

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 15/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2014-15)

Adil Rehman, ITO(INT TAXN)-2,
Hyderabad Vs. Hyderabad
[PAN : AALPR2665R]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Anil A. Masand, AR
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 13/03/2024
घोषणा की तारीख/Pronouncement on: 19/03/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the final assessment order dated 10/11/2023 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of Shri Adil Rehman ("the assessee") for the assessment year 2014-15, under section 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act"), assessee filed this appeal.

2. Brief facts of the case are that while computing capital gains in respect of the immovable property sold during the financial year 2013-14, the assessee claimed the transfer expenses at Rs. 2,81,425/- which

included expenses towards obtaining special power of attorney from India Consulate in USA, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses receipts etc., which was specifically needed to execute the sale. Learned Assessing Officer allowed transfer expenses to the tune of Rs. 46,000/- incurred in respect of brokerage, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses and disallowed Rs. 2,35,425/- claimed by the assessee in respect of brokerage, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses.

3. Assessee preferred objections before the learned DRP and submitted that all the expenses incurred by the assessee in connection with transfer are allowable expenditure and relied upon by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Shakuntala Kantilal (1991) 190 ITR 56 (BOM).

4. Learned DRP, however, was of the opinion that such an expenditure was merely incidental to the sale transaction and cannot be allowed to be deduction since such an expenditure was not wholly and exclusively for the transfer of property. Hence, this appeal.

5. Learned AR submitted that though the assessee placed reliance on the decision of Shakuntala Kantilal (supra) and submitted before the learned DRP that all the expenditure incurred in connection with the transfer of property is allowable expenditure, the learned DRP failed to consider the case in the light of such decision and explained why the

impugned expenditure is not allowable. Learned AR further submitted that the expenditure incurred by the assessee was wholly and exclusively for the purpose of transfer of property.

6. Learned DR placed reliance on the provisions of section 48 of the Act and submitted that the expenditure incurred for air fare, hotel accommodation etc., cannot be capitalized for the purpose of computing the cost of acquisition and cannot be allowed as allowable expenditure.

7. We have gone through the record in the light of the submissions made on either side. It is not the case of Revenue that the assessee did not incur expenditure towards obtaining special power of attorney from Indian Consulate in USA, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses receipts etc., but Revenue's case is that such expenses cannot be considered for the purpose of computing the capital gains under section 48 of the Act. Hon'ble Bombay High Court considered the question as to what constitute the expenditure incurred wholly and exclusively in connection with transfer as contemplated under section 48(i) of the Act and reached a conclusion that the expression 'in connection with such transfer' is certainly wider than the expression 'for transfer' and held that any amount of payment of which is absolutely necessary to effect transfer will be an expenditure covered by section 48(i) of the Act.

8. In the case on hand, the assessee is a non-resident individual and for the purpose of effecting transfer of the property, he had to travel to India and incurred the expenditure for obtaining special power of attorney from Indian Consulate in USA, air tickets, hotel accommodation receipts,

postal charges receipts, conveyance charges, lawyer fees, photocopying expenses, without which the transfer could not have taken place. We, therefore, are of the opinion that in terms of the ratio in the case of Shakuntala Kantilal (supra), said expenditure is covered under section 48(i) of the Act is allowable.

9. We, accordingly hold that the expenditure incurred by the assessee towards special power of attorney from Indian Consulate in USA, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses are also allowable expenditure and the learned Assessing Officer will consider the same and delete the addition so made. Grounds are allowed accordingly.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 19th day of March, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 19/03/2024

TNMM

Copy forwarded to:

1. Adil Rehman, 8-2-309/3/3, May Flower Road No. 14, Banjara Hills, Hyderabad.
2. The ITO (INT. TAXN)-2, Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD