

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "F" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 1269/Mum/2024
Assessment Year :2021-22

Income Tax Officer-42(1)(3), Kautilya Bhavan, C-41 to C-43, G-Block, Bandra East, Mumbai.	vs.	Mittal Mahesh Gala, 9, 2 nd Floor, Om Dipti Hsg. Society, Kasturba Road No. 7, Borivali (E), Mumbai PAN : AAFPG6897E
(Appellant)		(Respondent)

For Assessee :	Shri Pradip Kapasi
For Revenue :	Shri Ankush Kapoor, CIT-DR

Date of Hearing :	13-08-2024
Date of Pronouncement :	24-10-2024

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dt.19-01-2024 passed by the Ld.Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2021-22. The Revenue is aggrieved by the decision rendered by the Ld.CIT(A) on the following issues:-

- a. Rejection of claim for deduction u/s. 54F of the Income Tax Act, 1961 (‘the Act’);
- b. Addition made u/s. 68 of the Act in respect of sale of shares;

- c. Addition made u/s. 68 of the Act in respect of unsecured loans;

2. The assessee is engaged in the business of running pre-school for toddler kids. The assessee filed her return of income for the year under consideration declaring a total income of Rs. 6.14 crores. The assessee had sold shares of a private limited company and earned long term capital gain therein. The assessee invested a part of sale consideration in purchase of a residential flat and accordingly claimed deduction u/s. 54F of the Act during the year under consideration. The AO took up the return of income filed by the assessee for scrutiny, wherein the AO

- (a) rejected the claim for deduction u/s. 54F of the Act on the reasoning that the assessee owns more than one residential house on the date of transfer of shares
- (b) assessed the sale consideration of shares received as gift from her son as un-explained cash credit u/s. 68 of the Act and
- (c) assessed certain un-secured loans received from the family members as un-explained cash credit u/s. 68 of the Act.

The Ld.CIT(A) deleted all these additions and hence, the Revenue has filed this appeal.

3. We shall first take up the issue relating to rejection of claim for deduction u/s. 54F of the Act. During the year under consideration, the assessee sold 2,41,750/- shares held by her with M/s Creative Stylo Packs Private Ltd., for a sum of Rs. 16.68 crores on 07-11-2020. The assessee computed Long Term Capital Gain of Rs. 14.95 crores on the above said sale, after deducting indexed cost of Rs. 1.75 crores. The assessee invested a sum of Rs.14.95 crores in purchase of a residential Flat No. 101, Wing-A, Rustomjee Seasons, Andheri (East),

Mumbai on 13-10-2021 for Rs. 10.17 crores. Accordingly, the assessee claimed deduction u/s. 54F of the Act against the long term capital gains, which was computed at Rs. 9.12 crores.

3.1. As per the provisions of section 54F of the Act, the assessee can claim deduction under that section only if he/she does not hold more than one residential house on the date of transfer of original asset (here shares). The AO noticed that the assessee has held more than one residential house as stated in her Balance Sheet and accordingly took the view that the assessee is not eligible for claiming deduction u/s. 54F of the Act.

3.2. The Ld.CIT(A) noticed that various properties noted down by the AO are either commercial property or has been transferred earlier or does not belong to the assessee. He noticed that the assessee was having only one residential house as on the date of transfer of shares. Accordingly, he held that the assessee is eligible for deduction u/s. 54F of the Act. The revenue is aggrieved.

3.3. We heard the parties and perused the record. We notice that the Ld CIT(A) has clearly analysed the factual aspects relating to the various properties and accordingly, the decision rendered by the Ld.CIT(A) on this issue is having good clarity. Accordingly we prefer to extract the same below:-

“6.4 The appellant filed detailed submission during the appellate proceedings alongwith relevant documentary evidences. Each of above property is evaluated in detail hereunder:

Property 1 : Flat No. 701, Indraprastha, Katar Road, Borivali, Mumbai-400066:

6.6 The impugned property was jointly acquired in 1998 and was held by the appellant along with her husband, wherein, her share was 50%.

6.6 On 27.03.2017, the appellant had gifted said 50% share to her son Mr. Hetansh Gala. In this regard, the appellant filed following document before Learned AO vide submission dated 23.08.2022 and on 09.11.2022. The said details were once again filed during appellate proceedings.

- Registered gift deed dt. 27.03.2017 for transfer of Indraprastha Fiat to Hetansh Gala,
- Copy of Registration Receipt.
- MTR Challan No. 6,
- NOC of Society for Gift Transfer.

6.7 On perusal of aforesaid documents, it is evident that the appellant had gifted the share of property to her Son and thus, she was not owning the same on the date of transfer of shares i.e. on 7.11.2020. The learned AO has relied on disclosure made in balance sheet of Yr 2019-20 and 2020-21 of the appellant, which is mentioned as inadvertent error by the appellant. Further, the appellant had rectified said error in the balance sheet of AY 2021-22 i.e. year under consideration. Therefore, the erroneous disclosure made in AY 2019-20 and AY 2020-21 cannot be adopted as basis to disregard the legitimate deduction available to the appellant. In view of the registered gift deed and other documentary evidences it is found that the appellant was not owning property no 1 i.e. Flat No. 701, Indraprastha, Katar Road Borivali, Mumbai-400066, on the date of sale of shares.

Property 2 : Flat No. 1301, Trimurti, Keluskar Road, Dadar West, Mumbai-400028:

6.8 The underlined property was sold by the appellant on 31.3.2021 to her son Mr. Hetansh Gala. The appellant has also submitted that she owned only this property on the date of transfer of original asset (shares) i.e. on 07.11.2020.

Property 3: Flat no. 9, 2nd Floor, OM Dipti, HSG Society, Kasturba road-7, Borivali East, Mumbai

6.9 The learned AO at the end portion of the assessment order mentioned about this third property whereas no mentioning of said property was made in show cause notice. He contested that the underlined address is mentioned as correspondence address of the appellant in her ITR and he assumed the same to be belonging to the appellant.

6.10 In this regard, the appellant submitted that the appellant resides at Om Dipti Flat, which flat belongs to her mother in-law Smt. Maniben Gala (100% ownership) and she had simply used that address for filing her Return of Income, purchased under Sale deed dt. 29.04.1981. The appellant is not the owner of the said flat.

6.11 The appellant also filed following documentary evidences

- Indenture of Sale dt: 29.04.1981
- Share Certificate No. 9 of Om Dipti Flat
- Maintenance Bills
- Electricity Bills.

On perusal of the above documents, it is evident that the appellant is not owner of the said flat.

6.12 Merely mentioning a correspondence address as residential address shall not automatically results in ownership of a property.

6.13 The learned AO has presumed incorrectly and thus, it is reasonable to conclude that the appellant is not owner of said premises.

Property 4: Shop no.4, Ground Floor, Sarswati **Vasant Sager Complex, Thakur** Village, Kandivall (East), Mumbai - 400101

6.14 The appellant submitted that underlined property was a commercial property and not a residential property as contemplated by the provisions of Section 54F. In this regard, the appellant submitted copy of agreement before learned AO and the extract of the same has been re-produced by the learned AC) in the assessment order at pars 4.6 (page no. 23 of the assessment order).

6.15 The learned AO has merely stated that the details provided by the appellant as not matching with the documents submitted whereas in the extract reproduced, it is very clearly mentioned that the same is to a SHOP No 41 and not residential premises.

Thus, the contention of AO is once again not found to be acceptable.

6.16 Having regard to documentation submitted by appellant and explanation provided, it is found that the appellant was holding only one residential house property which is Flat No 1301, Sugee Developers as her 50% share in the property (mentioned as property 2 in above paragraphs of this order). Therefore, the condition prescribed by section 54F is not violated as contemplated by the learned AO.

6.17 The learned AO had inquired about the Tractor at village appearing in the Balance-sheet and based on the documentary evidence provided by the appellant it is concluded that the appellant does not hold any residential

premises in the village. The tractor was hired merely for conducting certain agricultural activities in the village.

6.18 Reproducing the following table submitted by the appellant in her written submissions for clarification of the doubts and the contentions of the learned AO.

Residential		Commercial		Mother - in Law	Village
Indraprastha - Barivali	Transart - Sagar Developers	Sarawati Vasant Sagar	Hari Om Plaza	Out Dign CHS	Tractor
Gifted During FY 2017-18.	Sold on 31.05.2021				
Not owned by the appellant as on the Date of Transfer of Equity Shares i.e. 07.11.2020	Owned by the appellant as on the Date of Transfer of Equity Shares i.e. 07.11.2020	Not in dispute	Not in dispute	Not owned by the appellant (owned by Mother - in - law)	Taken on Hire

6.19 In view of the above detailed finding, I am of the considerate view that merely mentioning any address as correspondence address or showing ownership of a property in preceding years shall not be adopted as basis to disregard the genuine deduction which is otherwise available to the appellant. Therefore, the disallowance made by the learned AO for sum of Rs.9,12,23,659/- is liable to be deleted."

3.4. Thus we notice that the Ld. CIT(A) has examined the details of each of the properties referred to by the AO and has given clear cut finding that the has owned only one residential house on the date of sale of shares, meaning thereby, the AO has misled himself in this matter. Before us, the revenue could not contradict the findings so given by the Ld. CIT(A). Accordingly, we affirm the order passed by Ld. CIT(A) on this issue.

4. The next issue relates to the addition of sale consideration of shares received as gift from her son. The assessee had received 1 lakh shares of M/s Creative Stylo Packs Private Ltd., as gift from her son on 27-10-2020. The said shares were sold by the assessee for a consideration of Rs. 6.90 crores along with shares already held by the assessee. The AO doubted the genuineness of receipt of gift and accordingly assessed the sale value of One lakh shares amounting Rs. 6.90 crores as un-explained cash credit u/s. 68 of the Act.

4.1. Before the Ld.CIT(A), the assessee submitted that the shares were received by way of gift from her son, which was evidenced by a gift deed prepared. It was also submitted that the provisions of section 68 of the Act will not be applicable as the assessee has proved the nature and source of Rs. 6.90 crores, as the same represents sale value of shares. Accordingly, the assessee contended that the AO was not justified in assessing the sale consideration of Rs. 6.90 crores as un-explained cash credit u/s. 68 of the Act. The Ld.CIT(A) was convinced with the above said explanations of the assessee and accordingly deleted the same.

4.2. We heard the parties and perused the record. The assessee has received one lakh shares of the above said company from her son by way of gift and the same is supported by the gift deed executed by the son of the assessee. It was received on 27-10-2020. The assessee sold the above shares along with shares held by the assessee subsequently on 09-11-2020. The proportionate sale value pertaining to one lakh shares was Rs. 6.90 crores, which has been assessed by the AO un-explained cash credit. When the above said amount has been received by way of sale of shares and the said shares have been gifted by her son, we are of the view that the Ld.CIT(A) was justified in holding that the sale consideration of Rs. 6.90 crores cannot be considered as un-

explained cash credit. Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting the addition of Rs. 6.90 crores made by the AO u/s. 68 of the Act.

5. The last issue relates to Rs. 20,82,520/- relating to un-secured loans added u/s. 68 of the Act as unexplained cash credit. The AO noticed that the assessee has received funds from certain sources and treated the same as un-explained cash credit u/s. 68 of the Act. The Ld.CIT(A) noticed that the assessee has explained the nature of cash credits found in the bank account and accordingly deleted the same.

5.1. We heard the parties and perused the record. We notice that major amount has been received from a related parties out of advance given by the assessee in the earlier years. Further, the said related party has also confirmed the payment, i.e., out of the above said amount of Rs.20,82,520/-, a sum of Rs.19,49,320/- was received by the assessee from M/s. TokershiBhavanji & Co. (Proprietary concern of Shri Mahesh Tokershi Gala)towards part repayment of the loan advanced by the assessee to the above said concern in the earlier years. We notice that the assessee has furnished the details of loan account of the above two years and the current year. The above said account statements also been confirmed by M/s. TokershiBhavanji & Co. Hence, the repayment of Rs. 19,49,320/- of the amount advanced earlier cannot be considered as a fresh cash credit, assessable u/s. 68 of the Act.

5.2. With regard to remaining amounts, it was submitted that the same represented school fee pertaining to the school run by the assessee. Those school fee have already been taxed by the AO either in the current year or in the preceding year/succeeding year. Hence, they cannot be added u/s. 68 of the Act. Accordingly we are of the view that the

Ld.CIT(A) was justified in deleting the entire addition of Rs.20,82,520/- made by the AO u/s. 68 of the Act.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 24-10-2024

Sd/-
[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 24-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai