

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

महनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.392/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2013-14)

Mrs. Sanjjay Saumya 251 A, Omalur Main Road, Swarnapuri, Salem-636 004.	बनम/ Vs.	PCIT Coimbatore-1.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AEYPS-0117-G		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Banusekar (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Dr. R. Mohan Reddy (CIT) - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	15-10-2024
घोषणा की तारीख / Date of Pronouncement	:	05-11-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax Coimbatore-1 (Pr.CIT) vide impugned order dated 21-12-2023 proposing revision of an assessment framed by Ld. AO u/s.147 r.w.s. 144B of the Act on 14-09-2021. The grounds taken by the assessee are as under: -

1. The order of the learned Principal Commissioner of Income Tax is contrary to law, facts and circumstances of the case.

Jurisdiction

2.1 The learned Principal Commissioner of Income Tax erred in assuming jurisdiction/passing order under section 263 of the Income Tax Act, 1961 (the Act).

2.2 The learned Principal Commissioner of Income Tax ought to have appreciated that the Assessing Officer has passed the order after considering the detailed submissions submitted by the Appellant during the course of assessment proceedings.

2.3 The learned Principal Commissioner of Income Tax ought to have appreciated that the issue sought to be revised by him, is subject to more than one view and the Assessing Officer has taken one of the possible views. Accordingly, assumption of jurisdiction by the Commissioner of Income Tax under section 263 of the Act is erroneous.

2.4 The learned Principal Commissioner of Income Tax erred in assuming jurisdiction to revise the assessment order on the basis of change of opinion.

2.5 The learned Principal Commissioner of Income Tax erred in setting aside the assessment order dated 14 September 2021 passed by the Assessing Officer by treating the same as erroneous and prejudicial to the interest of the revenue.

2.6 The learned Principal Commissioner of Income Tax ought to have appreciated that the assessment order dated 14 September 2021 is neither erroneous nor prejudicial to the interest of the revenue.

3.1 The learned Principal Commissioner of income Tax erred in stating that the Appellant has not responded to the notices issued by the Assessing Officer during the course of assessment proceedings under section 147 r.w.s 144B of the Act.

3.2 The learned Principal Commissioner of Income Tax ought to have appreciated that the Appellant has submitted as and when the details called for and offered necessary explanations towards the claim made in the return of income.

3.3 The learned Principal Commissioner of Income Tax ought to have appreciated that while passing the order under section 147 r.w.s 144B, the Assessing Officer had mentioned that the Assessee had complied and replied to the notices on 31/08/2021 in Page no. 4 of the assessment order.

2. The Ld. AR advanced arguments and submitted that the case was reopened specifically to examine the issue as raised in the revisionary order. The Ld. AR stated that the assessee furnished explanations which were accepted by Ld. AO and the same was, in fact, only possible view in the matter. The Ld. AR also raised the issue of double taxation. The written submissions have also been filed vide letter dated 25-10-2024 which have duly been considered while adjudicating the appeal. The Ld. CIT-DR, on the other hand, supported the revisionary order and referred to various case laws. Having heard rival submissions and upon perusal of case record, our adjudication would be as under.

Facts leading to Impugned Revision

3.1 The assessee being resident individual was director and one of the shareholder in an entity i.e., M/s AVR Swarna Mahal Jewellery Pvt. Ltd.

(SMJPL). It transpired that SMJPL issued zero coupon debentures @Rs.2000/- per debenture during financial year (FY) 2009-10 to 9 of its directors. The debentures were redeemable after 9 years (on 01-09-2019) at redemption price of Rs.6400/- per debenture. Accordingly, SMJPL created provision thereof in its books of accounts and claimed amortization of discount in their financial statements. During assessment proceedings of SMJPL, it was stated that amortization would be liable for TDS at the time of redemption of debentures. However, the same was disallowed by Ld. AO u/s 40(a)(ia). The same was reversed by first appellate authority and the revenue preferred further appeal against the same before Tribunal.

3.2 It further transpired that the SMJPL converted the debentures prematurely on 30-09-2012 into shares and deducted TDS @10% for amortization of discount on debentures. This amount was allowed as deduction by Ld. AO in this year. On these facts, Ld. AO of present assessee held an opinion that entire accumulated interest income on debenture was to be admitted as interest income by the assessee in the year of conversion. The debenture holders should have offered the accrued interest on debentures to tax. However, upon examination of return of income of debenture holders, it was noted that only some of the debenture holders offered accumulated and accrued interest. In assessee's' case, such accumulated interest amounted to Rs.75.46 Lacs. However, the assessee offered interest income of Rs.13.48 Lacs only and did not offer the remaining interest amount of Rs.61.97 Lacs. Accordingly, the case was reopened and various notices were issued to the assessee.

3.3 The assessee submitted that equity shares were allotted in lieu of debentures along with amortization of discount on debentures which falls under the purview of Sec.47(x) and therefore, the same would not be regarded as transfer. The assessee also submitted that it followed cash system of accounting as per Sec. 145 to recognize interest income. The assessee did not receive any income on debenture investments. Since there was no receipt for the assessee, no income was offered during this year. The assessee also submitted that it grossed up TDS as deducted by SMJPL and claimed TDS credit to that extent. Accepting the plea of the assessee, Ld. AO accepted the returned income of the assessee and chose not to make any addition in this regard.

3.4 Subsequently, Ld. Pr. CIT, upon perusal of case records, held that the assessment was erroneous and prejudicial to the interest of the revenue. Accordingly, the assessee was show-caused on 21-07-2023 wherein it was stated that the balance interest of Rs.61.97 Lacs was to be brought to tax u/s 56 r.w.s. 2(24)(iv). The assessee opposed the same on the ground that Ld. AO had duly applied his mind on the flagged issue. The assessee followed cash basis of accounting and it was not in receipt of any money towards income relating to debenture investments. Since there was no actual receipt, no income was offered. The assessee also raised alternative plea that the accretion to the debenture investment was to be treated as capital gains only upon transfer of such capital asset r.w.s. 2(47) r.w.s. 45 of the Act. The conversion of debentures into equity was nothing but liability re-classification in the books of SMJPL and would not result into any cash inflow into assessee's account. The conversion of debentures into equity is specifically exempted u/s 47(x) which provided that such conversion of

debentures into equity would not be regarded as transfer. The issue of capital gain would be dealt with in the year of sale of equity shares. Reference was made to various judicial decisions to assail the revision of the order.

3.5 However, Ld. Pr. CIT observed that the issue of taxability of proportionate accumulated accrued interest on conversion of debentures into shares up-to the date of conversion was not properly examined by Ld. AO. The claim was accepted without having a holistic approach to the issue on hand. Pertinently, in reassessment proceedings of some other directors, elaborate discussions were made and appropriate additions were made. The Ld. AO ought to have examined the provisions of Sec. 49(2A) r.w.s. 47(x) or 47(xa) and then explored the possibility of applying the provisions of Sec. 56(2)(id) r.w.s. 2(24)(iv) of the Act. The other directors who were subjected to scrutiny were assessed for proportionate accumulated interest accrued on the debentures and brought to tax. This was not done in assessee's case which makes the order erroneous. The accumulated interest was to be treated as interest on securities and required to be brought to tax. The action of Ld. AO in accepting the return of income was not in accordance with law. Finally, the assessment was set aside and Ld. AO was directed to re-do the assessment afresh by speaking order after verification of facts and after affording opportunities of hearing to the assessee. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that during FY 2009-10 SMJPL issued Zero coupon debentures having face value of Rs.2000/- per debenture which were redeemable at Rs.6400/- per debenture after 9 years. The

debentures, thus, had implicit interest embedded in their redemption value. Though the redemption was after 9 years, the same were converted pre-maturely into equity share capital in this year. The redemption value of the debenture was at approximate value of Rs.3500/- per debenture (including interest component as per terms of issue of debentures) which essentially had two components i.e., face value of Rs.2000/- per debenture and accumulated interest component of Rs.1500/- per debentures. SMJPL deducted TDS on interest component in this year and claimed the same as deduction which was allowed in their assessment proceedings.

5. So far as the assessee is concerned, the interest that has accrued to the assessee on these debentures for various years up-to the date of redemption is as follows: -

No.	Period	Amount of Interest (Rs.)
1.	02-09-2009 to 31-03-2010	14,27,637/-
2.	01-04-2010 to 31-03-2011	24,47,378/-
3.	01-04-2011 to 31-03-2012	24,47,378/-
4.	01-04-2012 to 30-09-2012	12,23,689/-
	Total	75,46,082/-

From assessment order, it could be seen that the assessee has offered interest amount of Rs.13.48 Lacs to tax which include interest for this year for Rs.12.23 Lacs and grossed-up portion of TDS deducted by SMJPL against the same. It also emerges that the assessee has claimed TDS credit on entire amount of interest that has accrued up-to the date of conversion. It is very clear that the assessee has not offered the interest income of Rs.61,97,169/- (Rs.75,46,082/- - Rs.13,48,913/-) to tax on the ground that she is following cash system of accounting and

the same would be taxable in the year of sale of equity shares. This plea is bereft of any substance. It is very clear that the whole interest amount of Rs.75.46 Lacs is deemed to be received by the assessee upon conversion of debentures into equity shares in this year. If the amount of Rs.61.97 Lacs is not brought to tax, the same would never be brought to tax. Pertinently, the conversion of debentures into shares have happened for face value of debentures for Rs.2000/- plus accumulated interest of Rs.1500/- per debenture. In other words, the value of shares essentially has two components i.e., face value of debentures of Rs.2000/- and other component is accumulated interest of Rs.1500/- per debenture. The capital gains on sale of shares would naturally be computed in the year of sale by adopting cost of acquisition accordingly. Therefore, the plea that if the interest component is taxed in this year, the same would amount to double taxation, is fallacious and hence, not acceptable. The cost shall include both the components in terms of Sec. 49(2A). There is no quarrel on the issue that such conversion of debentures into equity shares would not be regarded as transfer as per Sec. 47(x) so far as the computation of capital gain is concerned. However, here is question is of taxability of interest component of debenture that has accrued to the assessee up-to the date of conversion. Therefore, we conclude that the action of Ld. AO in accepting the return of income was not in accordance with law. The order has errors which is prejudicial to the interest of the revenue. Under these circumstances, the revision of the order could not be faulted with. We order so.

6. The appeal stands dismissed.

Order pronounced 5th November, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 05-11-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Salem/Coimbatore
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF