

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 14.02.2024
Pronounced on 02.03.2024**

ITA No.1/2022

Principal Commissioner of Income Tax,
J&K, Srinagar/Jammu.

.....Petitioner/Appellant

Through: Mr. Suraj Singh Wazir, Advocate
Ms Pariksha Parmar, Advocate

versus

Dr. Karan Singh, S/o L. Sh. Hari Singh,
The Palace, Jammu.

.....Respondent(s)

Through: Mr. C.S. Aggarwal, Sr. Advocate, with
Mr. Subash Dutt, Advocate
Mr. Sachin Sharma, Advocate

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Tashi Rabstan - J

1. The facts-in-brief, as gathered from the file, are that the assessee, namely, Dr. Karan Singh, his wife and two sons were having shares in M/s. Jyoti Pvt. Ltd. Thus, the assessee was one of the shareholders having 21000 shares in the said company. During the financial year of 1997-98, the assessee had transferred/sold 7150 shares in the said company to M/s. Bharat Hotels Ltd., New Delhi for a consideration of rupees ten crores, though, as on 01.04.1981, the assessee had taken the indexed cost of these shares at Rs.14,48,59,000/-. However, in the return filed by the assessee on 08.03.1999, the assessee had declared a total income of Rs.16,89,477/-, i.e., Rs.12,000/-

under the head salary and Rs.16,77,477/- as income from other sources. There was a note appended to the computation of income to the effect that the assessee had sold his shares in M/s. Jyoti Pvt. Ltd., and, as per valuation of the company's assets, there was a capital loss, which is not being claimed.

2. However, the Assessing Officer disputed the indexed cost of 7150 shares. He was of the view that while calculating the cost of acquisition, the value of land measuring 225.85 kanals was to be excluded as the land was not a part of sale consideration of shares of M/s. Jyoti Pvt. Ltd. to M/s. Bharat Hotels Ltd. Therefore, the Assessing Officer took the indexed cost of per share at Rs.3262. Thus, the Assessing Officer adopted the indexed cost of 7150 shares at Rs.2,33,23,300/-, instead of Rs.14,48,59,000/-. As such, the Assessing Officer was of the view that out of rupees ten crore being the sale price, there was a capital gain of Rs.7,66,76,700/- as having been received by the assessee.

3. Against the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Jammu. The CIT(A) vide order dated 21.03.2007 deleted the addition made by the Assessing Officer on the ground that as on the date of sale of shares, the lease period of beyond 20 years was still left with M/s. Jyoti Pvt. Ltd. and hence the land value in the hand of the lessor was practically nil or negligible and for all practical purposes M/s. Jyoti Pvt. Ltd. was de facto owner of the underlying land. The value of leasehold land, therefore, cannot be excluded for calculating the Fair Market Value of shares of M/s. Jyoti Pvt. Ltd. The Assessing Officer was, thus, directed to adopt the valuation report submitted by the assessee during the assessment proceedings resulting in no capital gain.

4. Against the said order, the revenue went in appeal before the Income Tax Appellate Tribunal, Delhi Benches "D", New Delhi and the learned Tribunal vide order dated 24.01.2022, while dismissing the appeal, held that reopening of the assessment case of assessee to be not in accordance with law. The learned Tribunal also allowed the Cross Objections filed by the assessee.
5. Against the said order, the Principal Commissioner of Income Tax, J&K has filed the present appeal.
6. The stand of appellant-revenue is that while calculating the cost of acquisition, the value of land measuring 225.85 kanals was to be excluded as the land was not a part of sale consideration of shares of M/s. Jyoti Pvt. Ltd. to M/s. Bharat Hotels Ltd. Therefore, the dispute is with regard to quantum of capital gain arising from transfer of shares in Jyoti Pvt. Ltd.
7. The stand of respondent-assessee is that no capital gain arose to him as a result of selling of his shares in M/s. Jyoti Pvt. Ltd. to M/s. Bharat Hotels Ltd., New Delhi as the fair market value of such shares as on 01.04.1981 had far exceeded the amount of consideration received on such selling/transfer of shares. Learned counsel for respondent-assessee in support of the arguments also relied upon the judgments, reported as, Commissioner of Income Tax vs Lakhani Footwear Ltd., 248 ITR 701 (Punj); Joint Commissioner of Income Tax vs Haryana Co-operative Sugarcane Mills Ltd., 248 ITR 813 (Punj); Gulab Chand vs Commissioner of Income Tax, 252 ITR 719 (Punj); Assistant Commissioner of Income Tax vs Ajay Vijay Traders, 254 ITR 642 (Raj) and Commissioner of Income Tax vs Fazilka Cooperative Sugar Mills Ltd., 255 ITR 411 (Punj).

8. Thus, the dispute was: as to what method of valuation of unquoted shares, held by the assessee in a private company, should be adopted for determining the market value as on 31.03.1981.

9. We have heard learned counsel appearing for the respective parties, considered their rival contentions and also perused the appeal file.

10. Admittedly, on the date of transfer of shares by the assessee, M/s. Jyoti Private Limited had only hotel building along with leasehold interest on the land on which the hotel building stood. M/s. Jyoti Private Limited had acquired the rights in the building and other superstructures when the same were purchased by the Company from its owner Shri Vikramaditya Singh vide Relinquishment Deed Dated 21.03.1973. However, the land measuring 225 kanals 17 Marlas, over which the building stood, was acquired by the Company from its owner Shri Vikramaditya Singh vide Lease Deed dated 21.03.1973 for a period of 40 years because due to the restrictions then prevailing in the State of J&K, a Company being a non-state subject was prevented to own land in the State. Jyoti Private Limited is a Private Limited Company having only four shareholders, i.e, assessee-respondent herein, his wife and two sons.

11. Since the dispute was as to what method of valuation of unquoted shares, held by the assessee in a private company, should be adopted for determining the market value as on 31.03.1981, the assessee-Dr. Karan Singh and three other shareholders, on the basis of the report of approved valuer, had adopted the fair market value of the assets transferred as on 01.04.1981 at Rs.24,91,86,520/- (Rs.19,87,48,000/- was the fair market value of the land and Rs.5,04,38,520/- was the fair market value of building). However, the

Assessing Officer had proceeded to determine the fair market value of the shares transferred/sold on the basis of break-up method, i.e., by adopting the fair market value of the hotel building as per the report of the approved valuer to be divided by the number of shares held by the assessee-Dr. Karan Singh and other shareholders, which came to Rs.3262/- per share after indexation. After calculation, the Assessing Officer was of the view that there was a capital gain of Rs.7,66,76,700/- as having been received by the assessee.

12. The assessee, on the other hand, computed the fair market value of the asset of the company as per the report of registered valuer and the average fair market value of each share was computed at Rs.6151.64 and, after indexation, the fair market value of each share was Rs.20,362/- and since the shares were transferred at the rate of Rs.4761.90/- per share, hence it was claimed that there was no capital gain on the transfer of shares as on 19.01.1998.

13. A perusal of the file reveals that on one hand the Assessing Officer computed the value of shares as per the breakup method, as approved method, after accepting the fair market value of building as per the report of the approved valuer, but excluded the value of land on the ground that the said land belongs to Vikramaditya Singh, whereas, on the other hand, the Assessing Officer in the case of Shri Vikramditya Singh though had made the assessment but did not include the value of land. Therefore, we are in agreement with the learned Tribunal that the action of Assessing Officer was apparently erroneous and unsustainable in law. Further, the CIT(A) has rightly deleted the addition made by the Assessing Officer after analyzing that the cost of acquisition of shares was higher than the value at which the shares were transferred. Further, as on the date of sale of shares, the lease period of beyond 20 years was still

left with M/s. Jyoti Pvt. Ltd. Hence, the land value in the hand of lessor was practically nil and for all practical purpose M/s. Jyoti Pvt. Ltd. was de facto owner of the underlying land, as such the value of leasehold land cannot be excluded for calculating the Fair Market Value of shares of M/s. Jyoti Pvt. Ltd.

14. Further, the learned Tribunal, while rejecting the plea of revenue to adopt the value of assets as reflected in the balance sheet as provided under Rule 11 of the Wealth Tax Rules, has rightly held that the Assessing Officer had himself applied the Fair Market Value of buildings and other assets while computing capital gain in the assessment order. Also, it is the fair market value, and not book value, of an asset which is relevant for determining the cost of acquisition as envisaged under Section 55(2)(b)(ii) of the Income Tax Act, 1961 for determining capital gain under Section 45 of the Act. The fair market value is defined under Section 2(22B) of the Act as the price that such asset would ordinarily fetch on sale in open market on 01.04.1981. Therefore, for the purposes of computation of capital gain, the fair market value has to be determined and not the value of shares, the valuation of shares is to be made under Rule 1D of the Wealth Tax Rules.

15. We are also in agreement with the learned Tribunal that the lease hold interest in the land is an asset of the company and is capable of valuation; as such the same is to be included in the value of asset of M/s. Jyoti Private Limited so as to determine the fair market value of shares held by the assessee as well as other shareholders.

16. Since the order impugned is a well defined and reasoned order, as such we are not inclined to take a view other than the one taken by the learned Tribunal as we are of the opinion that in the present appeal no substantial

question of law arises for our consideration out of the judgment rendered by the Income Tax Appellate Tribunal. The appeal is, accordingly, dismissed along with connected CM, if any.

Jammu
02.03.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes
Yes