

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

माननीय श्री महावीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.1174/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. TVS Finance & Services Ltd. (now known as Chennai Business Consulting Services Ltd.) Jayalakshmi Estate, New No.29 (Old No.8), Haddows Road, Chennai-600 006.	बनाम / Vs.	ACIT Corporate Circle-3(1), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACH-6041-B		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri D. Hema Bhupal (JCIT) -Ld. DR
सुनवाई की तारीख / Date of Hearing	:	07-12-2022
घोषणा की तारीख / Date of Pronouncement	:	07-12-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals)-11, Chennai [CIT(A)] dated 28-01-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 263 of the Act on 04-03-2015. The grounds taken by the assessee read as under:

1. The order of The Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The Commissioner of Income tax (Appeals) erred in confirming the treatment of profit on transfer of immovable properties as business profit instead of long term capital gains of Rs.102.16 crores

3 The Commissioner of Income tax (Appeals) ought to have appreciated that the lands in question were acquired in settlement of the debts assigned to M/s. Piramal Financial Services Limited and therefore it represented acquisition of capital asset, price of which was settled by the assignment of receivables and hence the land acquired constituted capital assets and profit arising therefrom constituted capital gains.

4. The Commissioner of Income tax (Appeals) ought to have found that mere ownership of properties even if obtained from a source which originally was employed in business, did not make such properties part of such business, in the absence of any finding that these properties was being used in that business

5. The Commissioner of Income tax (Appeals) ought to have found that the assessee had treated the land as investments in its books and not as part of business assets and were not used in the business operations and therefore the profit on sale of the land was assessable as capital gains.

6. The Commissioner of Income tax (Appeals) ought to have found that the assessee had treated the land as investments and held it for long-term capital appreciation rather than for short-term sale in the ordinary course of business.

7. The Commissioner of Income tax (Appeals) ought to have found that as per Accounting Standards Investment property, that is, investments made in land or buildings and not used in business operations are carried in financial statements at their cost.

As is evident, the sole issue that fall for our consideration is to determine head of income under which the gains arising from sale of immoveable properties would be taxable in the hands of the assessee. Having heard rival submissions, the appeal is disposed-off as under.

Assessment Proceedings

2.1 The assessee being resident corporate assessee is stated to be engaged in equipment leasing, hire purchase financing and bill discounting. It transpired that the assessee assigned / sold some of its outstanding receivables valuing at Rs.51.07 Crores to M/s Piramal Financial Services Ltd. for consideration of Rs.40 Crores vide assignment deed dated 30.09.1999. The consideration was settled partly by cheques and partly by transfer of certain properties

in favor of the assessee which were under litigation and finally, sold in this year.

2.2 The assessee sold parcels of land so acquired and admitted gains under the head 'Capital Gains'. The Ld. AO held that the gains would be business profits since the assessee claimed loss on re-possessed vehicles which was allowed. Similarly, the land was also part of business assets which was re-possessed and therefore, it would be assessable as business income only. Consequently, indexation benefit was denied to the assessee and the gains were assessed as Business Income.

Appellate Proceedings

3.1 During appellate proceedings, the assessee pleaded that land was capital assets and therefore, assessable under the head 'Capital Gains'. The assets were acquired in satisfaction of the debt. The land was never held as inventory rather it was to be taken as the collection of debts which was invested in capital asset.

3.2 The Ld. CIT(A) held that the land was received in lieu of a business loan foregone. The assets so received by the assessee would assume the character of same business assets as held by Hon'ble Supreme Court in **Cocanada Radhasoami Bank Ltd. 57 ITR 306; Express Newspapers Ltd. 53 ITR 250; Liquidators of Pursa Ltd. 25 ITR 265; United Commercial Bank Ltd. 32 ITR 688.**

3.3 In all these cases, it was held by Hon'ble Supreme Court that origin of the asset would determine the nature of the asset. If the asset came into being as a capital asset of the assessee, it continues to be capital asset irrespective of how the proceeds therefrom are utilized. Similarly, if the origin of the asset was from a

business source, it continues to be business assets irrespective of the fact that the asset was shown as a part of fixed asst. The vacant land came into the possession of the assessee in lieu of loan foregone in the normal course of finance business. Therefore, the vacant lands assume the nature of business assets and would yield business income as and when they are sold.

3.4 The decision of Pune Tribunal in **Sri Mahavir Cooperative Bank Ltd. vs. ITO (37 ITD 130)** was held to be distinguishable since in that case the assessee intended to purchase the asset permanently for its own use. However, in the present case, the asset was never intended to be used but intended to be sold as and when the litigations were completed and vacant land was sold for profit after due appreciation. Accordingly, the stand of Ld. AO was upheld. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. The undisputed facts that emerges are that the assessee is engaged in equipment leasing, hire purchase financing and bill discounting. As a part of its business, it has assigned / sold its outstanding receivables valuing at Rs.51.07 Crores to M/s Piramal Financial Services Ltd. for consideration of Rs.40 Crores vide assignment deed dated 30.09.1999. The consideration was settled partly by cheques and partly by transfer of certain vacant parcels of land in favor of the assessee which were under litigation and finally, sold in this year. For assessee, the receivables constitute business debt and any loss / gains arising in settlement thereof would be business income / loss for the assessee. In fact, the assessee has claimed losses on re-possessed assets as business loss in this year

which has been allowed also. The assignment of debt in favor of another entity partly in exchange of land was integral part of the business activities of the assessee and any gain / loss arising on such an asset should be viewed as business profits only. The situation is no different from a situation wherein the assessee in exchange of loan debts, repossesses the assets of the borrower and sell the same subsequently in discharge of loan assets. Any resultant gains / losses arising therefrom would be part of normal business activities of the assessee.

5. It is also clear that origin of the parcels of land so acquired is business asset only and therefore, the resultants gains would be business income of the assessee. The said proposition is duly supported by the decision of Hon'ble Supreme Court as referred to in the impugned order. The case law of Pune Tribunal has rightly been distinguished by Ld. CIT(A) and we concur with the same. We also concur with the findings that the land was received in lieu of a business loan foregone. The assets so received by the assessee would assume the character of same business assets irrespective of its treatment by the assessee in the books of accounts.

6. The Ld. AR has averred that the land has been shown as part of fixed asset and therefore, the same should be taken as capital asset. However, it is settled position that entries in the books of accounts would not be determinative of nature of income of the assessee.

7. Considering the facts of the case, the adjudication of Ld. CIT(A) could not be faulted with and we concur with the findings rendered therein.

8. The appeal stands dismissed.

Order pronounced on 07th December, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 07-12-2022
EDN/-

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF