

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH :: PANAJI

BEFORE SHRI R.S. SYAL, HON.VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER &
(Through virtual hearing)

ITA No.185 /PAN/2018
(A.Y. 2009-10)

Sanjay Atchut Poy Raiturcar, Shop No.1, Govind Poy House, Rua Padre Miranda, Margao, Goa. PAN: ADJPP 0902 G	vs	ITO, Ward-4, Margao, Goa.
Appellant		Respondent

Assessee by	:	Priyanka Kamat, AR
Revenue by	:	Shri N. Shrikanth, DR
Date of hearing	:	05/07/2023
Date of pronouncement	:	07/07/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-2, Panaji, dated 16/02/2018 for A.Y.2009-10 as per the following grounds of appeal:-

"1. The CIT(A) erred in not considering the fact that the capital asset sold during the accounting year was specifically gifted to the appellant for payment of compensation to the other legal heir by way of family arrangement and deductible as cost of acquisition from the sale value.

2. The CIT(A) erred in not applying amended provision of sec.2(14) and erred in considering the agricultural land situate beyond two kilometres from municipal limits as capital asset for purposes of computing capital gain."

2. The relevant facts are that assessee is an individual deriving income from salary, rent and other sources and he is covered by

Portuguese Civil Code and thus by u/sec.5A of the Income Tax Act. The assessee filed his return of income on 31/07/2009 declaring total income of Rs.1,34,90,240/-. The Assessing Officer (AO) completed the assessment u/sec.143(3) determining the total income of Rs.1,45,58,644/-. The AO made a single addition towards disallowance of interest claimed against the capital gains amounting to Rs.20,55,704/- in the hands of the communion and 50% thereof in the hands of the assessee. It was the contention of the assessee that such interest claimed was deductible as the cost of acquisition from the sale value, since the capital asset sold during the previous year was used for payment of compensation to the other legal heirs by way of family arrangement. The assessee had sold a land by execution of sale deed on 06/10/2008 at village Ella in Tiswadi Taluka, North Goa admeasuring 48,450 and 5,250 sq.mts. for a consideration of Rs. 5.50 crores. The assessee offered long term capital gains (LTCG) on the sale of land after claiming exemption u/sec. 54F, 54F(4) and interest paid to M/s. Fabrica De Gas Pvt. Ltd. The total LTCG offered to tax by the assessee was Rs. 2,30,62,021/- in the hands of the communion and 50% thereof in the hands of the assessee. The AO disallowed interest claimed as deduction from the capital gains. Ld.AR for the assessee submitted before the AO that there was an arbitration award relating to the family members of the assessee and as per this award, the assessee had to pay Rs. 1.91 crore to the assessee's brother along with interest of 12%. Hence, assessee borrowed loan from

M/s.Fabrica De Gas Pvt. Ltd. to pay the amount to his brother and interest paid to the said company was claimed as deduction. It was submitted that the assessee paid Rs. 1.25 crore to his sister also as part of family arbitration award. This contention of the assessee was not accepted by the AO since the family arbitration award had nothing to do with the LTCG earned by the assessee. The AO held that the ownership of the property sold by the assessee was conveyed to the assessee by gift deed dated 12/09/2005 registered with Sub-Registrar, Ilhas, Panaji on 13/09/2005 by his parents. Hence, the assessee had exclusive right and title to the said property and therefore, the interest claimed by the assessee was disallowed by the AO as the same was not allowable as per the provisions of sec.48 of the Act.

3. When the matter went to the Id. CIT(A), detailed written submissions were filed by the assessee which are on record and after considering the assessment order and the submissions of the assessee, the Id. CIT(A) upheld the findings of the AO by observing that assessee had absolute right and title over the property sold since it was gifted by his parents as per registered gift deed dated 12/09/2005. Thereafter, on such sale, the assessee had himself offered LTCG in his return of income. The claim of the assessee for reducing the interest as deduction from the capital gains is not justified within the parameters of the Act specifically sec.48 of the Act. The arbitration award by which the assessee had given certain money to his brother and sister as per the family settlement is entirely

separate from the issue of LTCG as computed under the Income Tax Act. The assessee's claim that in order to pay to his siblings, he had borrowed money from M/s. Fabrica De Gas Pvt. Ltd. and had paid interest to the said company and therefore such interest the assessee had claimed as deduction from capital gains. The Id. CIT(A) rightly held that the expenses incurred by the assessee for paying interest on the loan taken is not related either to the cost of acquisition, cost of improvement or cost of transfer of the asset sold. The interest claimed by the assessee, therefore does not come within any of the heads of expenses specified in sec.48 of the Act, and, therefore, such deduction on interest paid claimed by the assessee against LTCG as disallowed by the AO was upheld by the Id. CIT(A).

4. At the time of hearing, the Id.AR submitted that the assessee is claiming this deduction of the amount of interest paid as cost of acquisition of the property.

5. We have heard the submissions of the parties and have given considerable thought to the materials/documents on record, analysed the facts and circumstances in this case and have also considered the submissions made before this Bench.

6. The facts are unambiguous and, admittedly the land which is the capital asset sold by the assessee, in which he had also the ownership of the asset by virtue of the registered gift deed executed in his favour

by his parents. Thereafter, he had rightly offered LTCG in his return of income. Parallely, there was another incident that had taken place i.e., there was an arbitration award, due to which the assessee had to pay certain amount to his brother and sister. In order to pay, the assessee had taken loan from M/s. Fabrica De Gas Pvt. Ltd. The assessee against such loan had paid interest to the said company. Now the assessee had claimed deduction of this interest amount paid to that company i.e. M/s. Fabrica De Gas Pvt. Ltd. from the value of the LTCG. We are in conformity with the orders of the revenue authorities that this payment of interest has nothing to do with LTCG on the sale of the said capital asset and therefore such payment of interest cannot be claimed as deduction from the value of LTCG u/sec. 48 of the Act. We do not agree with the contention raised by the Id.AR for the assessee that it is the deduction claimed due to cost of acquisition since there is no cost incurred for acquisition, as the property had been gifted to the assessee by his parents. Therefore, none of the heads of expenses for computation of capital gains as defined u/sec. 48 is applicable in the case of the assessee. The deduction of interest paid is neither related to cost of acquisition, cost of improvement or cost of transfer of asset sold. We do not find any infirmity with the findings of the Id. CIT(A) which is hereby upheld. Ground No.1 of the assessee's appeal is dismissed.

7. Regarding ground No.2, the issue is never emanating from the

assessment order. In fact, after the sale of the land the assessee himself had offered LTCG in his return of income. Since, this ground is not arising from the assessment, the same is dismissed. Ground No.2 of the assessee's appeal is dismissed.

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

Order pronounced in open Court on 07th July, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 07th July, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, Panaji Bench, Panaji.
6. Guard File.

By Order

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Senior Private Secretary
ITAT, Pune.