

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

**I.T.A No.1226/Kol/2023
Assessment Year: 2015-16**

**Equitable Marketing Association.....Appellant
82, Baburam Ghosh Road,
Tollygunge, Kolkata – 700040.
[PAN: AAAAE0345D]**

vs.

ACIT, Circle-30, Kolkata.....Respondent

Appearances by:

Shri S. S. Gupta, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 10, 2024

Date of pronouncing the order : August 07, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.09.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That the Order passed by the Ld. Assessing Officer U/s 143(3) is arbitrary, bad in law and facts and the Ld. CIT(A), erred in confirming the same in part.

2. That the Ld. A.O erred in making an addition of Rs.1,36,67,806/- by invoking Sec. 50C of the Income Tax Act, 1961 and the Ld. CIT(A) erred in confirming the same in as much as in view of the facts and circumstances of the case no such addition U/s 50C was at all called for.

3. That the Ld. AO erred in law as well as in facts in passing the impugned assessment order disregarding the fact that the land is Agricultural Land and not a capital asset in terms of Sec. 2(14) of the Income Tax Act, 1961 and hence is not subject to charge of Capital Gains, and the Ld. CIT(A) erred in confirming the same, in as much as in view of the facts and circumstances of the case, no charge/levy of Capital Gain Tax is at all called for.

4. Without prejudice to Ground No. 2 &3, the Ld. AO erred in law as well as in facts in calculating Long Term Capital Gain at Rs.1,36,67,806/- even when the assessee has already computed the Long Term Capital Gain at Rs.47,83,928/-, in as much as in view of the facts and circumstances of the case, such computation has resulted in double taxation to the tune of Rs. 47,83,928/-,

5. That the Ld. AO erred in law as well as in facts in levying/charging interest U/s 234B at Rs.15,40,638/- and interest U/s 234D at Rs.1,32,706/-, in as much as in view of the facts and circumstances of the case no such interests were at all chargeable.

6. That the Ld. AO has erred in initiating penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961.

7. That the appellant craves leave to add, alter, change and/or modify any of the grounds of appeal at or before hearing of the appeal and claim further relief or reliefs which is necessary for the ends of justice.”

3. Though the assessee has raised various grounds of appeal, however, the sole issue contended by the ld. Counsel for the assessee before us is as to whether the land is an agricultural land and not falling within the definition of capital gains asset as defined u/s 2(14) of the Act.

4. The brief facts of the case are that the Assessing Officer during the assessment proceedings noted that the assessee had sold various parcels of land. The Assessing Officer further observed that the sale consideration mentioned in the respective sale deeds was less than the collector value/stamp duty value applied by the registering authority at the time of registration of the said sale deed. The Assessing Officer accordingly applied the provisions of section 50C of the Act and calculated the capital gains on the said sale of land at Rs.1,36,67,806/-.

The Assessing Officer further observed that the assessee had claimed deduction to the tune of Rs.90,44,500/- on the said capital gains u/s 54D of the Act. The Assessing Officer observed that the deduction u/s 54D was allowable only for the acquisition of industrial lands, which have been used for two years for industrial purposes prior to its acquisition by the Government. The Assessing Officer further observed that the parcel of land sold by the assessee was agricultural and not industrial and further that the assessee had not furnished any evidence to prove that the said land was eligible for claim of deduction u/s 54D of the Act. Since, the assessee had not shown any capital gains in the return of income, therefore, the Assessing Officer made the impugned additions of Rs.1,36,67,806/-.

5. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the CIT(A). However, before the Id. CIT(A), the assessee took another ground that the lands sold by the assessee, in fact, were agricultural lands, not falling in the definition capitals asset as defined u/s 2(14) of the Act, therefore, no capital gains tax was leviable on the said sale of lands. However, the Id. CIT(A) observed that no such ground was taken by the assessee before the Assessing Officer. Further, the assessee had produced some evidence in the form of certificate from Gram Panchayat, which was not reliable evidence to hold that the said lands were agricultural lands. Moreover, the assessee had himself claimed deduction u/s 54D of the Act, which was available in respect of industrial land acquired by the Government, therefore, the said fact, itself, proved that the said land was not agricultural land. The Id. CIT(A), therefore, dismissed the appeal of the assessee.

6. Being aggrieved, the assessee has come in appeal before us. Before us, the Id. Counsel for the assessee has relied upon certain documents

obtained from the Office of Land and Land Reforms Officer to submit that the land sold by the assessee was agricultural land. The ld. counsel has further submitted that these documents were not available with the assessee at the time of assessment. The ld. counsel has submitted that though the assessee had not taken the above plea that the land was not falling in the definition of capital asset before the Assessing Officer, however, the said plea was duly taken before the ld. CIT(A). The ld. counsel, therefore, has submitted that if there is no capital gain tax chargeable on the said land, the assessee should not be burdened with illegitimate taxes for its bona fide mistake.

7. The ld. DR, on the other hand, has relied the findings of the lower authorities.

8. We have considered the rival submissions. It has been held time and again that the Income Tax Authorities should charge from the citizens only legitimate taxes, which they are liable to pay. It has also been held time and again that an assessee should not be punished for his bona fide mistake. In this case, the plea of the assessee has been that the land sold by the assessee was an agricultural land not exigible to tax. Though certain documents were furnished by the assessee before the ld. CIT(A), however, the ld. CIT(A) has not considered the same as the same were not filed before the Assessing Officer. In our view, the interests of justice will be well-served if the assessee is given an opportunity to prove that the lands in question were agricultural lands not falling in the definition of capital asset as defined u/s 2(14) of the Act. The matter is restored to the file of the CIT(A) with a direction to the ld. CIT(A) to consider the above claim of the assessee and examine the documents furnished by the assessee and thereafter pass a speaking order on this issue. The ld. CIT(A), if so required, may also call remand report from the Assessing Officer in respect of evidences/documents

furnished, if any, by the assessee. Needless to say that the assessee will participate in the proceedings before the Id. CIT(A)/remand proceedings before the Assessing Officer and will furnish the necessary evidences and thereafter the issue be decided on merits.

9. The Id. counsel, at this stage, has also taken an another ground that the assessee had shown in the ITR long-term capital gain of Rs.47,83,928/-, however, the Assessing Officer has not given benefit of the capital gain tax already paid by the assessee. It is accordingly directed that if for some reasons, the assessee could not prove that the said land sold by the assessee was not agricultural land and if it is so held by the Id. CIT(A) that the capital gains tax is leviable on the sale of land by the assessee, then the aforesaid alternative plea will also be verified and if the assessee has already shown any capital gains on computation of income and has paid capital gain tax thereupon, then the set off of the same will be given to the assessee accordingly. However, it is made clear that our observation given in this para of the order will not have any bearing on our directions given in respect of the issue to as to whether the land in question is a capital asset or not.

10. With the above observation, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 7th August, 2024.

Sd/-
[Rajesh Kumar]
लेखा सदस्य /Accountant Member

Sd/-
[Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 07.08.2024.

RS

Copy of the order forwarded to:

1. Equitable Marketing Association
2. ACIT, Circle-30, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches