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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 25.01.2023*

\+ **W.P.(C) 950/2023 & CM Nos.3692-93/2023**

AVINASH KUMAR SETIA ..... Petitioner

Through: Mr Salil Kapoor, Mr Sumit Lalchandani, Mr Tarun Chanana and Ms Ananya Kapoor, Advs.

versus

ASSESSMENT UNIT, NATIONAL FACELESS ASSESSMNET CENTRE, DELHI ..... Respondent

Through: Mr Sunil Agarwal, Sr Standing Counsel with Mr Pratyaksh Gupta, Jr Standing Counsel for Mr Abhishek Maratha, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.3693/2023

1. Allowed, subject to just exceptions.

W.P.(C) 950/2023 & CM No.3692/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice.

2.1. Mr Pratyaksh Gupta, advocate, who appears on behalf of Mr Abhishek Maratha, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

3. Since Mr Maratha is not present, we have requested Mr Sunil Agarwal, learned senior standing counsel, who is present in court, to assist us in the matter.

4. Mr Agarwal says that in view of the directions that we intend to pass, a counter-affidavit need not be filed in the matter. Therefore, with the consent of learned counsels for the parties, this writ petition is taken up for hearing and final disposal, at this stage itself.

5. This writ petition is directed against the assessment order dated 26.12.2022, passed under Section 143(3), read with Section 144B of the Income Tax Act, 1961 [in short, "Act"].

6. The principal grievance of the petitioner/assessee concerns the sale of shares carried out by him, along with two other persons, i.e., shareholders, pursuant to the Share Purchase Agreement [in short, "SPA"] dated 21.11.2020.

6.1. The SPA concerned three shareholders, which included two persons and one entity, i.e., Mr. Avinash Kumar Setia/the petitioner, Mr Pradeep Sharma and Kochar Infrastructure Pvt. Ltd. [hereafter collectively referred to as the "shareholders", unless the context requires otherwise].

6.2. These shareholders held shares in Renuka Traders Pvt. Ltd. [in short, "RTPL"]. The transferee was an entity going by the name Imperia Structures Ltd. [in short, "ISL"].

7. Insofar as the petitioner was concerned, according to him, the sale of the shares resulted in Long Term Capital Gains (LTCG) amounting to Rs.12,63,23,160/-.

7.1. The petitioner claimed deduction under Section 54F of the Act, which was pegged at Rs.11,23,54,962/-.

8. The petitioner was issued a show cause notice dated 15.12.2022, whereupon a reply was preferred by the petitioner on 17.12.2022. Along with the reply, the petitioner furnished the relevant documents which included the aforementioned share purchase agreement, as also the annual return of RTPL.

8.1. Besides this, the transfer certificates in the prescribed form, i.e., Form SH-4, were also furnished.

9. The Assessing Officer (AO) has treated the LTGC said to have been earned by the petitioner, as income from other sources, and, accordingly, brought it to tax under Section 56 of the Act.

10. A perusal of the impugned order shows that there are two principal grounds on which the AO has reached the aforementioned conclusion.

10.1 First, a part of the consideration was received prior to the execution of the agreement to sell, i.e., 21.11.2020. The amount received prior to the said date is Rs.4,23,00,000/-. The balance amount was received after 21.11.2022; this was an amount equivalent to Rs.8,62,65,000/-.

10.2 Second, that upon notices being issued under Section 133(6) of the Act, both to RTPL and ISL, no response was received.

11. The AO was, thus, of the view that since the amount involved was huge, the said transaction had to be confirmed by the aforementioned entities.

11.1. Besides this, the AO was also of the view that mandatory steps for transfer of shares had not been taken by the petitioner i.e., the assessee.

12. The record shows that insofar as Mr Pradeep Sharma was concerned, the very same transaction, which involved almost the same number of shares and the same price, was accepted, and the said person was allowed to claim

deduction/exemption under Section 54F of the Act. Furthermore, even in Mr Pradeep Sharma's case, consideration was received prior to the aforementioned execution of the sale purchase agreement.

12.1. It seems rather curious that, in the petitioner's case, the AO has taken a decision that because part of the consideration was received before the agreement to sell, the income had to be treated as income from other sources, whereas in Mr Pradeep Sharma's case, the income earned was not only been offered for tax under the head "capital gains", but deduction was also claimed under Section 54F of the Act; a position which was accepted by the respondent/ revenue.

13. Furthermore, a perusal of the impugned assessment order does not reveal that, the fact that RTPL and ISL did not respond to the notices issued under Section 133(6) of the Act, was put to the petitioner.

13.1. The least that the AO could have done is that he could have brought this aspect to the notice of the petitioner, who could then, perhaps, have them represented *via* their authorized representative before the AO.

14. Having regard to the above, we are inclined to set aside the impugned order, with liberty to the AO to pass a fresh order after giving due opportunity to the petitioner. It is ordered accordingly.

14.1. The AO will issue a notice in this behalf to the petitioner, which would indicate the date and time, when hearing would be accorded in the matter.

14.2. Needless to add, after the AO will pass a fresh assessment order, the petitioner will be at liberty to take recourse to an appropriate remedy, albeit as per law.

15. The writ petition and the pending application are disposed of in the aforesaid terms.

16. The parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 25, 2023
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Click here to check corrigendum, if any