessee that which shares were sold and which were kept as holding. Thus, the Assessing Officer made addition of Rs.44,69,147/- as "STCG".

4. Being aggrieved by the assessment order, the assessee filed the appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld.DR submitted that the CIT(A) was not right in deleting the addition of Rs.44,69,147/- without appreciating the fact that the shares in question pertain to Private Limited Company and even though the shares have been purchased on the same date, i.e. on 28/08/2012, the cost of acquisition adopted by the assessee is different in each case. The Ld.DR further submitted that the CIT(A) was not right in deleting the addition made under the head "STCG" by the Assessing Officer by substituting the cost adopted by the assessee with the average price of each share which the Assessing Officer determined to be at Rs.6.54 per share. The Ld.DR submitted that the CIT(A) has not verified the bank statement of the assessee and the details of the sales and purchase of the shares and there was no proper documentary proof given by the assessee during the proceedings of the appeal before the CIT(A). Thus, the Ld.DR submitted that the CIT(A) was not justified in partly allowing the appeal of the assessee.

6. The Ld.AR, on the other hand, submitted that the assessee has demonstrated before the CIT(A) that the assessee has given the rate of the shares acquired from each party and also given the details of total investment reflected in the balance-sheet as on 31/03/2013. The Ld.AR further submitted that the assessee has given the details of the specific agreement with each person separately for the purchase of such shares of

Origin Hotels and Resorts Pvt.Ltd. (formerly known as Prabhav Hotels & Motels Pvt.Ltd.) The Ld.AR submitted that the CIT(A) has taken proper cognizance of all the details and partly allowed the appeal of the assessee and relied upon the order of the CIT(A).

7. We have heard both the parties and perused the relevant material available on record. It is pertinent to note that the assessee has given the details of purchase of the shares from each person (out of four persons) and the specified rate of purchase from these persons were also given before the Assessing Officer, but the Assessing Officer has not questioned the purchase price and simply stated that the assessee failed to substantiate his claim. In fact, the assessee has given the quantification and the details as to which shares from which party has been sold on 10/11/2012 and 05/11/2012 and as per the selling of the shares from those parties, the assessee has taken the purchase value of per share and the selling value of share, while calculating the claim of STCG. The explanation given by the assessee before the CIT(A) was reflected in the balance-sheet and no new evidences were produced by the assessee which was already detailed before the Pr.CIT. Thus, the CIT(A) has rightly observed that the STCG calculated by the Assessing Officer was not consonance with the claim made by the assessee regarding the sale transaction and, therefore, rightly deleted the addition of Rs.44,69,147/- on account of STCG which was arrived at by taking average price of shares by the Assessing Officer. The CIT(A) has taken cognizance of the details of balance-sheet as well as the details of purchase and sale of the shares which was provided by the assessee and the submission of the Ld.DR that bank statement should have been verified appears to be incorrect. Thus, there is

no need to interfere with the findings of the CIT(A). Hence, grounds of appeal raised by the Revenue is rejected.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Court on 06th March, 2024 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 06/03/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-4, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

//True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad

