

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.16/Rjt/2020
(Assessment Year: 2015-16)

M/s. L. N. Technocast Pvt. Ltd., 80 Feet Road, Nr. K. S. Diesel, Aji Vasahat, Behind ITI Hostel, Nr. Trishul Pump, Rajkot	Vs.	Income Tax Officer, Ward-2(1)(4), Rajkot
[PAN No.AAACL9630Q]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Ashish Kumar Pandey, Sr. DR

Date of Hearing	03.01.2024
Date of Pronouncement	05.01.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, (in short "Ld. CIT(A)"), Rajkot in Appeal No. CIT(A)-2/Rjt/10270/2017-18, vide order dated 05.12.2019 passed for Assessment Year 2015-16.

2. The assessee has taken the following grounds of appeals:-

"1. The learned Commissioner of Income Tax (Appeals) - 2, Rajkot erred in upholding the validity of order passed u/s 143(3) of the Act whereby wrongly assessed the total income of Rs.1,09,80,455/- as against the returned income of Rs.NIL is unwarranted, unjustified and bad in law.

2. The learned Commissioner of Income Tax (Appeals)-2, Rajkot erred in upholding the calculating of the Long Term Capital Gain on sale of land at Rs.37,81,491/- as against the loss of Rs.72,000/- and added to the total income of Rs.37,81,491/- is unwarranted, unjustified and bad in law.

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3. *The learned Commissioner of Income Tax (Appeals)-2, Rajkot erred in upholding the Calculating the Short Term Capital Gain on sale of Building at Rs.1,12,85,609/- and added to the total income of Rs.1,12,85,609/- is unwarranted, unjustified and bad in law.*

4. *The learned Commissioner of Income Tax (Appeals)-2, Rajkot erred in upholding the wrongly mentioned the facts in body of order is very far away from the truth is unwarranted, unjustified and bad in law.*

5. *The learned Commissioner of Income Tax (Appeals)- 2,Rajkot erred in upholding the initiating the penalty proceedings u/s.271(1)(c) of the I T Act is unwarranted, unjustified and bad in law.*

6. *The learned Commissioner of Income Tax (Appeals), Jamnagar erred in upholding the charging the Interest u/s.234 A/B/C/D of the I T Act is unwarranted, unjustified and bad in law.*

7. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”*

3. The brief facts of the case are that the assessee had sold it's property for a consideration of Rs. 2,75,00,000/- on 16.09.2014. However, in the computation of Long Term Capital Gains, the assessee declared sale consideration at Rs. 1,03,20,000/- and after taking cost of acquisition and indexed cost of improvement, the assessee computed Long Term Capital Loss of Rs. 72,000/-.

4. During the course of assessment, the assessee filed revised computation, wherein sale consideration was shown at Rs. 2,75,00,000/- and indexed cost of acquisition was shown at Rs. 96,00,000/-. Accordingly, in the revised computation the assessee computed Long Term Capital Gains at Rs. 1,79,00,000/-. However, the Assessing Officer was of the view that out of the total sale consideration of Rs. 2.75 crores, consideration of Rs. 84,65,625/- was towards sale of land and consideration of Rs. 1,90,34,375/- was towards sale of building. Accordingly, the Assessing Officer computed Long Term Capital Gains on sale of land and Short Term Capital Gains on

sale of building separately for an amount of Rs. 1,12,85,609/- and Rs. 37,81,491/- respectively. The total capital gains computed by the Assessing Officer in the case of assessee was Rs. 1,50,67,100/-, with the Long Term Capital Gains being subject to tax @ 20% and the Short Term Capital Gains being subject to tax @ 30%.

5. The assessee filed appeal before Ld. CIT(A) challenging the separate capital gains computation in respect of land and the building / structure constructed thereon. However, Ld. CIT(A) dismissed the appeal of the assessee with the following observation:-

“Having considered facts and circumstances of the case contentions I find that computation of short term capital gain in respect of building which is depreciable asset and long term capital gain in respect of land separately is fully justified. The cost of acquisition of land and WDV of the building as well as sale consideration of the two are clearly ascertainable from the records (that is audit report of the assessee and the sale deed). In my considered opinion there is no infirmity in the computation of short term and long term capital gain and the ground of appeal are therefore rejected.”

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) dismissing the appeal of the assessee. However, despite giving several opportunities of hearing to the assessee, the assessee did not cause appearance before us. Accordingly, we are constrained to pass the present order in the light of available facts on record, the arguments put before us by the Ld. Departmental Representative and the judicial precedents on the subject.

7. The issue for consideration before us is whether Ld. CIT(A) erred in facts and in law in upholding that in case of composite sale of land and building, separate capital gains tax computation can be made with respect to

land and the super structure / building constructed thereon, wherein the land may be subject to Long Term Capital Gains tax and the building subject to Short Term Capital Gains tax, since the construction with respect to the building has been undertaken subsequently. In our considered view, the Assessing Officer has not erred in facts and in law in computing separate capital gains tax in respect of sale of land (being Long Term Capital Gains) and sale of building / super structure (being Short Term Capital Gains), even if the assessee had made a consolidated sale of both land and building, as part of the same agreement.

8. In the case of **Smt. Seema Shah vs. ITO Assessee 140 taxmann.com 523 (Varanasi-Trib)**, the facts were that the assessee had bought a land in financial year 2006-07. She constructed a house upon said land in financial year 2013-14 and sold said land along with one part of a house constructed upon the land in same financial year for a consideration of a certain amount. The assessee further made investment in new residential house property and, accordingly, claimed exemption under section 54 of the Act. The ITAT held that since building/house constructed was sold within 36 months of construction and, hence, capital gains arose on it being a short-term capital gain was not eligible for exemption under section 54 of the Act. However, since assessee had held land for more than thirty six months before its sale, exemption under section 54 was to be allowed on long-term capital gains realized on sale of land.

9. In the case of **CIT v. C.R. Subramanian 242 ITR 342 (Karnataka)**, the High Court held that since site and building subsequently constructed thereon are separable assets, for purpose of capital gains, even

though they had been sold as a single asset, profits arising from sale of site would be considered as long term capital gains and profit arising out of sale of building would be considered as short-term capital gains.

10. In the case of **CIT v. Dr. D.L. Ramachandra Rao 236 ITR 51 (Madras)**, the High Court held that land is an independent and an identifiable capital asset, and it continues to remain an identifiable capital asset even after construction of building and at time of sale thereof. Further, the High Court held that it is possible to bifurcate capital gains arising with reference to sale of land and building even if they are sold as one unit, if land was held by assessee for a period more than that prescribed under section 2(42A), but building thereon was a new construction held for a period of less than 36 months.

11. In the case of **CIT v. Vimal Chand Golecha 201 ITR 442 (RAJ.)**, the High Court held that when price of two capital assets is charged at one consolidated price, then assessee is entitled to bifurcate same. Therefore, where a gain from one of capital assets was a short-term capital gain while from other it was a long-term capital gain, benefit to assessee could not be denied in respect of gain arising from sale of an asset which could be considered as long-term capital gain.

12. In the case of **ACIT v. Sekhar Gupta 79 ITD 192 (CAL.)** the assessee purchased a plot of land in 1984 and constructed a house in 1988. He thereafter sold and transferred land as well as house by two separate deeds and thereby he had long-term capital gain in respect of land but short-term capital loss in case of sale of house. The ITAT held that definition of

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‘Capital Asset’ includes property of any kind and land as well as building held by assessee are both capital assets. Therefore, it is possible to bifurcate capital gain arising with reference to sale of land and building even if they are sold as one unit, if land is held by assessee for 36 months as prescribed under section 2(42A). Therefore, capital gains arising on both assets had to be worked out separately.

13. In the case of **ACIT v. Yamuna Syndicate Ltd. 162 Taxman 167 (Chd.) (Mag.)**, the ITAT held that where assessee has sold two assets by a composite agreement for a composite consideration, assessee would be well within its right to segregate consideration amongst two assets and compute respective capital gains accordingly. Therefore, where assessee-company had sold its land and building for a composite consideration, computation of short-term capital gain in relation to proportionate consideration of building and long-term capital gain in relation to proportionate consideration of land on which no depreciation had been claimed by assessee was justified.

14. In light of the facts of the assessee’s case and the judicial precedents on the subject, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

15. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on

05/01/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 05/01/2024
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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ITA No.16/Rjt/2020
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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot