

Devinder Prakash Kalra Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-22-2005

Reported in : (2005)97TTJ(Delhi)372

Judge : P Parikh, A Jain

Appellant : Devinder Prakash Kalra

Respondent : Assistant Commissioner of Income

Judgement :

1. The ground being common in these appeals by the assesseees and the leading order of the learned CIT(A) being that in the case of Smt.

Anuradha Kalra, we will deal with the facts as in ITA No.3923/Del/2003.

2. The grievance of assessee is that the application filed under Section 154 of the Act was wrongly rejected; that the admissible relief under the proviso to Section 112(1) of the IT Act ought to have been allowed; that wrong calculation of tax on capital gain by the AO amounted to a mistake of law, which deserved to be rectified; and that while levying tax on capital gains as declared by the assessee in her return, the proviso to Section 112(1) of the Act could not be ignored.

3. The assessee filed her return of income declaring income from long-term capital gains on sale of shares. The tax on long-term capital gains was worked out according to Section 48 of the Act. The return was processed under Section 143(1) of the Act. Subsequently, the assessee moved an application under

Section 154. It was submitted that the tax was worked out without giving effect to the provisions of Section 112(1) of the Act.

4. The AO rejected the application, observing that the assessee was seeking relief in long-term capital gains tax under the proviso to Section 112(1), substituting the original claim made in the return, as per the provisions of second proviso to Section 48 of the Act.

According to the AO, there was no mistake apparent from the record requiring rectification and that the claim of the assessee was a second thought. The AO also observed that since the total income of the assessee, other than the long-term capital gain amounted to less than the maximum exemption limit of Rs. 50,000, such maximum margin of Rs. 50,000 would be allowed under Section 112(1) to the assessee and the balance total income would be taxed.

5. Upholding the order of the AO rejecting the application under Section 154 of the Act, the learned CIT(A) held that the AO was not empowered, under Section 143(1) of the Act, to carry out any prima facie adjustment w.e.f. 1st June, 1999 and that accordingly, the AO processed the returns of income originally filed by the assessee, accepting it as it was and that since there was no mistake in the intimation sent by the AO under Section 143(1) of the Act, if the assessee has made a wrong claim, the AO cannot rectify the same by amending the intimation under Section 143(1), by taking recourse to the provisions of Section 154.

6. As per the assessee, there are no two different claims, as taken by the AO, while observing that the assessee was seeking relief substituting the original claim made. According to the second proviso to Section 48, the long-term capital gain shall be computed after substituting, in Clause (ii) of Section 48, "indexed cost of acquisition" and "indexed cost of any improvement" for the words "cost of acquisition" and "Cost of any improvement". Section 112 of the Act provides for the rate of tax to be levied on the long-term capital gains computed in accordance with Section 48. The rate of tax provided under Section 112(1) is 20 per cent. As per the proviso to Section 112(1), where the tax payable @ 20 per cent in respect of long-term capital gains, computed after taking indexation provided for in the second proviso to Section 48, exceeds 10 per cent of the amount of capital gains

before giving effect to the provision of indexation, such excess shall be ignored for the purpose of computing the tax payable by the assessee. The provisions of the proviso to Section 112(1) are mandatory. By no stretch of imagination can it be said that there are two claims--one under the second proviso to Section 48 and the other under the proviso to Section 112(1). If due to oversight, the relief is not allowed in the intimation under Section 143(1), it can be allowed under Section 154, since this is a mistake of overlooking the provisions, amounting to a mistake of law, which is apparent from the record.

7. On the other hand, the learned Departmental Representative is of the view that in the facts and circumstances of the present case, there was no remedy available to the assessee under the provisions of Section 154 of the Act. The application for rectification was rightly rejected and the appeal was rightly dismissed. There is no mistake apparent from the record. Indexation was done by the assessee on long-term capital gains as long-term capital gains, in the original return filed too. Hence, there is no mistake needing to be justified (sic-rectified). In the subsequent computation in the revised return, the long-term capital gain was indexed from the earlier Rs. 2,37,230 to Rs. 2,87,922.

However, here again, indexation was done. The learned Departmental Representative submits that in the revised return, the assessee has taken benefit of indexation only for a part of the transaction. There are two tax rates, i.e., 20 per cent with indexation and 10 per cent without indexation. The assessee cannot take benefit both ways. If he wants benefit of indexation, indexation has to be done in the whole transaction.

8. In the counter, the learned Counsel for the assessee has submitted that in the revised return of the assessee, certain shares were with indexation whereas others were without indexation. It was only to exercise the option available to the assessee, that the revised return was filed. The provisions of Section 112 of the Act are clear. Each share can be worked out separately. In the revised return, the working was done after netting off.

9. The only issue before us is as to whether the application under Section 154 of the Act filed by the assessee was rightly rejected by the AO, as confirmed by the

learned CIT(A). Section 112 of the Act states that where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, chargeable as capital gains, the tax payable on the total income shall be as provided thereunder. According to the proviso to Section 112(1), where the tax payable with regard to long-term capital gains computed before giving effect to the indexation provided for in the second proviso to Section 48 exceeds 10 per cent of the amount of capital gains, such excess shall be ignored for the purpose of computing the tax payable by the assessee. By virtue of the said proviso, where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being listed securities, exceeds 10 per cent of the amount of capital gains, before giving effect to the provisions of the second proviso to Section 48, such excess amount shall not be taken into consideration for the purpose of computing the tax payable. Thus, by virtue of this proviso, the long-term capital gains tax on transfer of shares and securities, for resident Indians, has been capped @ 10 per cent.

10. According to the second proviso to Section 48 of the Act, where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in an Indian company, the income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received, or accruing as a result of transfer of the capital asset, the indexed cost of acquisition and the indexed cost of improvement thereto.

11. So, where, as per the second proviso to Section 48 of the Act, the income chargeable under the head "Capital gains", with regard to a long-term capital asset is to be computed by deducting the indexed cost of acquisition of the asset and indexed cost of any improvement thereto, from the full value of the consideration received for the transfer of the capital asset, according to the first proviso to Section 112(1), where the total income of an assessee individual as reduced by the long-term capital gains is below the maximum amount not chargeable to income-tax, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount not chargeable to income-tax and the tax on the balance of such long-term capital gains shall be

computed @ 20 per cent.

12. In the assessee's case, in the original return, the assessee took recourse to indexation. In the revised return too, the assessee did the same. The plea of the assessee has been that in the original return, the proviso to Section 112(1) stood inadvertently overlooked. By way of application under Section 154, a request was made to give effect to the said proviso to Section 112(1). The AO was of the view that by way of the application, the assessee sought to substitute the original claim made as per the provisions of the second proviso to Section 48, with the claim for relief under the proviso to Section 112(1).

13. In this case, in the original return filed by her, the assessee had not claimed relief under Section 112(1) of the IT Act, 1961, through oversight. Hence, revised return was filed claiming relief under Section 112(1) on sale of certain shares and an application under Section 154 of the Act was also made revesting the AO to rectify the assessment. This was rejected by the AO, observing that the assessee was seeking relief in long-term capital gains tax under the proviso to Section 112(1), substituting the original claim made in the return, as per the provisions of second proviso to Section 48 of the Act. The CIT(A) upheld the rejection of the application.

14. The simple issue before us is whether the assessee is entitled to claim relief under Section 112(1) of the Act or not by way of an application under Section 154 of the Act. Section 48 of the Act provides for the mode of computing capital gains. The second proviso to Section 48 provides for indexing the cost of acquisition and the cost of improvement. Section 112 provides for taxing the long-term capital gains at concessional rate of 20 per cent. The proviso to Section 112(1) of the Act provides that if no indexation is availed of by the assessee, then the rate of tax applicable would be 10 per cent. Thus, in short, if the benefit of indexation is availed of by the assessee, the rate of tax would be 20 per cent and if the benefit of indexation is not availed of, the rate of tax would be 10 per cent. Sub-section (1) of Section 112 begins with the sentence 'where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset,' The expression 'capital asset' has been used in singular. This means that if several

transactions have taken place by way of sale of shares, the assessee can avail the benefit of indexation in a few transactions and avail the 10 per cent tax rate in the remaining transactions. Section 112 is not only a beneficial provision but it is also mandatory because the word 'shall' has been used in Section 112(1) of the Act. By virtue of the proviso to Section 112(1), it becomes mandatory for the AO to grant the said benefit. It makes no difference whether the benefit was claimed in the original return or by way of an application under Section 154 of the Act.

Therefore, in our view, the Revenue authorities were not justified in rejecting the application of the assessee.

15. The computation of capital gains as placed in the paper book by the assessee is not clear as to how the optional benefits have been claimed. Therefore, the matter is remitted back to the file of the AO with the direction to grant benefit, either of indexation or of the proviso to Section 112(1) of the Act, as may be desired by the assessee, in accordance with law. To reiterate, the AO will take care to see that 20 per cent tax rate is made applicable where indexation is claimed and 10 per cent tax rate is applied where indexation is not claimed.

16. In the result, the appeals of the assesseees are allowed for statistical purposes.

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