

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 997/CHD/2024

S.A. No. 24/CHD/2024

निर्धारण वर्ष / Assessment Year: 2012-13

Sigma Convertors, No. 10/5, Royal Enclave, Besant Avenue, Adyar, Chennai.	Vs	The ACIT, Circle, Parwanoo.
स्थायी लेखा सं./PAN NO: PTLSI8316E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Amar Pratap Singh, Advocate

Revenue by : Dr. Ranjit Kaur, Addl.CIT, Sr.DR

Date of Hearing : 29.01.2025

Date of Pronouncement : 24.02.2025

PHYSICAL HEARING

ORDER

PER RAJ PAL YADAV, VP

The assessee is in appeal before the Tribunal against the order of the Id. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 07.08.2024 passed for assessment year 2012-13.

2. In Column No. 10 of Form 36, assessee has raised six grounds of appeal. Apart from that, it has annexed

Annexure-A which is running into roughly 27 pages wherein assessee has pleaded its grievance and on the last page, it has made prayer upto letter 'A' to 'F'. All these pleadings are not in consonance with Rule 8 of ITAT Rules, 1963.

3. In brief, grievance of the assessee is two fold, namely ;
 - (A) The ld. CIT(A) has erred in upholding the re-opening of the assessment,
 - (B) The ld. CIT(A) has erred in confirming the addition of Rs.2,60,25,000/-.

3. The brief facts of the case are that assessee has filed its return of income on 27.08.2012 declaring total income of Rs.17,27,58,289/-. Its case was selected for scrutiny assessment and ultimately an assessment order under Section 143(3) of the Income Tax Act was passed on 27.02.2015. The AO has accepted the returned income.

4. The assessee, at the relevant time was engaged in production, distribution and sale of kitchen appliances. It has entered into a Slump Sale Agreement in Financial Year 2011-12 and transferred its business by way of slump sale to

M/s Preethi Kitchen Appliances Pvt. Ltd. The sale price for such slump sale was agreed at Rs.20,82,00,000/-. Out of that, Rs.18,21,75,000/- was paid to the assessee in Financial Year 2011-12 i.e. assessment year 2012-13. Balance Rs.2,60,25,000/- was kept in an Escrow Account which was later received by the assessee in Financial Year 2012-13 (assessment year 2013-14). According to the assessee, this balance amount was contingent upon fulfillment of certain conditions, hence on materialization of those conditions, it has received that amount and offered for tax in assessment year 2013-14. The AO has accepted this stand in an assessment order passed under Section 143(3). The AO thereafter recorded reasons and formed an opinion that total sale consideration agreed for the slump sale ought to have been offered for taxation during assessment year 2012-13 only. The AO has reproduced the reasons in paragraph No. 3 of the assessment order and reopened the assessment by issuance of a notice. Thereafter, he has passed re-assessment order and made addition of Rs.2,60,25,000/-.

5. The appeal to the CIT(A) did not bring any relief to the assessee.

6. The ld. Counsel for the assessee took us through Slump Sale Agreement, whose copy is available at page No. 1 to 174 of the Paper Book. He has pointed out that under clause 4.8, the conditions for Escrow Account are being provided in this Agreement and if these conditions are perused, then it would reveal that the amount to the extent of Rs.2,60,25,000/- was not accrued or crystallized in favour of vendor. It was contingent one and subject to fulfillment of conditions mentioned in para 4.8.1 to 4.8.3. Thus, the Revenue failed to appreciate the concept of maintaining Escrow Account and also lost sight that tax rate is similar in both the assessment years upon the assessee. The assessee has already offered this amount for taxation in assessment year 2013-14 which has been accepted by the Revenue. For buttressing his contentions, he relied upon the judgement of Hon'ble Punjab & Haryana High Court in the case of Pr. Commissioner of Income Tax, Chandigarh Vs Shri Mahipinder Singh Sandhu reported in 2019 (3) TMI

1358. He has placed on record copy of this judgement. According to the ld. Counsel for the assessee, Hon'ble Court has explained the concept of Escrow Account and as to how the amount kept in Escrow Account is to be treated as contingent one.

7. The ld. DR, on the other hand relied upon the order of the Revenue authorities.

8. With the assistance of ld. Representative, we have gone through the record carefully. In order to appreciate the fact whether amount of Rs.2,60,25,000/- accrued to the assessee in assessment year 2012-13 is not worth to appreciate the conditions enumerated for the amounts deposited in Escrow Account. These conditions are provided in clause No. 4.8 of the Agreement which read as under :

“4.8 Escrow Amount

4.8.1 On a day not later than April 12, 2011, the Purchaser shall deposit the Escrow Amount into the Escrow Account with the Escrow Agent to be held in the Escrow Account for a period of 1 (one) year from the Closing Date (the 'Escrow Period'). The Escrow Amount shall serve as security (without detracting from any other rights of Purchaser) for the due performance by the Seller of its obligations, to the extent of (a) any claim for breach of Seller's Warranties filed prior to expiry of the Escrow Period, and have been paid pursuant to the procedure for third party claims under Clause 7 below (b) any claim in relation to the covenants set out in Clauses 4.22 through 4.55 which claim has been awarded by

the arbitral tribunal constituted pursuant to Clause 10.13 below, and (c) any claim under Clause 6,2 which have been paid pursuant to the procedure for claims under Clause 7 below. To the extent that any claim made pursuant to any of the aforesaid clauses has not resulted in an indemnification obligation as on the date of the expiry of the Escrow Period, the amount of such claims shall be released from the Escrow Account to the Seller without prejudice to the right of Purchaser to make an indemnification claim in respect of the same pursuant to Clause 7 below, if such claim were to crystallise on a future date. Save as provided in the foregoing provisions of this Clause 4.8.1, there shall be no other claim of set off, adjustment or deduction by Purchaser from the Escrow Amount.

- 4.8.2 Within 5 (five) Business Days after expiry of the Escrow Period, the balance amount (being the Escrow Amount less any amounts deducted for claims filed by Purchaser pursuant to Clause 4.8.1), increased by interest accrued in the Escrow Account, shall be paid to the Seller.
- 4.8.3 Purchaser shall not merge with any other entity belonging to the Purchaser Group or otherwise, and shall not dispose of the Business transferred pursuant to this Agreement the payment of the Escrow Amount to the Sellers in accordance with the terms of this Agreement. In the event of any proposal to merge or sell any portion of the Business transferred to the Purchaser, then, subject to Clauses 4.8.1 and 4.8.2 above, the Escrow Amount shall become immediately payable to the Seller in accordance with this Agreement as a condition for such transaction to become effective.

8.1 A bare perusal of the above clause would indicate that this amount will be paid to the assessee on fulfillment of conditions. It was not under the control of the assessee. It was with the Escrow Agent who act independently and determine the fact whether conditions are fulfilled or not. If conditions are not fulfilled, then this amount will not be given to the assessee, rather it will be given to the Vendee. Therefore, it is incorrect at the end of the Revenue to

harbour the belief that complete amount has been crystallized for receipt in the hands of the assessee in assessment year 2012-13. At this stage, we deem it appropriate to take note of the judgement of the Hon'ble Punjab & Haryana High Court in the case of Mahipinder Singh Sandhu. The observations of the Hon'ble Court read as under :

“4. The Assessing Officer had reopened the case of the assessee to which the assessee filed objections. The Assessing Officer disposed of the said objections by giving reasons in the order dated 23.6.2016 wherein it was observed that the capital gains were to be taxed in the year in which they were transferred and that the delay in receipt of consideration was no bearing on the taxability of the amount. Vide the said order, the Assessing Officer rejected the objection of the assessee regarding withdrawal of exemption under Section 54EC of the Act by noticing that the assessee was not eligible for exemption under Section 54EC since the investment was not made within six months after the date of transfer which is an eligibility criterion for claiming the exemption. The said findings of the Assessing Officer were upheld by the CIT(A) in appeal. On further appeal, the Tribunal upheld the action of the Assessing Officer in reopening of the assessment. However, the Tribunal deleted the addition of Rs. 40,28,748/- made by the Assessing Officer and upheld by the CIT(A). The Tribunal held that admittedly the amount of Rs. 18,00,000/- was deposited in the Escrow Account. Both the transferrer and the transferee had common rights over the said amount as the said amount was deposited in the Escrow Account as a security in respect of future liabilities of the company/ transferor. There was no certainty about the quantum of amount likely to be received by transferor or transferee out of the said amount deposited in Escrow Account. Since, there was no certainty of the time of release of the said amount or the part of the amount to either of the parties as dispute between the parties had occurred and the litigation was going on, it cannot be said that the assessee had got a vested right to receive the amount in question. It was only at the end of the litigation that the rights and liabilities of the transferor and transferee were ascertained and thereupon the share of the assessee was passed on to the assessee for

which the assessee offered capital gains in the immediate assessment year 2010-11. Further, the Tribunal had held the assessee entitled to the benefit of deduction under Section 54EC of the Act as the amount was invested by him in the Rural Electrification Corporation Ltd. bonds in the year of receipt which was also the year of taxability of the capital gains so received. The relevant findings recorded by the Tribunal read thus:-

"8. We have considered the rival submissions of the Ld. Representatives of the parties and have also gone through the record. We find force in the contention raised by the Ld. Counsel for the assessee. Admittedly, a sum of Rs. 18,00,000/- was deposited in the Escrow Account. Both the transferor and transferee had common rights over the said amount as the said amount was deposited in the Escrow Account as a security in respect of future liabilities of the company/transferor. There was no certainty about the quantum of amount likely to be received by transferor or transferee out of the said amount deposited in Escrow Account. Even there was no certainty of the time of release of the said amount or the part of the amount to either of the parties as a dispute between the parties had occurred and litigation was going on. In these circumstances, it cannot be said that the assessee had got a vested right to receive the amount in question. It was only at the end of the litigation that the rights and liabilities of the transferor and transferee were ascertained and thereupon the share of the assessee was passed on to the assessee for which the assessee offered capital gains in the immediate A. Y. 2010-11. The Hon'ble Bombay High Court in the case of CIT Vs. Hemel Raju Shete' (supra) while relying upon the decision of the Hon'ble Supreme Court in 'E.D. Sassoon & Co. Ltd. Vs. CIT (supra) has observed that when the taxpayer did not have the vested right to receive a particular amount, it cannot be said that the said amount has accrued to the taxpayer. The Hon'ble Delhi High Court in the case of 'R. Dalmia Vs. CIT (supra) has held that the capital gains would accrue only to an assessee when they are ascertained.

9. We also find force in the contention of the Ld. Counsel for the assessee that the amount was invested in Rural Electrification Corporation Ltd. bonds on receipt of the same and in the year of the taxability of the capital gains. We, therefore, hold that the assessee is entitled to the benefit of deduction u/s 54EC as the amount was invested by the assessee in the Rural Electrification Corporation Ltd. bonds in the year of receipt which was also the year of taxability of the capital gains so received. In view of this, the order of the lower authorities on this issue is set aside and the additions made into the account of the assessee are hereby ordered to be deleted."

5. *In view of the above, no error could be pointed out by learned counsel for the revenue in the findings recorded by the Tribunal warranting interference by this Court. Further, referring to the judgment of the Apex Court in Sanjeev Lai and another v. Commissioner of Income Tax and another (2014) 365 ITR 389 (SC)."*

8.2 On an analysis of these details, we are satisfied that amount kept in "Escrow Account" was not under the dominance and control of the assessee. It was not accrued to the assessee nor a right to receive was accrued. Thus, this amount is not to be offered for taxation in this assessment year. It is not taxable in assessment year 2012-13. The assessee has rightly offered it for taxation in assessment year 2013-14 and addition of this amount is not sustainable. Accordingly, the grievance of the assessee noticed by us at 'B' is allowed. Addition of Rs.2,60,25,000/- is deleted.

9. As far as re-opening is concerned, though we have deleted the addition on merit, we are of the view that re-opening is also bad in the eyes of law. The original assessment was made under Section 143(3). The whole issue involved in that assessment was whether complete sale consideration deserves to be taxed or only to the extent of

amount received by the assessee in that Financial Year. The notice under Section 148 has been issued on 18.08.2017 i.e. after four years from the end of the relevant assessment year. Benefit of proviso will be available to the assessee. The proviso appended to Section 147 contemplates that where four years have been expired and assessment was framed under Section 143(3), then AO will be prohibited to take action under Section 147, unless it is established that income has escaped assessment for the failure of the assessee to declare full and complete facts regarding the taxable income of the assessee. There is no allegation of the AO in the reasons about this failure of the assessee rather a composite transaction was there whose details were disclosed in the scrutiny assessment and the AO has accepted the amount to the extent received or accrued to the assessee but did not taxed the amount lying in an 'Escrow Account'. The AO has failed to appreciate the transaction while harbouring the belief that income has escaped. Therefore, on that front also, re-assessment is quashed.

10. As far as Stay Application is concerned, we find that out of turn hearing was granted to the assessee and on the date of hearing i.e. 29.01.2025, ld. Counsel for the assessee did not press the Stay Application. Accordingly, Stay Application is dismissed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced on 24.02.2025.

Sd/-

(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar