



ITA-168-2016

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

ITA-168-2016

Date of Decision: 30.07.2024

Vijay Sehgal

.... Appellant

Versus

Principal Commissioner of Income Tax-II Jalandhar

.... Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTHPresent: Mr. J.S. Bhasin, Advocate
for the appellant (through VC).Mr. Ranvijay Singh, Senior Standing Counsel
for the respondent.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The present appeal has a checkered history. The first round of appeal ended with an order dated 31.12.1998 passed by the Income Tax Appellate Tribunal, Amritsar, whereby, the assessee appeal was partly allowed with the following directions:-

“We are in agreement with the submissions of the Ld. DR. so far as the ownership of sale of shares are concerned, the lengthy discussion took place during the hearing of the case. The Ld. Counsel for the appellant pleaded that all the shares of M/s Leader Engg. Works do not belong to the appellant alone. The Ld. counsel pleaded that he has no objection for taxing capital gain out of sale of the shares. But for that the Assessing Officer has to calculate the capital gain of the ownership of shares held by Sh. Vijay Sehgal, which are 330 of Vijay Sehgal, HUF and rest of the legal heirs of late father of Sh. Vijay Sehgal. This issue is, therefore, referred back to the file of the



Assessing officer who will decided and look into the taxability of the capital gain and also the proper and legal ownership of the shares held by Sh. Vijay Sehgal and his family members. He will also decide the issue as stated above as to when the sale of the shares has taken place. The Assessing officer will calculate capital gains regarding the shares held by Sh. Vijay Sehgal and in case sale is taken place during the block period the same will be taxed in the block period. Regarding capital gains of other shares holders, he can take legal action as he deems fit under the facts and in the circumstances of the case. So for as the issue of sale price is concerned same will be taken at Rs. 1,01,01,000/- i.e consideration received in cash as well as by cheque."

2. The AO directed to recalculate the income of the block period in accordance with the directions as above. The AO passed an order making additions relating to the sale of shares in May 1995 as part of the block period and declared the capital gain of Rs.5,60,566/- as undisclosed income in the block period. Feeling aggrieved, the appeal was preferred by the CIT appeals who vide his order dated 16.01.2002 deleted the said addition of Rs.5,60,566/- holding that the same would not come within the purview of the block period as the sale in May 1995 would have to be found as part of the return and had been included in the return actually filed on 22.10.1996. The capital gain was, therefore, not falling as taxable income in the block assessment in terms of the Section 158BB(1)(d) of the Income Tax Act.

3. The revenue took the order passed by the CIT(A) before the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT' in short) again and this time the ITAT passed an order holding that the CIT(A) decided the appeal of the assessee on merits without considering the



ITA-168-2016

-3-

directions of ITAT, Amritsar Bench earlier order dated 31.12.1998 and remanded the matter to the CIT(A) setting aside its order.

4. In compliance of the order dated 15.06.2005, the CIT(A) reversed its earlier finding and held that the addition of Rs.5,60,566/- represents the capital gain held by the assessee and was brought to tax as undisclosed income for the block period in terms of the directions of the ITAT order dated 31.12.1998. The assessee filed an appeal and in the third round, the Income Tax Appellate Tribunal has passed an order taking the middle path holding that the directions contained in the order of ITAT dated 31.12.1998 were clear and unambiguous and the capital gain arising on sale of 330 equity shares has to be taxed in the block period. It upheld the second order passed by the CIT(A) and further it observed that the Tribunal cannot review its own order and considering the scope of Section 254(2) to be limited and narrow, held that the order cannot be rectified and would amount to review of its earlier order dated 31.12.1998. The order directed as under:-

“In view of the above facts and circumstances, we do not find any infirmity in the order of learned CIT(A) and therefore, appeal filed by the assessee is dismissed. However, in the interest of natural justice, we direct the Assessing Officer to reduce the amount of capital gain in the assessment of regular return of income to avoid double taxation”.

5. We are afraid with the law has to be understood in its literally terms and has to be interpreted accordingly. A look at the order dated 31.12.1998 para quoted above (supra) reflects that the ITAT has not given any clear finding of treating the sale of 330 shares by the appellant to be

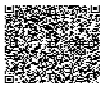


ITA-168-2016

-4-

added in the block period upto 31.12.1995. Of course, factually it is correct that the shares were sold in May 1995. The capital gain has been declared by the assessee in the return filed on 22.10.1996. It would thus be apparent that the same could not have been added to the undisclosed income of the assessee for the block period from 01.04.1985 to 31.12.1995. The CIT(A) has rightly held in terms of Section 158BB(1)(d) read with Section 158BA(3) to keep the said amount of capital gain to be taxed in the subsequent year and would not fall within the block period as above. The order passed by the ITAT subsequently remanding the matter back to the CIT(A), on the said issue based on the order of the Tribunal passed earlier on 31.12.1998, in our view, was erroneous as the order passed by the ITAT was with regard to remanding the matter back to the Assessing Officer. Once the Assessing Officer passes an order, the CIT(A) was independently empowered to examine the appeal and was not bound by the orders passed earlier by the ITAT dated 31.12.1998. In fact, the CIT(A) while passing the order Annexure A-5 was examining the order passed on remand by the AO dated 27.03.2001, it was not a remand by the ITAT to the CIT(A). The ITAT on appeal from the order dated 16.01.2002, therefore, erred in remanding the case back to CIT(A) directing it to follow the order of ITAT dated 31.12.1998. The said aspect has been completely ignored in the subsequent order passed by the ITAT, which is impugned before us.

6. We are satisfied on law on the order passed by the CIT(A) deleting the additions of the amount of Rs.5,60,566/- as capital gain arising on account of sale of 330 equity shares for the block period upto 31.12.1995, was correct and did not call any interference. We also find the directions issued by the ITAT dated 06.11.2015 holding the said amount to be included



for determination of the total amount for the block period upto 1995, as wrongful and accordingly, the order is set aside. The order passed earlier by the Commissioner of Income Tax dated 16.01.2002 is upheld. The appeal is accordingly allowed to the aforesaid extent.

(SANJEEV PRAKASH SHARMA)
JUDGE

30.07.2024
D.Bansal

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No