

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.1462/Kol/2024
Assessment Year: 2018-19

Subrata Das.....Appellant
P-347, CIT Road,
Scheme Vim Kankurgachi,
Kolkata – 700054.
[PAN: ACXPD9375L]

vs.

ITO, Ward-44(2), Kolkata..... Respondent

Appearances by:

Shri Amit Agarwal, Advocate, 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 : September 23, 2024

Date of pronouncing the order : September 23, 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 24.06.2024 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 learned National Faceless Appeal Centre, Delhi erred in passing ex-parte order dated 24th June, 2024 under section 250 of the Income Tax Act, 1961 dismissing the appeal of the Appellant in-limine without dealing with the merits of the case and by not passing speaking order on the grounds of appeal raised by the Appellant Assessee against the impugned assessment order dated 30.03.2021 passed by the Ld. National Faceless Assessment Centre, Delhi (the Assessing Officer) under section 143(3) of the Income Tax Act, 1961, in the case of the Assessee for the Assessment Year 2018-19.

2. That the learned National Faceless Appeal Centre, Delhi erred in arbitrarily confirming the addition of Rs.1,48,94,000/- made by the Ld. Assessing Officer on the basis of assumption of incorrect facts that the Assessee had sold three properties at the aggregate sum of Rs.1,48,94,000/- and derived short term capital gain of Rs.1,48,94,000 thereon, without appreciating that the said transactions of sale of three properties were made by "M/S LKR Heights Private Ltd" (AACCL5630Q), wherein the Assessee is a director, to purchasers through registered sale deeds, which deeds were signed by the Assessee in his capacity as Director of the said Company.

3. That the Ld. Assessing Officer has erred in disallowing and adding back a sum of Rs. 70,40,000 /- under section 56(2)(x) on the grounds without appreciating that the provisions of 56(2)(x) of the Income Tax Act, 1961 will not apply in the facts of the case as the Assessee had not purchased any property and the immovable property were received by him as gift from his mother viz. Smt. Sabita Das vide Gift Deed dated 08th August, 2017.

4. That the impugned Appellate Order dated 24th June, 2024 passed by learned National Faceless Appeal Centre, Delhi under section 250 of the Income Tax Act, 1961 is without jurisdiction, illegal, invalid and bad-in-law as the same has been passed in clear violations of the applicable provisions of law.

5. That the appellant craves leave to add, amend or abandon any grounds of appeal taken above in course of hearing of the case and for such act of kindness of your good self the appellant shall ever pray."

3. The assessee through the above grounds of appeal has agitated against the action of the lower authorities in assessing capital gains against sale of three properties and further in respect of property received without consideration, hence, deeming it as income of the assessee u/s 56(2)(x) of the Act.

4. At the outset, the ld. counsel for the assessee has invited our attention to an application filed for additional evidence under Rule 29 of the Income Tax (Appellate Tribunal), Rules, 1963 and has further submitted that during the year, the assessee did not sell any property as alleged by the Assessing Officer. He inviting our attention to the impugned assessment order has submitted that the only information available to the Assessing Officer was from the land revenue

department that certain sale deeds have been registered, wherein, the name of the assessee was appearing under signature of 'owner/vendor'. The ld. counsel has demonstrated before us that all the three properties as referred to by the Assessing Officer, were, in fact, sold by the company namely M/s LKR Heights (Pvt.) Ltd. and the assessee had signed the said sale deeds being the director of the said company. The capital gains, if any, have to be assessed in the name of the company and not in the hands of assessee.

4.1 In respect of the second issue, the ld. counsel has invited our attention to page 147 of the paper-book, which is a copy of the registered gift deed by the mother of the assessee in favour of the assessee. The ld. counsel for the assessee has submitted that since the said gift deed was from the mother of the assessee and she is falling in the definition of relative as defined under the Act, therefore, the provisions of section 56(2)(x) of the Act were not applicable to the said gift deed.

4.2 The ld. counsel, therefore, has submitted that the impugned additions made by the lower authorities were not justified.

5. The ld. DR, however, has submitted that the assessee had not produced the aforesaid documents before the lower authorities. That these documents have been produced, for the first time, before this Bench. He, therefore, has submitted that the matter may be restored to the file of the Assessing Officer so as to give opportunity to the Assessing Officer to examine the aforesaid sale deeds and gift deed.

6. The ld. AR has not objected to the same.

7. We have heard the rival contentions and gone through the record. The evidence produced on record by the assessee is admitted under

Rule 29 of the Income Tax (Appellate Tribunal), Rules, 1963. The matter is restored to the file of the Assessing Officer with a direction that the Assessing Officer will examine the sale deeds of the three properties and also the gift deed from his mother and consider the submissions of the assessee. If the claim of the assessee is found to be correct, then not to make any addition. Needless to say that the Assessing Officer will pass a speaking order after giving proper opportunity of hearing to the assessee. The Assessing Officer is directed to decide the matter within 90 days from the receipt of the copy of this order.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 23rd September, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 23.09.2024.

RS

Copy of the order forwarded to:

1. Subrata Das
2. ITO, Ward-44(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches