

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. N. K. Saini, AM And Sh. Kuldip Singh, JM

ITA No. 5112/Del/2010 : Asstt. Year : 2001-02

Deputy Commissioner of Income Tax, Central Circle-15, New Delhi	Vs	M/s AAA Portfolio Pvt. Ltd., 2-A, Shankar Market, Connaught Place, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACA1931B		

CO No. 19/Del/2011 : Asstt. Year : 2001-02

M/s AAA Portfolio Pvt. Ltd., 202, 1 st Floor, Okhla Indl. Estate, Phase-II, New Delhi-110020	Vs	Deputy Commissioner of Income Tax, Central Circle-15, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACA1931B		

Assessee by : Sh. R. M. Mehta, Adv.

Revenue by : Sh. K. K. Jaiswal, DR

Date of Hearing : 07.04.2016	Date of Pronouncement : 08.04.2016
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ORDER

Per N. K. Saini, AM:

The appeal by the department and the Cross Objection by the assessee are directed against the order dated 03.09.2010 of Id. CIT(A)-III, New Delhi.

2. In the departmental appeal following grounds have been raised:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on merits in relying on the decision of the ITAT in the case of M/s Escorts Ltd. in ITA No. 567/Del/2005 and M/s Big Apple Clothings Ltd. in ITA No. 762/Del/2007.

2. On the facts and circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.7.35 Crores made by the assessing officer on account of business income u/s 28(iv) of the Act.

3. (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. During the course of hearing the ld. Counsel for the assessee at the very outset stated that an identical issue having similar facts has already been adjudicated by the ITAT Delhi Bench -Hø, New Delhi in the case of M/s Big Apple Clothing Pvt. Ltd. Vs DCIT, CC-3, New Delhi in ITA No. 762/Del/2009 order dated 09.10.2009, which belongs to the same group to which the assessee belongs.

4. In his rival submissions the ld. DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

5. After considering the submissions of both the parties and the material on the record, it is noticed that an identical issue having similar facts has already been adjudicated by the ITAT Delhi Bench -I, New Delhi in the case of M/s Big Apple Clothing Pvt. Ltd. Vs DCIT, CC-3, New Delhi in ITA No. 762/Del/2009 order dated 09.10.2009 wherein vide para 7, it has been held as under:

“7. Even on merits, it is noticed that the issue is covered in favour of the assessee in view of the decision of Coordinate Bench of this Tribunal in the case of Escorts Ltd. who was the 90% shareholder in EHRC Chandigarh and in whose case the Coordinate Bench of this Tribunal at Para 46 held as follows:

"It was thus a common view of the Hon'ble Judges that normally at the time of acquisition or purchase at a concessional price no profit (income) secures. The only exception stated by one of the judges was a case where purchase of other companies or amalgamations and faking over of other companies is carried out as a trading activity. The Ld. Special Counsel for the department probably realized this aspect and has sought to raise a new contention before us, which we will deal with at the appropriate stage. Nevertheless, the aforesaid principle cannot be applied in the present situation. The Ld. Judge noted that as a result of the amalgamation process, substantial surplus (i.e. price paid being less than the value of the assets after deduction of liabilities) resulted in favour of the assessee and it was so accounted for as having accrued, and, therefore, opined it to be gains and profit from a trading activity. In other words, the

reasoning weighing with the Ld. Judge was that surplus arising as a result of amalgamation of two companies accrues when the accounts of the companies are amalgamated and if such amalgamation is carried out as a part of well-planned and concerned activity, the surplus so accruing is to be considered, as a gain and profit from a trading activity. In the instant case, the Delhi Society has merged/amalgamated with the Chandigarh Society and thereafter the Chandigarh Society has converted itself into a company as per part IX of the Companies Act, 1956. The surplus or deficit as a result of the amalgamation, if any, would be in the accounts of the amalgamated society only. That issue is certainly not before us. To repeat, the issue before us is merely with respect to the allotment of shares in the merged society and limited company to the assessee as to whether such, allotment would give rise to income in the hands of the assessee, which can be brought to tax this year. In Assessment Year case, therefore, the observations made by His Lordship Mr. Justice Khanna, J. cannot be applied in the instant factual situation. For the present issue that arises for consideration in the assessee's appeal, it is enough to conclude that no income can be said to have accrued or arisen to the assessee at the time of purchase of the shares at a price less than its book value. Thus, it cannot be said that the assessee earned an income within the meaning of section 2(24) of the Act. This conclusion is with reference to the case as made out by the CIT(A). "

6. In the present case, it is an admitted fact that the facts of the assessee's case are identical to the facts involved in the aforesaid referred to case of M/s Big Apple Clothing

Pvt. Ltd. Vs DCIT, CC-3, New Delhi. So, respectfully following the aforesaid referred to order dated 09.10.2009 in ITA No. 762/Del/2009 in the case of M/s Big Apple Clothing Pvt. Ltd. Vs DCIT, CC-3, New Delhi. We do not see any merit in this appeal of the department.

7. In the Cross Objection assessee has raised the following grounds:

1. The CIT (Appeals) erred both on facts and in law in upholding the reassessment u/s 147/148 of the I.T. Act, 1961 on the part of the Assessing Officer.

2. The CIT (Appeals) did not consider the detailed written submissions filed during the course of hearing both on facts and in law and neither did the CIT (Appeals) consider the judgments relied upon in support of the contention that reopening was invalid in case

i. there was a complete disclosure of material facts at the stage of the original assessment, and

ii. in the reasons recorded for reopening there was no allegation about suppression of any material on the part of the assessee.

3. Without prejudice to the aforesaid grounds, the CIT (Appeals) failed to consider that one of the grounds for reopening was the valuation of the land by the DVO in respect of the properties at Delhi, Chandigarh, Jaipur, etc. belonging to

EHIRC, a separate assessee altogether, and reopening on the - basis of such report was not at all justified in law.

4. The appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and/or any Ground(s) of Appeal at or before the date of hearing.”

8. The Cross Objection filed by the assessee is delayed by 7 days and the assessee filed an application for condonation of delay alongwith the Affidavit of Sh. Arun K. Mathur, a Retainer. Since we have dismissed the appeal of the department, on merit and the issue stands allowed in favour of the assessee, this Cross Objection is arising out of the said departmental appeal. Therefore, the Cross Objection of the assessee is also dismissed as infructuous.

9. In the result, appeal of the department and Cross Objection of the assessee are dismissed.

(Order Pronounced in the Court on 08/04/2016)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 08/04/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR