

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: 546 & 2325/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2007-08

Shri R.N. Anandakumar,
New No.24, Old No.21,
Second Cross Street,
West CIT Nagar, Nandanam,
Chennai – 600 083.

The ACIT,
v. Corporate Circle 3(1),
Chennai - 34.

PAN : ADCPA 1678D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri B. Suresh, FCA
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 11.10.2021

घोषणा की तारीख/Date of Pronouncement : 11.10.2021

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

These appeals by the assessee are arising out of the order of the Commissioner of Income Tax (Appeals)-11, Chennai in ITA No.147/CIT(A)-11/2016-17 dated 19.12.2017 and ITA No.147/16-17 dated 20.12.2018. The Assessment was

framed by the Deputy Commissioner of Income Tax, Corporate Circle 3(2), Chennai U/s 143(1) of the Income Tax Act, 1961 (hereinafter 'the Act') for the A.Y. 2007-08 vide order dated 16.02.2009 and rectification order u/s.154 r.w.s.143(1) was framed by the Assistant Commissioner of Income Tax, Corporate Circle 3(1), Chennai vide order dated 16.02.2016.

ITA 546/CHNY/2019

2. The assessee has filed argumentative grounds numbering 17 in total and running into 4 pages. He was asked to file concise grounds and vide letter dated 17.06.2020, he filed concise grounds which are running into 10 Nos. The first issue in this appeal of assessee is as regards to the order of the CIT(A) not adjudicating the claim of the assessee u/s.112 of the Act, on Long Term Capital Gain for sale of shares. The assessee has raised this issue vide ground Nos. 1 to 5.

3. Brief facts are that the assessee filed his return of income on 31.03.2008 for assessment year 2007-08. The assessee earned income on account of capital gain arising out of sale of shares of M/s. Zylog Systems Ltd. This return was processed

u/s.143(1) of the Act and the AO in his intimation u/s.143(1) raised demand to the extent of Rs.19,20,840/-. The assessee filed rectification petition dated 21.09.2010. The assessee also filed an appeal before the CIT(A) against intimation u/s.143(1) of the Act, but CIT(A) has not adjudicated the issue of claim of revised calculation of tax u/s.112 of the Act, computed on long term capital gain for sale of shares. The Id.counsel for the assessee before us stated that he has declared and computed tax @ 20% and which was processed by the AO, but the assessee in his return of income in Schedule CG(B)(4) has shown deduction u/s.48 of the Act i.e., cost of acquisition without indexation. It was the claim that once cost of acquisition without indexation is claimed, tax will be charged u/s.112 of the Act on long term capital gain arising out of sale of shares @ 10% and not 20%.

4. On the other hand, the Id. senior Departmental Representative however opposed the plea of the assessee and stated that once the assessee himself declared tax rate @20% on long term capital gain arising out of sale of listed securities, he cannot go back from this on computation.

5. We have heard rival contentions and gone through facts and circumstance of the case. We have gone through income tax return filed by the assessee for assessment year 2007-08. We noticed that no doubt the assessee has computed tax rate on long term capital gain arising out of sale of listed securities @ 20%, which is not as per the provisions of section 112 of the Act, because the assessee has claimed that he is not claiming indexation on cost of acquisition, as per Schedule CG (B) (4). The facts emanating out of return of income for assessment year 2007-08 needs verification. Hence, we remit this issue to the file of the CIT(A) who will adjudicate this issue in light of facts given in the return of income for assessment year 2007-08 as well as any other evidence assessee wants to file. Hence in term of the above, we set aside this issue to the CIT(A) and remand the matter back to his file for fresh adjudication. This issue of the assessee is allowed for statistical purpose.

6. The next issue in this appeal of assessee is as regards to the order of the CIT(A) charging of interest u/s.234A, 234B & 234C of the Act. The assessee has raised this issue vide ground Nos.6 to 10. Since, these levy of interest u/s.234A,

234B & 234C of the Act is consequential in nature, these will be charged as per computation of income and according to the provisions of law. Once the CIT(A) decide the first issue as remanded back to his file by us, this issue also be adjudicated accordingly. This issue of the assessee is also allowed for statistical purpose.

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7. At the outset, it is noticed that this appeal is time barred by 502 days and assessee has filed affidavit for condonation stating the reason that the assessee has already filed appeal before ITAT against the order of CIT(A) passed on processing of return and intimation u/s.143(1) of the Act, which is within time and issues are exactly identical. Since, issues are exactly identical, the Revenue will not be at any loss in case delay is condoned and appeal is admitted, because the assessee was also availing alternative legal remedy. Hence, we admit the appeal and condone the delay.

8. At the outset, the Id. counsel for the assessee stated that this appeal is arising out of rejection of application u/s.154 of

the Act on the issue of claim u/s.112 of the Act and charging of interest u/s.234A, 234B & 234C of the Act. Since, we have remanded the matter back to the file of the CIT(A) on main appeal i.e., appeal u/s.143(1) of the Act preferred by assessee before CIT(A), these issues will arise out of above appeal and hence, CIT(A) will adjudicate the same.

9. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 11th October, 2021 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th October, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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