

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 306/Kol/2017

Assessment Year : 2012-13

Amar Das
[PAN: AIHPD 2414 L]
(Appellant)

-vs- ITO, Ward-1(3), Durgapur
(Respondent)

For the Appellant : Shri Soumitra Chowdhury, Advocate

For the Respondent : Shri Sallong Yaden, Addl. CIT, Sr. DR

Date of Hearing : 11.07.2018

Date of Pronouncement : 13.07.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-Durgapur [in short the Id CIT(A)] in Appeal No. 55/CIT(A)/DGP/2015-16 dated 17.11.2016 against the order passed by the ITO, Ward-1(3), Durgapur [in short the Id AO] under section 144 R/W 147 of the Income Tax Act, 1961 (in short “the Act”) dated 30.03.2015 for the Assessment Year 2012-13.

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in sustaining the addition of Rs. 9,88,240/- made by the Id. AO, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is an individual, engaged in the business of purchase and sale of lands. This is quite evident from the fact that the assessee had filed his income tax return in ITR-4 in the earlier year. The assessee filed its return of income for the assessment year 2012-13 on 31.03.2013 in response to notice issued u/s 148 of the Act. The assessee disclosed taxable income of Rs. 6,99,072/- after claiming deduction under Chapter-VIA of Rs. 1,00,000/-. The details of income disclosed by the assessee are as under:

Opening Stock of Land including development Cost	Rs. 38,87,071/-
Add: Purchase of land during the year	Rs. 45,33,440/-
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	Rs.84,20,511/-
Less: Sale of Lands during the year	Rs.40,00,000/-
Less: Closing Stock of lands as on 31.03.2012	Rs.52,19,583
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Net Profit from trading of land	Rs.7,99,072/-
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Gross total income of the assessee	Rs.7,99,072/-
Less: Deduction under Chapter VIA	Rs.1,00,000/-
Taxable Income	Rs.6,99,072/-

The assessee was in receipt of advance against the sale of land from the following parties:

Shri Moloy Ghosh	Rs. 2,00,000/-
Shri Aakash Construction	Rs. 70,000/-
Shri Dipak Chatterjee	Rs. 1,60,000/-
Shri Sunil Kumar Das	Rs. 5,00,000/-
Total	Rs. 9,30,000/-

The assessee treated the receipt of advance against the sale of land from the aforementioned persons in the sum of Rs. 9,30,000/- as a liability in the balance sheet as on 31.03.2012 since the registration of sale deed did not happen before the end of 31.03.2012. The ld. AO analyzed all the bank accounts of the assessee and found excess credit of Rs. 9,88,240/- comprising of advances received from aforesaid four parties to the tune of Rs. 9,30,000/- and interest income on deposits to the tune of Rs. 58,240/-. The ld. AO sought to treat the entire credits of Rs. 9,88,240/- as unexplained cash credit u/s 68 of the Act in the assessment. This action of the ld. AO was upheld by the ld. CIT(A). Aggrieved the assessee is in appeal before us .

4. We have heard the rival submissions. We find from the balance sheet as on 31.03.2012 that the assessee had duly disclosed the amounts received as advance towards sale of land from four parties stated supra in the sum of Rs. 9,30,000/- as a liability as on 31.03.2012. The identity and creditworthiness of these parties were never questioned/doubted by the ld. AO. Since the assessee is regularly engaged in the business of buying and selling of lands, there is no harm in receiving advance from intending buyers of lands. It is not in dispute that the registration of the proposed lands to be bought by the intending buyers were not registered as on 31.03.2012 thereby it attains the character of advance received towards sale of land as on 31.03.2012. In the circumstances, there is no reason to doubt the genuineness of the said transaction. Hence we hold that the assessee had duly proved the three necessary ingredients of section 68 of the Act. We also find from the balance sheet and profit and loss account filed for the year ended 31.03.2013, the assessee had effected sales of Rs. 45,00,515/- and advance received from sale of land is not reflected in the balance sheet as on 31.03.2013. This goes to prove that the advance for sale of land as on 31.03.2012 were duly adjusted with the sale proceeds of land during the next financial year relevant to assessment year 2013-14. In these circumstances, we hold that there could be no

addition made u/s 68 of the Act in the sum of Rs. 9,30,000/-. We direct the Id. AO accordingly to delete the addition of Rs 9,30,000/- . With regard to remaining sum of Rs. 58,240/- representing interest income on various deposits, no explanation was offered by the assessee and hence we hold that the same has been rightly taxed by the Id. AO. Accordingly, ground no. 1 raised by the assessee is partly allowed.

5. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in sustaining the addition of Rs. 43,22,878/- made on account of long term capital gains by invoking the provision of Section 50C of the Act, in the facts and circumstances of the case.

6. The brief facts of this issue is that the Id. AO observed that during the year under consideration the assessee had made sale of two lands vide Deed No. I-7296/11 dated 20.09.2011 for Rs. 3,00,000/- and Deed No. I-8582/11 dated 08.11.2011 for Rs. 37,00,000/-. These two sums were also reflected in the fund flow statement which is part of the assessment order. The Id. AO treated the assessee as an investor of lands based on certain submissions made in the course of assessment proceedings and ignored the fact that the assessee is a trader of lands and had already offered business income of Rs. 7,99,072/- thereon in the return of income. The Id. AO having decided to treat the assessee as an investor in lands, invoked the provision of section 50C of the Act in respect of lands that were sold during the year and adopted the stamp duty valuation thereon as under:

Deed No. I-7296/11 dated 20.09.2011 - Rs. 4,50,000/- - sold to Seema Ganguly

Deed No. I-8582/11 dated 08.11.2011 - Rs. 48,51,043/- - sold to Subarna Dutta

The Id. AO accordingly sought to compute the long term capital gain on sale of the aforesaid two lands. For this purpose, he computed the cost of acquisition of the said lands in the following manner:

- a) The cost of acquisition of one land i.e. the land sold to Seema Ganguly was requisitioned from BLRO Officer and it was found that the value was Rs. 50,000/- in the financial year 2005-06. The Id. AO adopted this as cost of land in financial year 2005-06 and accordingly computed the indexation thereon.
- b) In respect of land sold to Subarna Dutta, the Id. AO obtained confirmation from the third party who had affirmed that the said land was purchased by the assessee along with two other partners i.e. Subodh Kumar Dutta and Goutam Dutta at a consolidated price of Rs. 20,00,000/-. Accordingly the assessee's share from that consolidated cost worked out to Rs. 6,66,666/- ($20,00,000/3$) during the financial year 2008-09. The Id. AO gave the benefit of indexation based on this cost.

7. Accordingly, the Id. AO computed the long term capital gain on sale of the aforementioned two lands at Rs. 43,22,878/- while treating the value determined by the Stamp Valuation Authority u/s 50C of the Act as full value of consideration for the purpose of capital gains and by adopting the cost of acquisition of those lands in the manner stated above. When this was proposed by the Id. AO, the assessee made an alternative claim before the AO that in case if the assessee is treated as an investor in lands, then correspondingly exemption u/s 54F should be granted to the assessee in respect of lands purchased in the form of re-investment made during the year. The Id. AO denied this alternative claim of exemption of the assessee u/s 54F of the Act on the ground that the same was not registered by the assessee in any way, probably on the ground that the sum was not claimed by the assessee in the return of income. This action of the Id. AO was upheld by the Id. CIT(A). Aggrieved the assessee is in appeal before us.

8. We have heard the rival submissions. At the outset, we find that the assessee was only a dealer in lands i.e. engaged in the business of purchase and sale of lands. This is quite evident from the balance sheet and profit & loss account filed by the assessee for

the year ended 31.03.2011 (i.e. immediately preceding assessment year); 31.03.2012 (i.e. year under appeal) and 31.03.2013 (i.e. immediately succeeding assessment year). It would be relevant at this juncture to reproduce the balance sheet and profit and loss account of the assessee as on 31.03.2011, 31.03.2012 and 31.03.2013 as under:

Balance Sheet as on 31.03.2011

LIABILITIES	Amount (Rs.)	ASSETS	Amount(Rs.)
Capital A/c (B/F)	1,05,04,981.94	Land & Building	3,00,000.00
Add: Net profit	6,25,410.00	Gold	2,85,200.00
	1,11,30,391.94	Stock of land	38,87,071.00
		Investments &	55,37,597.00
Less: Drawings	2,75,400.00	Deposits:	
		Cash at Bank & Hand:	8,45,123.94
	1,08,54,991.94		
	1,08,54,991.94		1,08,54,991.94

Profit and Loss Account for the year ending 31.03.2011

Particulars	Amount(Rs)	Particulars	Amount(Rs)
To, Opening stock(including development cost)	31,54,630.00	By, Sale	17,03,884.00
To, Purchase during the year	18,10,915.00	By, Closing Stock	38,87,071.00
To, Net Profit	6,25,410.00		
	55,90,955.00		55,90,955.00

Balance Sheet as on 31.03.2012

LIABILITIES	Amount (Rs.)	ASSETS	Amount(Rs.)
Capital A/c (B/F)	1,08,54,991.94	Land & Building	3,00,000.00
Add: Net profit	7,99,072.00		
	1,16,54,063.94	Gold	2,85,200.00
Less: Drawings	3,42,500.00	Stock of land	52,19,583.00
Advance against sale of land: Shri Moloy Ghosh- 200000.00 Shri Akash Const.- 70000.00 Dipak Chatterjee – 160000.00 Sunil Kr. Das - 500000.00	1,13,11,563.94	Investments & Deposits:	54,00,865.80
	9,30,000	Cash at Bank & Hand:	10,35,915.14
	1,22,41,563.94		1,22,41,563.94

Profit and Loss Account for the year ending 31.03.2012

Particulars	Amount(Rs)	Particulars	Amount(Rs)
To, Opening stock(including development cost)	38,87,071.00	By, Sale	40,00,000.00
To, Purchase during the year	45,33,440.00	By, Closing Stock	52,19,583.00
To, Net Profit (Termed as brokerage wrongly)	7,99,072.00		
	92,19,583.00		92,19,583.00

Balance Sheet as on 31.03.2013

LIABILITIES	Amount (Rs.)	ASSETS	Amount(Rs.)
Capital A/c (B/F)	1,16,54,063.94	Land & Building	3,00,000.00
Add: Net profit	12,15,460.00	Gold	2,85,200.00

Less: Drawings	1,28,69,523.94	Stock of land Investments & Deposits: Cash at Bank & Hand:	48,45,650.00
	3,85,450.00		56,58,120.00
	1,24,84,073.94		13,95,103.94
	1,24,84,073.94		1,24,84,073.94

Profit and Loss Account for the year ending 31.03.2013

Particulars	Amount(Rs)	Particulars	Amount(Rs)
To, Opening stock(including development cost)	52,19,583.00	By, Sale	45,00,515.00
To, Purchase during the year	29,11,122.00	By, Closing Stock	48,45,650.00
To, Net Profit	12,15,460.00		
	93,46,165.00		93,46,165.00

From the same, it could be safely concluded that the assessee had duly shown the stock of land in its balance sheet as its stock-in-trade and had brought forward the same as opening stock in his profit and loss account for the next year and had reported purchase and sale of land and profits thereon and offered the same as business income of the assessee year on year. In this scenario, there is no reason to treat the assessee as an investor in lands. Hence the lands that were sold to Seema Ganguly and Subarna Dutta during the year are to be considered at the sale consideration actually reported in the registered sale deed and not as per the provisions of section 50C of the Act, being the value determined by the Stamp Valuation Authority, as admittedly the provisions of section 50C are applicable only for capital assets and not for assets held as stock-in-trade. We find that the legislature in its wisdom had introduced a separate provision to adopt the stamp value in respect of assets other than capital assets by introducing section 43CA of the Act in line with provision of section 50C of the Act. But we find

that the provisions of section 43CA has been introduced in the Statute by Finance Act, 2013 w.e.f 01.04.2014 meaning thereby, the same is applicable only for assessment year 2014-15 and not earlier. Hence the value determined by the Stamp Valuation Authority for sale of two lands cannot be adopted as full value of consideration. Hence we hold that the action of the Id. AO in this regard as untenable in law. With regard to adoption of purchase cost of lands, the assessee had duly disclosed the total purchase cost in his profit and loss account and had also valued the closing stock of unsold lands thereon. After taking into account the said closing stock of unsold land the profit has been arrived by the assessee and the same has been offered to tax hence there is no reason to make any addition towards sale of lands in the hands of the assessee.

9. With regard to claim of exemption u/s 54F of the Act, the assessee had only made an alternative claim before the Id. AO and before the Id. CIT(A) to the effect that in case if the assessee is treated as an investor of land, then he should be given the benefit of exemption u/s 54F of the Act in respect of re-investment in land made thereon. We find there is no need to look into this aspect of the issue as we have already held that the assessee is not an investor in land and is only a trader in lands.

10. In view of the aforesaid discussions, we direct the Id. AO to delete the addition made in the sum of Rs. 43,22,878/- on account of long term capital gains. Accordingly, ground nos. 2 and 3 raised by the assessee are allowed.

11. Ground no. 4 raised by the assessee is with regard to the addition on account of Rs. 88,240/- on account of long term capital gains. We find that no addition has been made by the Id. AO in the assessment order. There is no enhancement made by the Id. CIT(A) in his order. Accordingly, we direct the Id. AO to make necessary modification while giving effect to this order in respect of this sum of Rs. 88,240/-. Accordingly ground no. 4 raised by the assessee is allowed.

12. Ground nos. 5 and 6 raised by the assessee were stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as a statement from the Bar and accordingly ground nos. 5 and 6 are dismissed as not pressed.

13. Ground no. 7 raised by the assessee is general in nature and does not require any specific adjudication.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 13.07.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 13.07.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Amar Das, Sukumar Nagar Colony, Durgapur-713201, WB
2. ITO, Ward-1(3), Durgapur, Ayakar Bhawan, City Centre, Durgapur-713216, WB
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches