

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

महनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.329/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)

M/s. Smart Information Worldwide Inc. 49 Sixth Main Road, Raja Annamalaipuram, Chennai-600 028.	बनम/ Vs.	DCIT International Taxation -2(2) Chennai-6.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAOCS-8497-G		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri V. Ravichandran (CA)- Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	20-06-2024
घोषणा की तारीख / Date of Pronouncement	:	06-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 13-12-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 144C(3) of the Act on 21-03-2017. The grounds of appeal raised by the assessee read as under: -

1. The order of the learned CIT (Appeals) is contrary to law and the facts of the case and is devoid of reasoning.

2. The learned Assessing Officer ought to have appreciated that capital gains have to be computed based on the statutory provisions and that Section 48 requires that capital gains be computed by adopting the *"full value of consideration received or accruing as a result of the transfer of the capital asset"* and does not permit the actual consideration to be substituted by the fair market value.
3. The learned Assessing Officer erred in adopting the fair value of the shares when there was no evidence to suggest that the sale consideration has been understated except in certain situations such as specifically provided such as in Sections 50C, 45(5), 45(2), 45(3), 46(2), 50D and in the absence of such specific provisions, such substitution is not permissible.
4. The learned Assessing Officer ought to have appreciated that that Finance Act, 2017 has introduced Section 50CA with effect from Assessment Year 2018-19 by which the capital gains on the sale of unlisted shares would be determined by taking the fair market value of the share if it were to be higher than the sale consideration, but this provision would apply only from Assessment Year 2018-19 and has no application for earlier Assessment Years.
5. The learned Assessing Officer ought to have appreciated that in the case of unlisted companies, the only statutory basis for valuation is provided under Rule 11UA which has been prescribed under Section 50CA and even if the capital gains were to be computed based on the fair market value, such fair market value has to be determined in accordance with Rule 11UA.
6. The learned Assessing Officer has erred in applying section 50D in case where the sale consideration is determinable.
7. The learned Assessing Officer erred in levying interest under sections 234A and 234B when the entire income consisted of capital gains on which tax was deductible at source under section 195.

As is evident, the sole that arise for our consideration is addition made by Ld. AO under the head capital gains.

2. The Ld. AR advanced arguments taking support of various documents as placed on record along with various judicial decisions and assailed the impugned additions. The Ld. CIT-DR controverted the same and supported the additions made by Ld. AO. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being non-resident corporate assessee incorporated in USA is stated to be holding company of another entity by the name M/s Sulekha.com New Media Private Ltd. (Sulekha.com in short). The

shareholders of the assessee were promoters of Sulekha.com. The assessee held approx. 80% shareholding in Sulekha.com.

3.2 It transpired that during 2013 the assessee sold 221151 shares of Suelkha.com to another shareholder of Sulekha.com viz. Norwest Venture Partner FCVI Mauritius (Norwest in short) at Rs.520/- per share. M/s Norwest was a foreign venture capital fund duly registered with the SEBI. Norwest belong to Norwest Venture Partner group which is venture capital fund based in USA. Since the shares were acquired as bonus shares by the assessee, the cost was taken as 'nil' and the assessee offered entire sale consideration as capital gains and paid taxes on the same.

3.3 However, Ld. AO disputed the sale consideration per share by observing that the assessee acquired 10049 shares of Sulekha.com in a fresh issue of shares during the year 2012 @ Rs.835.94 per share. Further, during April, 2015, Sulekha.com issued shares to Norwest and other entity at approx. rate of Rs.2135/- per share. The assessee, in support of valuation, produced valuation reports in respect of 2012 and 2015 issue of shares by Sulekha.com. The assessee submitted that the sale was concluded by private negotiation between the assessee and Norwest and a price of USD 8.68 per share was agreed upon. This translates at the then prevailing exchange rate to Rs.52.80 per equity shares. Since both parties were shareholders in Sulekha.com and knew the affairs of the company well, they did not resort to third part valuation. Still, during scrutiny proceedings, the assessee obtained a valuation which valued the shares at Rs.27.43 per share based on net book value method. On the basis of the same, the assessee assailed adoption of any other value by Ld. AO.

3.4 The Ld. AO noted that during 2012, the shares were valued by independent valuer at Rs.645 wherein the shares were issued at Rs.835.94 per share. The Ld. AO then attempted to arrive at valuation shares during 2013 based on assumptions / projections relied upon by Sulekha.com for earlier / subsequent year valuation and valuation made as per discounted cash flow (DCF) working. The value per share for 2013 was worked out to be Rs.1162/- per share. Accordingly, adopting the same, Ld. AO made additions under the head capital gains for Rs.14.76 Crores. It was also seen by Ld. AO that there was difference in income returned by the assessee for Rs.10.93 Crores whereas in Form 26AS, the amount was reflected as Rs.11.40 Crores and accordingly, the differential was proposed to be added to the income of the assessee.

Appellate Proceedings

4.1 During appellate proceedings, the assessee contended that Sec.48 provide for computation of capital gain based on the sale consideration received and not based on fair market value of the asset transferred except in specific case set out in Sec.50C. The fair market value, even otherwise, could not be different from the sale value negotiated between two unrelated parties at Arm's Length. The assessee also contended that the provisions of Sec.50CA prescribing substitution of fair market value of unquoted shares has been inserted w.e.f. 01.04.2018 only and therefore, the same would not apply in this year. The assessee, in its written submissions, also submitted that there was no material to believe that higher sale consideration was received by the assessee. The sale value was evidenced by the agreement and particulars of tax deduction at source. There was no factual basis for disregarding the sales value that had actually been received. There was no relationship between the

assessee and Norwest. Reference was made to various judicial decisions including the decision of Hon'ble Supreme Court in the case of **CIT vs. Gillander Arbuthnot & Co. (87 ITR 407)** holding that full value of the consideration is the consideration agreed to be paid and not the market value. The assessee also cited various other subsequent decisions taking the same view. The assessee also submitted that in case of unlisted companies, the only statutory basis for valuation was provided under Rule 11UA which has been prescribed u/s 50CA which permit substitution of FMV for sale consideration only from AY 2018-19 and not before that. The assessee also submitted that it obtained a valuation report which yielded value of Rs.27.43 per share which was much lower than the sale price received by the assessee.

4.2 However, Ld.CIT(A) endorsed the computation of Ld. AO by holding that fair market value was not arrived on scientific basis. Sulekha.com was performing exceptionally well with robust financials. On the issue of sale difference, Ld. AO was directed to cross-verify the same and also compute correct capital gains. The Ld. CIT(A) also observed that Ld. AO did not invoke the provisions of Sec.50CA in the present case. Accordingly, the appeal was partly allowed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee has sold certain shares during the year to Norwest at Rs.520/- per share. Since the shares were acquired as bonus shares, the cost thereof was taken as 'Nil' and entire capital gains have been offered to tax by the assessee. The assessee as well as Norwest are independent parties. In support of sale price, the assessee furnished valuation report also which yielded

price per share at Rs.27.43 per share which is much lower than the sale price of Rs.520/- as earned by the assessee out of impugned sales transactions. The Ld. AO has not referred the valuation to an independent valuer but proceeded to compute the fair market value of per share based on projections made in earlier / subsequent years and arrived at value of Rs.1162/- per share disregarding the agreement value between the assessee and Norwest. However, the aforesaid valuation, in our opinion, is clearly fallacious one since the valuation of shares would keep on fluctuating depending upon the performance of the underlying entity and the valuation could not be arrived merely on the basis of projections alone. There is no finding that the shares were sold at an under-valued price.

6. Pertinently, in terms of Sec.48 of the Act, the capital gains have to be computed by adopting *full value of consideration received or accruing as a result of the transfer of the capital asset*. In other words, full value of consideration could not be substituted with any other value unless specified. There is no material to believe that the assessee received higher sale consideration. The actual sale price negotiated between two unrelated parties in a commercial transaction could not be substituted by the valued determined by Ld. AO. The case law of Hon'ble Supreme Court in **CIT vs. Gillander Arbuthnot & Co. (87 ITR 407)** supports the case of the assessee. Similarly in **CIT vs George Henderson & Co. Ltd. (66 ITR 622)**, it was held that full value of consideration is the full sale price actually paid. It was further observed that the legislatures made distinction between expressions *full value of consideration* and *fair market value of capital asset transferred*. Similarly in **CIT vs Sivakami Co. Pvt. Ltd. (159 ITR 61)**, it was held by Hon'ble Apex Court that since

the revenue could not prove that the consideration was understated, the capital gains were to be computed on the basis of sale consideration. Following these decisions, Hon'ble Delhi High Court in the case of **CIT vs. Nilofer Singh (309 ITR 233)** held that the expression *full value of consideration* used u/s 48 would not have any reference to the market value but only to consideration stated in the sale deeds. Similar are the decision of various other judicial authorities which are paced on record in the paper book. All these decisions support the view that full value of consideration could not be substituted with fair market value. Though Ld. CIT(A) has stated that the provisions of Sec.50CA has not been invoked by Ld. AO, we find that the aforesaid provisions have been introduced by Finance Act, 2017 w.e.f. AY 2018-19 only and the same do not apply to this year. This being so, the impugned addition as made by Ld. AO, in our considered opinion, is not sustainable in law. So far as the sale consideration reflected by the assessee vis-à-vis consideration reflected in Form 26AS is concerned, the Ld. AO is directed to verify the same. The assessee is directed to reconcile the same. We endorse the findings of Ld. CIT(A) to that extent. The impugned addition made by Ld. AO on the basis of share valuation stand deleted.

7. The appeal stand allowed in terms of our above order.

Order pronounced on 6th August, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :06-08-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF