

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.174/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Naveen Kumar Gupta Sector-C, Main Road, Bandamunda, Rourkela, Odisha-770032	Vs	ACIT, Circle Rourkela, Rourkela
PAN No. :ADSPG 0050 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Abhijeet Agarwal, Advocate
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	03/09/2024
घोषणा की तारीख/Date of Pronouncement	:	03/09/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), dated 16.02.2024 passed in DIN & Order No.ITBA/NFAC/S/250/2023-24/1061029134(1) for the assessment year 2017-2018 on the strength of following grounds of appeal :-

- A. *For that the order passed by the Ld. NFAC is ex-facie illegal, excessive, bad in law and as such liable to be quashed in limine.*
- B. *For that the Ld. NFAC totally misinterpreted the fact and has upheld the addition of Rs.1,60,00,000/-.*
- C. *For that the Ld. NFAC instead of completely setting aside the addition of Rs.2,80,50,000/- has instead directed the Assessing Officer to delete the amount after verification.*

- D. The Ld. NFAC has arbitrarily upheld the addition of Rs.6,42,955/- despite the fact the appellant has clearly explained all the reasons for the increase in sales of the Appellant as the Appellant deals in FMCG goods and maximum transactions are done in cash.*
- E. For that the Appellant craves leave to submit further points, if any at the time of hearing.*

2. Before us, the assessee is represented by Shri Abhijeet Agarwal, Advocate and the department is represented by Shri Sanjay Kumar, Id CIT DR.

3. In ground Nos. 1 & 2, the assessee has aggrieved by the addition of Rs. 1,60,00,000/- upheld by Id CIT(A) out of total addition of Rs.12,80,000/- made by the assessing officer by holding that assessee has sold certain pieces of land during the year under appeal and such transaction was not disclosed in the return of the income filed by the assessee.

4. Before us, Id AR submitted that the assessee is one of the partner in M/s. Aaravindam Lifespace LLP and the firm had purchased certain piece of land in terms of the sale deed executed on 10.03.2017, wherein the assessee has represented himself for and on behalf of the firm M/s. Aaravindam Lifespace LLP as a partner. In the said sale deed, the PAN number of the assessee was stated being the signatory on behalf of the purchasing firm. The registration authorities have wrongly submitted the details in SFT wherein this transaction was shown as being carried out by the assessee in his individual capacity and as against the total value of the transaction at Rs. 1,60,00,000/-, the transaction was incorrectly reported in SFT at Rs.12,80,00,000/-. It is further submitted by Id AR that

the lower authorities have wrongly treated this transaction of purchase of the land by the partnership firm M/s. Aaravindam Lifespace LLP as a sale transaction entered into by the assessee and confirmed the addition of 1.60 crore in the hands of the assessee as capital gain. Ld AR submitted that from the perusal of the sale deed placed in the paper book at pages 3 to 20, it could be evident that it is a transaction of purchase of land by the partnership firm M/s. Aaravindam Lifespace LLP and therefore, this transaction cannot be treated as the sale of land. Further since it is the land purchased by the partnership firm, the assessee cannot be asked to explain the sources of the investment made in acquisition of such pieces of lands. He submitted that though before the Id AO assessee could not file any details however, during the appellate proceeding before Id CIT(A), all the details were submitted along with the documentary evidences and a remand report was sought by the Id CIT(A), wherein after considering these facts, the correct nature of the transaction was stated by the AO in the remand report dated 26.12.2023. The Id CIT(A) after considering the remand report has wrongly confirmed the addition to the extent of 1.60 crores as sale consideration without appreciating that it was not a sale consideration received by the assessee but it is the purchase price paid by the partnership firm M/s. Aaravindam Lifespace LLP. Therefore, no addition is required to be made in the hands of the assessee on this transaction. He, thus, prayed for the deletion of addition so made and confirmed by the Id. CIT(A).

5. In reply, Id. CIT-DR fairly admitted that the transaction is of the value of Rs.1.60 crores only and not of 12.80 crores as has been observed by the Id AO in assessment order and also as reported in SFT. With regard to the issue that the land was purchased by the firm and not by the assessee and it is a transaction of purchase of land as against the sale as has been treated by the lower authorities, he requested that the matter may be sent to the file of AO for making necessary verification and decide the issue accordingly.

6. At the outset, from the perusal of the sale deed placed before us in the paper book, it is seen that the sale deed was executed by the assessee in the capacity of a partner of M/s. Aaravindam Lifespace LLP where the firm has purchased certain pieces of land for a total sum of Rs. 1,60,00,000/- from M/s. Utkal Steel Ltd. Therefore, it is not a transaction of sale of property by the assessee but it is a transaction of purchase of certain piece of land by the partnership firm, wherein the assessee is one of the partner. Also, the fact that in SFT report wrong figure were reported by the respective authorities is an admitted fact and the AO in the remand report has also accepted these facts. The relevant observations of the AO in the remand report dated 26.12.2023 are as under :-

1. Issue on addition in the assessment order u/s.144 dated 23.12.2019 for the A.Y.2017-18 on sale of agricultural land of Rs.12,80,00,000/-:

On perusal of sale deed and Buyer details received from the O/o IGR Board of Revenue, Odisha, Cuttack, it is seen that for registration purposes, the consideration for the transfer of the Land, as mentioned in schedule Land is Rs. 1,60,00,000/- (Rupees one Crore Sixty Lakh). The details of schedule land and registration details is as under:

Schedule Land

Mouza	KHATA	Plots sold hereunder	AREA	REGISTRATIO NNO	REGISTRATIO N DATE	Buyer Name
Kapatm unda	44	43/p	2.167	11731700275	17-Mar-2017	Aaravinda m Lifespace LLP PAN-ABHFA2997E represented through its designated partner Nabin Kumar Gupta
	44	45/p	1.15	11731700275	17-Mar-2017	
	44	47/p	3.67	MI11700275	17-Mar-2017	
	99/41	41	0.82	11731700275	17-Mar-2017	
	99/41	42	1	11731700275	17-Mar-2017	
	99/41	44	0.39	11731700275	17-Mar-2017	
	99/41	44/1019	0.297	11731700275	17-Mar-2017	
	99/41	44/1020	0.5292	11731700275	17-Mar-2017	
		8 Plots				
	2		10.0233			
Total	Khatas		Acres			

On perusal of the sale deed vide Registration no. 11731700275 dated 17.03.2017 , it is seen that the company M/s. Aaravindam Lifespace LLP had purchased 8 Plots of Rs. 1,60,00,000 Represented Through Its Designated Partner Nabin Kumar Gupta during the F.Y.2016-17

relevant to the A.Y.2017-18, the assessee Nabin kumar gupta is one of its company partner. However, the said transaction incorrectly uploaded in SFT in the name of Nabin Gupta PAN-ADSPG0050B instead of M/s. AARAVINDAM LIFESPACE LLP PAN- ABHFA2997E and the said transaction is also incorrectly uploaded in SFT of Rs. 12.80 Cr. instead of Rs. 1.60 Cr..

7. Since the subject transaction is admittedly of purchase of land by the partnership firm wherein the assessee is one of the partners, therefore, no addition could be made by treating this transaction as sale of land in the hands of the assessee as has been done by the lower

authority. Therefore, the addition made as capital gain in the hands of the assessee is directed to be deleted.

8. It is further observed by us that even otherwise this transaction of purchase of property was actually pertained to the partnership firm M/s. Aaravindam Lifspace LLP, therefore the assessee cannot be asked for the source of investments in his individual capacity therefore, on this score also no addition could be made in the hands of the assessee for any investment alleged as unexplained.

9. With regard to request of Id. CIT-DR for sending back the issue to the file of AO, we find that this will create multiplicity of proceedings as the issue is very clear from the perusal of facts, thus is decided by us.

10. In view of the above facts, we direct to delete the addition of Rs.1,60,00,000/- as confirmed by the Id. CIT(A) in the hands of the assessee. As a result, ground No.2 of appeal is allowed.

11. Ground No. 3 taken by the assessee stood withdrawn by the Id AR during the course of hearing by making following remarks in appeal memo:-

This has been allowed by the AO vide order dated 9/7/24. Hence withdrawn

Sd/-
(Abhijeet Agarwal)
03/09/2024

12. Since this ground of appeal is withdrawn, therefore, the same is hereby dismissed as withdrawn.

13. Ground No. 4 is related to the addition of Rs.6,42,955/- made on account of cash deposit during demonetization which was held as unexplained by the AO.

14. The Id CIT(A) has confirmed the addition as made by AO by observing that the assessee has not established the sources of the said cash deposit.

15. Before us, the Id AR of the assessee reiterated the submissions made before the lower authorities and stated that assessee was dealing in the FMCG goods and deposits are on account of the sales made on cash basis. He, therefore, requested for the deletion of the addition so made by the AO.

16. On the other hand, Id CIT-DR submitted that during the demonetization period assessee has made a total cash deposit of Rs.61,01,400/-. In response to the notice u/s.133(6) of the Act the respective banks have informed that out of this total cash of Rs.61,01,400/- deposited by the assessee during the demonetization period, Rs.4,77,800/- was deposited in Rs.100/- and Rs.50/- denomination notes and the balance amount was deposited in demonetized currency. The AO after considering the average deposits has been fair enough in allowing the necessary deduction and made addition of Rs.6,42,955/- only and he prayed for the confirmation of such addition.

17. We have considered the rival submissions. From the records and perusal of the orders of the lower authorities we are unable to find out as

to how much of the amount and on which date, the assessee has deposited SBN in bank during the period of demonetization nor any effort was made by the AO to verify these facts. Further the assessee has also failed to file the details about the closing cash balance as on 8.11.2016 which could have been deposited in the bank during the demonetization period in SBN. Therefore, we are of the considered view that this issue needs further examination where the assessee is directed to file the copy of the cash book and another relevant evidences before the AO to establish that the cash deposited during demonetization period was available with him as on 8.11.2016. In case it is found that assessee has accepted SBN after 8.11.2016 no credit for such cash received should be allowed to the assessee.

18. In view of our above directions, this issue is restored file of the AO for making verifications and make the addition, if any, with regard to the source of the cash deposited in SBN during demonetization period. As a result, this ground of appeal is allowed for statistical purposes.

19. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order dictated and pronounced in the open court on 03/09/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 03/09/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Naveen Kumar Gupta
Sector-C, Main Road, Bandamunda, Rourkela,
Odisha-770032
2. प्रत्यर्थी / The Respondent-
ACIT, Circle Rourkela, Rourkela
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack