

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. Nos. 1670 & 1671/Kol/2024
Assessment Years: 2018-19 & 2019-20

DCIT, CC-3(2), Kolkata	Vs.	Shilpi Modi (PAN: AEXPM 7841 J)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	27.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	19.12.2024
For the assessee / निर्धारिती की ओर से	Shri S. M. Surana, Advocate Shri Sunil Surana, FCA
For the revenue / राजस्व की ओर से	Shri Subhendu Datta, CITDR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the appeals preferred by the revenue against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-21, Kolkata (hereinafter referred to as the "Ld. CIT(A)") for the AY 2018-19 & 2019-20 respectively. Both the appeals are interlinked to each other hence taken up together for disposal.

2. Brief facts of the case of the assessee are that a search and seizure operation was carried out in the residential and office premises of Manyaver Group on 27.11.2018. The assessee, Mr. Ravi Modi, belongs to this group. Consequent upon search and seizure operation, notice u/s 153A was issued and asking from the assessee to file return for AY 2018-19. In response to the same, the return of income was filed declaring total income of Rs. 23,50,13,240/-. The return filed was selected for scrutiny by issuing notice u/s 143(2) of the Act. The assessee submitted its response. The AO after going over the submission filed by the assessee found that the response of the assessee regarding claim of the assessee with respect to the short term capital loss during FY 2017-18 not tenable and accordingly A.O assessed the income at Rs. 37,74,64,300/-.

3. The said order has been challenged by the assessee before the Ld. CIT(A) wherein the appeal of the assessee has been allowed.

Being aggrieved and dissatisfied the department has preferred the instant appeal.

4. The Ld. D.R challenges the impugned order of the Ld. CIT(A) by submitting that the Ld. CIT(A) has erred in facts and law by allowing the appeal of the assessee by deleting the disallowance of Rs. 40,76,15,492/- made by the AO despite were not being eligible to claim short term capital loss due to the insolvency proceedings during which such short term capital loss was incurred not being completed before the end of the financial year. The Ld. D.R further argued that the Ld. CIT(A) has further erred in facts and law by allowing the assessee to claim short term capital loss based on the order of distribution of assets instead of date on which the order of liquidation was passed by the Hon'ble High Court.

5. Contrary to that, the Ld. A.R supports the impugned order.

6. We have perused the order of Ld. CIT(A) and the order of AO. As we have already stated in our preceding paragraphs that both the appeals of the department are interlinked as the only issue involved that the action of AO in holding in view of the short term capital loss in the shares of M/s Produce and Textiles Pvt. Ltd. was allowable

in the subsequent year i.e. AY 2019-20 even the order for liquidation of the company was passed by the Hon'ble High Court and not in the order when the assets were distributed to and received by the shareholders. In this context, we have perused the Section 46 of the Act which is reproduced as herein below:

“46. Capital gains on distribution of assets by companies in liquidation –

- (1) Notwithstanding anything contained in Section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of Section 45.*
- (2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income tax under the head ‘capital gains’ in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of Clause (22) of Section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of Section 48.”*

7. Going over the aforesaid section the key issue is that at what point of time the capital gain is taxable. As per the provision, the capital gains are liable to be taxed added when they are received i.e. capital gains/loss comes into play when the asset is distributed by the liquidator. It is the case of the assessee that the company had applied for voluntary liquidation in the FY 2016-17 and the assets were distributed during FY 2017-18 to the assessee in exchange of shares. It is further important to mention here that Hon'ble Calcutta High Court had approved liquidation so applied by its order dated 30.11.2018. We have found that the property was duly received by the assessee by virtue of the conveyance deed executed on 15.09.2017. We find that the AO has treated the loss as allowable loss but he has taken the view that the short term capital loss was arisen in the order in which the Hon'ble High Court has passed the order of liquidation and not in the AY 2018-19. As we have already stated that in the instant case conveyance deed was executed on 15.09.2017 on companies liquidation. The said deed falls in the assessment year in question. The Ld. CIT(A) discussed the deed of transfer in its order and thereafter hold thus:

“In respect of the above discussions, it is evident that for giving effect to the fiction enacted under Section 46(2), the necessary requirements were existing in the instant case and the fiction reached its logical end upon the transfer of the immovable property on 15.09.2017. The transfer of property vide Deed of Transfer dated 18.09.2017 clearly establishes the fact that the short term capital loss accrued upon the assessee during the FY 2017-18 pertaining to AY 2018-19

and not during AY 2019-20 as held by the AO. I therefore cannot agree with the contentions of the AO, owing to the reasons that Section 46(2) of the Income Tax Act stipulates that an assessee shall be chargeable to income tax under the head capital gains in respect of the money so received or the market value of the other assets on the date of distribution, which in the instant case is evidently is 15.09.2017. The AO is therefore directed to allow the shorter term capital loss of Rs. 40,76,15,492/- and set off the same with the LTCG during the AY 2018-19 as per law. These grounds are therefore allowed.”

8. It is pertinent to mention here that the section, judicial pronouncement as well as facts of the case supports the order of the CIT(A). We find that the Ld. CIT(A) has elaborately discussed the everything and thereafter allowing the appeal of the assessee. We do not find any infirmity in the impugned order, accordingly the appeal of the revenue is dismissed.

9. Issue raised in the appeal in ITA No. 1670/Kol/2024 for AY 2019-20 as decided by us in ITA No. 1671/Kol/2024 for AY 2018-19 would mutatis mutandis apply to this appeal as well. Consequently, the appeal of revenue is dismissed.

In the result, both the appeals of the revenue are dismissed.

Order is pronounced in the open court on 19th December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 19th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Central Circle-3(2), Kolkata
2. Respondent – Shilpi Modi, SDF-1, A501N, A502, 4th Floor, Paridhan Garment Park, 19, Canal South Road, Beliaghata-700015
3. Ld. CIT(A)-21, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata