

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.153/Chny/2021

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s.Dhanalakshmi Mills Ltd., 130, B.S.Sundaram Road, Tirupur-641 601.	Vs	The Deputy Commissioner of Income Tax, Circle-1, Tirupur.
PAN: AABCD 9708J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.S.Lakshmi Venkatraman, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. M. Rajan, CIT

सुनवाईकीतारीख/Date of hearing	:	30.06.2022
घोषणाकीतारीख /Date of Pronouncement	:	13.07.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Principal Commissioner of Income Tax, Coimbatore-1, dated 25.03.2021, u/s.263 of the Income Tax Act, 1961, and pertains to assessment year 2015-16.

2. At the outset, learned AR for the assessee submitted that the appeal filed by the assessee is time barred by 9 days. The AR further submitted that the assessee could not file appeal within the time allowed under the Act, mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of Hon'ble Supreme Court *suo motu*

Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court , then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in *suo motu* Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of courts and tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

5. The assessee has raised following grounds of appeal:-

“1. The order of PCIT. Coimbatore I dated 25.03.2021 is opposed to the facts of the case and is not legally maintainable.

2 The assessee filed a detailed reply dated 09.03.2021 16.03.2021 in connection with the show cause notice dated 24.02.2021 issued by the PCIT. The above replies have not been considered by the PCIT in all its aspects

3, The PCIT not justified in not considering the submission of the appellant that the sale deed executed on 07.02.2006 which is the subject matter of proceedings u/s 263 of the Act for the A.Y 2015-16 is not legally valid as the capital gains arose in the AY:2006-07.”

6. Brief facts of the case are that the assessee company has filed return of income for the assessment year 2015-16 on 31.10.2015 admitting total income of Rs. Nil. The case was taken up for scrutiny. During the course of assessment proceedings, it was noticed that the assessee has declared long term capital gain from transfer of a property vide document No.2239/2006 for a consideration of Rs.2,62,30,000/-. The Assessing Officer, after considering relevant submissions of the assessee and also taken note of guideline value of property as on 01.04.1981 towards cost of acquisition computed long term capital gain at Rs.1,55,52,949/-. The case has been subsequently taken up for revision proceedings and accordingly, show-cause notice u/s.263 dated 24.02.2021 was issued on the assessee and called upon the

assessee to explain as to why assessment order passed by the Assessing Officer shall not be revised for the reasons stated in said show-cause notice. In the said show-cause notice, the learned PCIT was of the opinion that the assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue, because although, there is difference in guideline value of property as on date of registration and consideration stated to be received for transfer of property, but the Assessing Officer has failed to examine the issue in light of provisions of section 50C of the Income Tax Act, 1961, which rendered the assessment order to be erroneous and prejudicial to the interests of revenue. In response, the assessee submitted that the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue, because the issue of capital gain computed by the assessee from transfer of property has been examined by the Assessing Officer and after considering relevant facts has computed long term capital gain. Therefore, the Principal CIT cannot assume his jurisdiction to revise the assessment order on the very same issue. The PCIT, after considering relevant submissions of the

assessee and also taken note of various facts opined that the Assessing Officer has not applied his mind on the issue of difference in guideline value of property when compared to consideration exchanged between the parties, although, there is a huge difference in guideline value of property and thus, opined that assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of revenue and hence, set aside the assessment order and directed the Assessing Officer to redo assessment in light of discussions given in 263 order. Aggrieved by the PCIT order, the assessee is in appeal before us.

7. The learned A.R for the assessee submitted that the learned PCIT erred in revising assessment order u/s.263 of the Act, without appreciating fact that capital gain derived from transfer of property cannot be assessed for the impugned assessment year and thus, difference consideration received as per provisions of section 50C of the Act cannot be subject matter of revision proceedings for the impugned assessment year.

8. The learned DR, on the other hand, supporting order the learned PCIT submitted that facts brought on record in the order of the PCIT, clearly proves that the Assessing Officer has failed to apply his mind in light of provisions of section 50C of the Act, which rendered the assessment order to be erroneous, insofar as it is prejudicial to the interests of revenue and thus, the PCIT has rightly set aside assessment order by exercising his powers conferred u/s.263 of the Act, and their orders should be upheld.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The facts with regard to impugned dispute are that the assessee has sold property vide document No. 2239 / 2006 for consideration of Rs.2,62,30,000/-. Further, although transaction of sale took place in financial year relevant to the assessment year 2006-07, but the assessee itself had declared capital gain from transfer of property for the assessment year 2015-16 on the ground that possession of property has been handed over to buyer in the financial year 2014-15 relevant to the assessment year 2015-16. From the above, it is very clear that

for the purpose of computation of capital gains transfer had been taken place for the assessment year 2015-16. It was further noted that there is difference between stated consideration received for transfer of property and guideline value of property as on date of registration, as per which the assessee claims to have received consideration of Rs.2,62,30,000/-, whereas guideline value of property has been fixed by the Registration Department at Rs.4,10,70,379/- and said value has been determined by the Stamp & Registration Department on 11.02.2009. From the above, it is very clear that there is difference between stated consideration in the document and guideline value of property.

10. In light of above factual background, if you examine the assessment order passed by the Assessing Officer and order of the PCIT passed u/s.263 of the Act, we need to understand whether the PCIT is right in exercising his powers u/s.263 of the Act or not. Admittedly, the Assessing Officer has caused necessary inquiries with regard to computation of long term capital gain derived transfer of property and has computed capital gain by taking into account cost of acquisition claimed by

the assessee without disturbing consideration received from transfer of property, even though, there is difference in guideline value of property. From order of the Assessing Officer, what we could notice is that although, provisions of section 50C could have been applied in the given facts and circumstances of the case, but the Assessing Officer has failed to apply provisions of section 50C to determine correct consideration received for transfer of property. The PCIT, after verifying necessary evidences in light of various facts brought on record by the Assessing Officer has opined that the assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue on the issue of computation of long term capital gain from transfer of property, because the Assessing Officer has failed to apply provisions of section 50C of the Act, while completing assessment. In our considered view, the Assessing Officer has failed to apply his mind in light of facts of the case to relevant provisions of section 50C of the Act, while completing assessment. Hence, the PCIT has rightly exercised his jurisdiction u/s.263 of the Act and set aside the assessment order, because the assessment order passed by the Assessing

Officer is erroneous, insofar as it is prejudicial to the interests of revenue. Therefore, we are of the considered view that there is no error in the reasons given by the Id. PCIT to set aside the assessment order and thus, we are inclined to uphold findings of the learned PCIT and dismiss appeal filed by the assessee.

10. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 13th July, 2022

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 13th July, 2022

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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