

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.4119/Del/2016
Assessment Year: 2009-10

ITA No.4120/Del/2016
Assessment Year : 2010-11

Techno Construction Flat No.44, Santosh Apartments, Plot No.39B, Sector-6, Dwarka, New Delhi.	Vs	ITO, Ward-27(3), New Delhi.
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PAN: AACFT5711D

(Appellant)

(Respondent)

Assessee by	:	Shri M.P. Arora, CA
Revenue by	:	Shri Shyam M. Singh, Sr. DR
Date of Hearing	:	05.02.2024
Date of Pronouncement	:	03.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the order dated 21.03.2016 of the Commissioner of Income Tax (Appeals)-15, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.91/15-16 arising out of the appeals before it against the orders dated 11.02.2014 passed u/s 144/147 of the Income Tax Act, 1961 (hereinafter

referred as ‘the Act’), by the ITO, Ward 27(3), New Delhi (hereinafter referred to as the Ld. AO). The appeals are based on same set of facts and principles of law, so were heard together and decided together. The grounds for AY 2009-10 are reproduced below, and same are common to both AY, except the amounts involved:-

“1. That on the facts and circumstances of the case, the order of the Ld. CIT (Appeal) stating that the belief that the income escaped the assessment is based on relevant and tangible material and in good faith is perverse, illegal and is liable to be dismissed.

2. That on the facts and circumstances of the case, the order of the Ld. CIT (Appeal) that none of condition have been fulfilled to treat the firm as dissolved, is contrary to law as the assessment officer at the time of making the assessment was fully aware that the firm is a sole proprietorship. The fact of the firm, being the proprietorship firm is duly stated in the Arbitrator award passed by Hon'ble Justice Anil Dev Singh.

3. That on the facts and circumstance of the case, the Ld. Assessing officer wrongly observed that the claim of the appellant that the firm was dissolved w.e.f. 28.09.2004 vide Arbitrator order dated 27.12.2007 by the award passed by the Arbitrator Hon'ble Justice P.K. Bahri is misplaced as the firm constituted for the purpose of Income Tax evidenced by an instrument cannot be dismissed by two award passed by the Arbitrator.

4. That on the facts and circumstances of the case, the Ld. CIT (Appeal) has wrongly observed that the amount of Rs. 97,54,352/- received in the year under consideration has to be treated as trading receipts and the same is taxable as per provision of section 41(1) and 41(4) of the Income tax Act,1961.”

2. Heard and perused the record. On hearing both the sides it comes up that primary contention of appellant is that the assessment has been made on a partnership firm which stood dissolved. Ld. DR has defended this on basis of findings of CIT(A).

3. The facts that are necessary to decide the ground no. 2 and 3 are that a partnership firm consisting of two partners Shri Vinod Kumar Singhal and Shri Rakesh Kumar Gupta was engaged in the business of Civil Construction vide Partnership Deed dated 24.10.2001 having its office at 404, Santosh Apartments, Plot No. 39-B, Sector-6, Dwarka, New Delhi. That as per the aforesaid Partnership Deed, the profit sharing ratio was 50:50 in the said partnership business. The partners started business under the name & style of M/s Techno Construction and the said business was carried on jointly by both the partners till 28.09.2004. That the Partnership firm was engaged in business of Developers, Contractors, Engineers and other allied activities. During the course of the said partnership, the firm took the works contract of Kunj Vihar Co-operative Group Housing Society on turn-key basis for construction of flats at Sector-198, Sector 12, Dwarka, New Delhi. That the firm maintained its bank accounts with Oriental Bank of Commerce at its branches at District Centre, Janak Puri and Modern School Branch, Vasant Vihar, New Delhi. The differences cropped up between the partners and one of the partners Shri Rakesh Kumar Gupta filed the claim petition before Hon'ble Justice, P.K.Bahri, Former Judge, Hon'ble Delhi High Court in the year 2004. In the said claim petition it has been alleged that during the proceedings of OMP No. 337/2004, Shri Vinod Kumar Singhal (appellant herein in this appeal before the Tribunal) undertook to take the possession of assets of M/s Techno Construction with the undertaking to give appropriate accounting to the claimant as per his share in

Techno Construction. The said order was passed on 23.11.2004. Along with the claim petition, the claimant Shri Rakesh Kumar Gupta also submitted the details of amounts received from Shri Kunj Vihar Co-operative Group Housing Society. Appellant claims that due to aforesaid differences, the Income Tax Returns for the Assessment years 2003-2004 & 2004-2005 could not be filed with Income Tax Department. It has also been submitted in the claim petition that the partnership was at "Will." Therefore, on 12.09.2004, the claimant requested Shri Vinod Kumar Singhal, appellant herein for dissolution of partnership of M/s Techno Construction. It was also submitted that as per the provisions of Partnership Act, the partnership between the claimant and the appellant herein stands validly dissolved followed by a legal notice sent by the claimant. In the claim petition, it has been stated by the claimant Shri Rakesh Kumar Gupta that as no partnership now subsists between the claimant and Shri Vinod Kumar Singhal, appellant herein and in the business of M/s Techno Construction, therefore, the appellant is under an obligation to render true and correct accounts of the partnership firm M/s Techno Construction including the profits and assets in favour of the claimant as per the accounts maintained therewith. It has also been stated in the claim petition that in spite of the dissolution of the partnership business, the appellant herein has failed to come forward to render any accounts and the profits of the partnership firm M/s Techno Construction as per the partnership deed dated 24.10.2004, the claimant was therefore, constrained to file the Petition under Section 9 of the Arbitration

Application under Section 11(6) of the Arbitration & Conciliation Act, 1996. It has also been stated that as per the partnership deed, the dispute between the claimant and the appellant is liable to be adjudicated by way of arbitration, therefore, the present claim is being filed.

3.1 It is the case of appellant that vide order dated 23rd November, 2004, the Delhi High Court appointed Justice P.K.Bahri (Retd.) as a sole arbitrator to adjudicate the disputes between the parties. The parties filed their pleadings and during the course of the arbitration proceedings, the parties settled their disputes and in a joint statement of legally constituted attorney Lt. Col. G. K. Gupta on behalf of Shri Rakesh Kumar Gupta and Shri Vinod Kumar Singhal the appellant herein, was recorded. Thus, the parties settled all their disputes in terms mentioned in the said settlement. Both the parties prayed that the award be made in terms mentioned in their joint statement. The parties agreed and decided that the claimant namely Sh. Rakesh Kumar Gupta shall stand retired from the aforesaid partnership firm w.e.f. 10.12.2007 and Shri Vinod Kumar Singhal, the appellant herein would continue with the said firm as its sole proprietor thereof. The partnership firm was dissolved w.e.f. 28th September, 2004 by the Award of Arbitrator Hon'ble Justice P.K. Bahri (Retd.) by order dated 27th December 2007.

3.2 Then during the year under consideration, the assessment of the appellant was completed under section 144/147 of the Act at a total income of Rs.97,54,352/-. Appellant has submitted that it has not received any notice stated to be sent under section 148 of the Act. The appellant also claims that it has also not received any notice stated to be sent under section 142(1) of the Act.

3.3 The case of appellant is that during the assessment year 2009-10 under consideration vide, ITA No.4119/Del/2016, the assessee has received a sum of Rs.97,68,440/- and in the assessment year 2010-11 under consideration, vide ITA No.4120/Del/2016, the assessee has received a sum of Rs.1,02,31,560/- from M/s Kunj Vihar CGHS Ltd. These two receipts represents part of the award of Rs.2,00,00,000/- (Rs.Two Crore) passed by the Arbitrator Hon'ble Justice Anil Dev Singh. The award was given as a settlement towards outstanding debtors, earnest money and inventory lying with Kunj Vihar CGHS Ltd. Appellant has claimed that the amounts do not represent the income of the appellant for the years under consideration as the same were towards outstanding dues and inventory lying with the aforesaid society.

3.4 It is contended that the Assessing Officer has wrongly observed that the amounts represent the income of the appellant under the head income from business and profession. That the Assessing Officer has himself stated correctly in the assessment order that the award was granted by the Sole Arbitrator due to

pending dispute between the appellant and the Kunj Vihar CGHS Ltd on account of payment of money due to the appellant for work done in the past.

3.5 The thrust of Ld. AR was on the fact that on the date when the assessment order was passed, the firm stood dissolved on the orders of Arbitrator Hon'ble Justice P.K.Bahri. As the assessment order has been passed after the firm has been dissolved, it is not only illegal, but also unjustified.

4. After taking into consideration the facts and the submissions, it comes up that the ld. AR has primarily relied the awards passed by Hon'ble Justice P.K. Bahri (Retd.) and Hon'ble Justice Anil Dev Singh (Retd.) to submit that the firm stood dissolved on 28.09.2004 and, thereafter, assessment could not have been completed on the firm. It appears that the CIT(A) has not accepted this contention on the premises that as for the purpose of the Income-tax Act, the Arbitration Award is not of any consequence and independently the status of firm is to be determined.

4.1 We are of the considered view that the CIT(A) has fallen in error in not appreciating the background of the dispute adjudicated by Hon'ble Justice P.K. Bahri (Retd.) and Hon'ble Justice Anil Dev Singh (Retd) as Arbitrators appointed by the Hon'ble High Court of Delhi. As we go through these awards, copy of which has been placed at pages 129 to 156 of the paper book along with copy of claim petition filed before the Hon'ble Justice P.K. Bahri, Arbitrator,

available at pages 157 to 185, it comes up that the firm M/s Techno Construction initially had two partners, Shri Rakesh Kumar Gupta and Shri Vinod Kumar Singhal and Shri Rakesh Kumar Gupta had invoked the arbitration clause by filing a petition u/s 11 of Arbitration and Conciliation Act, 1996. The Hon'ble High Court of Delhi had appointed Hon'ble Justice P.K. Bahri (Retd.) as the sole Arbitrator and during the pendency of the proceedings, a compromise was effected. In the Arbitration Award, the terms of that compromise are mentioned which show that Rakesh Kumar Gupta who was referred in the Award as Gupta Group was retired from partnership w.e.f. 10.12.2007 and Vinod Kumar Singhal who was referred in the award as Singhal group was to continue with the said firm as its sole proprietor. This Award mentions that Singhal group was solely authorized to realize and recover the dues of the firm from its debtors including Kunj Vihar Cooperative Group Housing Society Ltd. on behalf of the firm and Singhal group was authorized to use the name and goodwill of the said firm to carry and run the business and all affairs of the firm with the new constitution/status. Further, the compromise had provided that:

“(vii) That it is further agreed by the parties that in view of the above settlement between them, Singhal Group shall be exclusively entitled to take all steps and proceedings before the appropriate courts or forum for recovering and realizing the dues and outstanding of the above said partnership firm from its borrowers, debtors or any other person from whom such amount is found to be due and also to execute any decree passed or to be passed in favour of the aforesaid firm before its dissolution and Gupta Group shall have no right or interest in the amount so realized by the Singhal Group. Gupta Group further undertakes that it shall not claim any amount whatsoever from the above said borrowers,

debtors(including the society mentioned hereinabove) or any other person mentioned hereinabove in respect of the said firm.”

4.2 The Award stood passed on the basis of these conditions. The Award further provide that Shri V.K. Singhal had paid a sum of Rs.55 lakhs to Gupta Group in full and final satisfaction and settlement of interests, shares, claims, dues outstanding of the Gupta Group in respect of the partnership firm. It further comes up that being authorized by award of Hon’ble Justice P.K. Bahri (Retd.) as the sole Arbitrator, to raise claims on behalf of the partnership firm, of which he was now a proprietor, the assessee had thereafter raised the claim against M/s Kunj Vihar Coperative Group Housing Society Ltd., in which Hon’ble Justice Anil Dev Singh (Retd.) was appointed as Arbitrator and there also a compromise was effected by agreement dated 30.05.2008. As per this compromise agreement, a sum of Rs.2 crore was agreed to be paid by the Society to the assessee in final settlement. Further, it was agreed that not only the claim raised, but there was also a reference to the “**erstwhile firm**” in the agreement and we consider it appropriate to reproduce certain paragraphs of this Award available at page 144 of the paper book:-

*“3. It is agreed, declared and confirmed by the parties that upon receipt of the above settlement/ payment of the above amount by the Second Party to the First party, neither party shall have or make any claim or demand -whatsoever against each other under the said Agreement or otherwise. Further all claims in relation to the construction work carried out an. executed by First Party & the **erstwhile firm** shall stand satisfied and the First Party shall be left with ho claims against the Second Party in respect of all disputes forming part of the claim petition filed by the **erstwhile firm** before Mr. Justice Retired Anil Dev Singh.*

4. *The parties upon execution of the present, agreement and the Second Party upon payment of Rs.2,00,00,000/- (Rupees Two Crores only) to the First party, shall be left with no claim against each other and all the claims part, pending of future which the parties had, have, or may have against each other in future in relation to the construction work executed by the **erstwhile firm** on the said land allotted to the Second party. Further upon the receipt of the said amount the First Party hereby confirms and admit that he shall have no monetary claim against the said Second Party on any account whatsoever. The Second Party hereby confirm, declare and admit that all amount standing receivable from the Second Party if any, shall be deemed to have been adjusted and squared off and the First Party and Mr. Rakesh Kumar Gupta partner of the Erstwhile Firm shall not claim any money from Second Party at any time hereafter on any account whatsoever.*

5. *That in case if any claim is raised by the Erstwhile Firm or its Mr. Rakesh Kumar Gupta partner, against the second party, the first party shall keep indemnify the second party against all such claims of any nature whatsoever, in respect of the construction work carried out by the **Erstwhile Firm.***”

4.3 This Award shows that the sum of Rs.2 Crore which was receivable by the firm was to be paid in the following manner:-

“Accordingly, the claimant is held entitled to receive a sum of Rs.2,00,00,000/- (Rupees Two Crores only) from the respondent in the following manner:-

(i) The FDR in the name of Registrar General, Delhi High Court bearing no.123248 dated 03.11.2004 for Rs.36,33,269.50 (which includes accrued interest) shall be released in the name of the claimant.

(ii) FDR in the name of Registrar General, Delhi High Court bearing FDR bearing No.123686 dated 07.04.2004 for Rs.61,35,170/- (which includes accrued interest) shall be released in the name of the claimant.

(iii) The balance amount of Rs.1,02,31,560.50 shall be paid by the respondent to the claimant within three months from today.”

4.4 As we take into consideration the aforesaid, we are of the view that the CIT(A) has fallen in error in not considering the consequences of the

Arbitration Awards in correct perspective. Section 184(1) of the Act, which has been relied by the CIT(A) only refers to the change in the constitution of the firm or the shares of the partners as is evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought. Thus, where on principles of mutuality there is any change in the composition and constitution or shares of the partnership, the provisions of section 184(1) of the Act can strictly be applied. However, in a case where the composition, constitution and shares of the partnership changed due to any order of the Court or Award, which has the effect as good as a decree of a Court, then, being quasi judicial authorities, the tax authorities are supposed to take cognizance of the same.

5. Thus, the CIT(A) has fallen in error to consider the firm to be in existence during the years under consideration so as to uphold the assessment completed by the AO in the case of the appellant in the capacity of firm as justified and legally valid. We are inclined to accordingly allow grounds No.2 and 3. Consequently, both the appeals of the assessee are allowed and the assessment orders are held to be *void ab initio* with consequences to follow.

Order pronounced in the open court on 03.05.2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 03rd May, 2024.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi