

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1995/Mds/2015

निर्धारण वर्ष /Assessment year : 2012-2013.

The Assistant Commissioner of
Income Tax,
Non Corporate Circle 7(1)
Chennai 600 034.

Vs. Shri. M. Ponnuswamy,
Old No.25, New No.23,
AA Block, Anna Nagar,
Chennai 600 040.

(अपीलार्थी/Appellant)

**[PAN AAEP 4919R]
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. P. Radhakrishnan, IRS, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri. G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 02-02-2016

घोषणा की तारीख /Date of Pronouncement : 19-02-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue is directed against order
of the Commissioner of Income-tax (Appeals)-7, Chennai in ITA

No. 97/CIT(A)-7/2014-15, dt. 08.06.2015 for the assessment year 2012-2013 passed u/s.143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised substantive grounds against order of Id.CIT(A) deleting the additions made by the Assessing Officer were assessee failed to submit information on sale price of share transactions carried out in off market mode between the Directors of the company.

3. The Brief facts of the case that the assessee is an individual filed return of income with total income of ₹3,88,05,247/- and return was processed u/s.143(1) of the Act. Subsequently, the Assessing Officer issued notice u/s.148 of the Act on reason to believe that there is a concealment of income and found on perusal of the return of income that the assessee has sold unlisted shares in off market and offered Long Term Capital Loss of ₹6,98,025/- and assessee is a director of a M/s. Stanfab Apparels Private Limited (SAPL) holding 57,00,000 shares and were sold in toto to a director for ₹7,00,00,000/- and assessee has acquired shares at par value of ₹10/- each in the year 2009. Since the shares are not traded, the Assessing Officer issued notice u/s.133(6) of the Act to the Registrar of Companies, Under Ministry of Company, Law and Justice, Chennai Vide

office letter dated 16.12.2014 to submit Annual Report of M/s. Stanfab Apparels Private Limited for the financial year 2009-10 and 2011-12 and also share allotment form 2, transfer deeds of sale of shares and other relevant documents. In compliance to notice, the Registrar of Companies vide letter dated 17.12.2014 submitted information. The Id. Assessing Officer on perusal of forms and Balance Sheet and Audited Financial statements found that the assessee has not done any due diligence to arrive at selling price of ₹12.28 paisa per share nor supported with method of valuation of shares. The Id. Authorised Representative reiterated his submissions that sale consideration received by the assessee is actual receipt and cannot be disputed. The I.d Assessing Officer relying on the Financial statements calculated Value of Share on "Net Worth Method" based on the paid up capital and reserves & surplus of the company and arrived at intrinsic value of share as on 31.03.2011 at ₹12.35 paisa further went ahead as the transfer of shares took place in the financial year 2011-12 and determined share value of the company as on 15.09.2011 relying on the unaudited figures of the company at ₹13.89 paisa. The method of calculation is not prudent and they are not adopted nor approved in the Annual General Body Meeting by the share holders and Id.AO determined sale consideration of 57,00,000 shares at ₹7,91,73,000/- and calculated Long Term Capital Gains on sale at ₹83,73,949/- and

made other additions to the returned income and assessed income of ₹4,71,15,620/-. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative reiterated his submissions made in assessment proceeding and disputed the action of Id. Assessing Officer in determining long term capital gain of shares at ₹84,75,075/- as against offered (-) ₹6,98,085/-. The Id. Commissioner of Income Tax (Appeals) based on the of submissions and on perusal of the assessment order found that the methodology applied by the Assessing Officer cannot be accepted as unaudited figures adopted for the purpose of valuation as on 15.09.2011 are without any statutory base and relied on the written submissions filed by the assessee on 27.04.2015 observed at page no.5 as under:-

“As per section 45 of the Income-tax Act, 1961 any profit or gain arising from the sale or transfer of a capital asset is chargeable to tax under the head "Capital Gains". As per Section 48 of the Income-tax Act, 1961, Capital gains is computed as the difference between "Full Value of Consideration" and the indexed cost of acquisition. The expression "full value" means the whole price without any deduction

whatsoever and it cannot refer to the adequacy or inadequacy of the price bargained for. Nor it has any reference to the market value of the capital asset which is the subject matter of the transfer. The consideration for the transfer of the capital asset is what the transferor receives in lieu of the asset he parts with, namely money or money's worth. In case the AO suspects that the consideration admitted is understated, the burden was on the AO to prove that the appellant has sold the shares over and above the consideration admitted in the return. This statutory burden has not been discharged by the AO. He has simply substituted the admitted consideration with the value of share determined on 'net worth' basis as on the date of transfer. This no way establishes that the appellant had actually received consideration as determined by the AO. It is to be stated here that in his books of accounts Sri S.R. Eswaran has also admitted the very same amount as cost, as admitted by the appellant. This aspect has not been verified by the AO. He has not examined the purchaser u/s 131. Thus, the action of the AO is illegal, not mandated u/s 48. The Supreme Court in K P Verghese v ITC [131 ITR 592] has held "notwithstanding plain meaning of section 52 (omitted w.e.f 01-04-1988), it cannot be applied except in case where the AC proves understatement of consideration. Applying this decision, the Madras High Court has held in CIT v. P V Kalayanasundarm (282 ITR 259) that the onus of proving the actual consideration is on

the Revenue. This decision was upheld by the Supreme Court in 294 ITR 49”.

The Id. Commissioner of Income Tax (Appeals) considered the actual receipt and provisions of Sec. 45 and 48 of the Act for the transaction between transferor and transferee of shares recorded in the documents as full value of consideration. In the present case the assessee has received ₹7,00,00,000/- as full value of consideration which is not disputed and there is no authority to regulate such transfer of share of private limited company relied on the judicial decisions and further directed the Assessing Officer to adopt sale consideration of ₹7,00,00,000/- only and allowed the appeal. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the Revenue has assailed an appeal before the Tribunal.

5. Before the Tribunal, the Id. Departmental Representative reiterated his submissions that the Id. Commissioner of Income Tax (Appeals) erred without any authentic information has directed the Assessing Officer to adopt the actual receipt as sale consideration. The Assessing Officer methodology is full proof and duly supported by Audited Financial statements and Annual Report obtained from the office of Register of Companies. The Assessing Officer has calculated the intrinsic value of share as per Audited Accounts as on 31.03.2011

at ₹ 12.35 paisa which has credible value and Id. Assessing Officer further marked up the value based on the unaudited profit and turnover as on 15.09.2011 and determined share value at ₹13.89 . The Id. Commissioner of Income Tax (Appeals) has emphasized actual receipt as full value of consideration not the intrinsic value even though assessee has not supported with documents and pleaded for set aside of the order of the Commissioner of Income Tax (Appeals).

6. Contra, Id. Authorised Representative submitted that the assessee has complied to the directions of the Id. Assessing Officer. The basis of determination of share value in the case of listed companies is the price quoted on the stock exchange but in case of transfer of shares between directors in private limited company where shares are closely held at agreed consideration. In the present case the assessee sold stock of shares for a consideration of ₹7,00,00,000/- and said amount was credited to bank account and there is no dispute on the acquisition of shares in the year 2009 and offered long term capital loss for taxation but Assessing Officer without appreciating the transaction has obtained valuation of share on the basis of Audited accounts as on 31.03.2011 and unaudited figures from 01.04.2011 to 15.09.2011 and determined share value at ₹12.35 as on 31.03.2011 and at ₹ 13.89 as on 15.09.2011. The assessee is aggrieved by both

the valuations as the actual consideration received per share is ₹12.28 only. Further without prejudice to rights the valuation has to be considered as per Rule 11U and Rule 11UA of Income Tax Rules 1962 and relied on the decision of Jurisdictional High Court of *Dr. Fareed Jamshed Italia vs. ACIT (2011) 203 Taxman 0241* for computation of capital gains on the basis of full value of consideration received and relied on the order of the Commissioner of Income Tax (Appeals).

7. We heard the rival submissions and perused the material on record and also judicial decisions cited. The contention of the Id. Departmental Representative that the Id. Commissioner of Income Tax (Appeals) has endorsed full value of consideration as correct without basis in respect of valuation of shares. The assessee is a Director of the Company and the shares were sold to another Director for the valuable consideration determined as actual consideration. On the other hand, the Id. Authorised Representative of the assessee drew attention to the order of Commissioner of Income Tax (Appeals) at page no.5 where the receiptant of the shares also admitted same amount as admitted by the assessee. The Assessing Officer has not examined from this angle and called for the records and calculated intrinsic value based on the Audited Accounts which are approved in the Annual General Body Meeting of the Company. But the Assessing

Officer has exceeded the calculations by making further addition to the share value based on unaudited figures as on 15.09.2011 which is not realistic and unaudited. We found as per Rule 11U(b) of Income Tax Rules, the definition of the Balance Sheet was provided by adoption of Accounts of the Company. Considering the facts and provision of laws, we direct the Assessing Officer to adopt intrinsic value of share determined as on 31.03.2011 at ₹.12.35 supported with Audited Annual Report to calculate long term capital gains and provide adequate opportunity of being heard to the assessee and decide the issue on merits.

8. In the result, the appeal of the assessee in ITA No.1995/Mds/2015 is partly allowed for statistical purpose.

Order pronounced on Friday, the 19th day of February 2016, at Chennai.

Sd/-

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 19.02.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |