आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री एस.एस. गोदारा, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./**ITA Nos.2059 & 2060/Mds/2014**

निर्धारण वर्ष / Assessment Years : 1999-2000 & 2000-2001

M/s Citi Financial Retail Services (I) Ltd., (now known as Citi Corp Finance (India) Ltd.), 117, Radhakrishnan Salai, Mylapore, Chennai - 600 004. PAN : AAACN 2379 N (अपीलार्थी/Appellant)	v.	The Assistant Commissioner of Income Tax, Company Circle I(3), Chennai - 600 034. (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V.S. Jayakumar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 26.02.2015

घोषणा की तारीख/Date of Pronouncement : 11.03.2015

आदेश /O R D E R

PER BENCH:

These assessee's appeals for assessment years 1999-2000 and 2000-2001, arise from a common order of the Commissioner of Income Tax (Appeals)-II, Chennai, dated 24.01.2014 passed in ITA Nos.380 & 381/13-14 sustaining the

Assessing Officer's actions adding short term capital gains of ₹ 29,88,022/- and written back sum of ₹22,80,832/- under Section 41(1) respectively, in proceedings under Section 143(3) r.w.s. Section 147 of the Income-tax Act, 1961 (in short 'the Act').

2. A combined perusal of both cases reveals that these appeals are time barred due to delay of 120 days in filing. The assessee's Managing Director has filed a condonation affidavit dated 08.09.2014 attributing this delay to its amalgamation with another identity and procedural requirements involved therein. The Revenue fails to controvert these solemn averments. Therefore, we accept the assessee's condonation affidavits, condone delay of 120 days each in both cases and proceed to deal with the merits.

3. We take up I.T.A. No. 2059/Mds/2014 for assessment year 1999-2000 first raising sole substantive issue of short term capital gains of ₹29,88,022/-. The assessee is a finance company. It had filed its return on 16.12.1999 admitting income of ₹90,22,970/- under 'normal' computation with book profits of ₹3,00,76,566/-. The same was 'summarily' processed. Thereafter, the Assessing Officer took up 'scrutiny'. He inter alia

noticed a sum of ₹2,52,38,888/- as opening balance in the land account of fixed asset schedule. The assessee had put up a note about the land sold and pending of necessary registration even after receiving full consideration money. The purchase cost of these two chunks of land was ₹24,35,450/- and ₹1,96,00,000/- in financial year 1997-98 added by stamp duty of ₹32,25,000/- totalling to ₹2.5 crores. The Assessing Officer found that the possession has already been delivered to the vendee concerned who had raised a building thereupon. He quotes Section 53A of the Transfer of Property Act and proposed to compute the impugned short term capital gains.

4. The assessee contested the Assessing Officer's proposal. It pleaded that the gross amount of ₹2,82,23,910/- included cost of land as well as building and its vendee had borne the latter outgo. It would contend that the Transfer of Property Law at the time of registration completed on 22.01.2003 had not been considered for determining value of the land including building in question. The Assessing Officer adverted to contents of sale deed and found that the assessee had itself acknowledged to have received actual sale price of ₹2,82,23,910/-. In light

thereof, he rejected the assessee's explanation and computed impugned short term capital gains of ₹29,88,022/-.

5. The assessee preferred an appeal. It would file written submission on 28.05.2009 relying on its account books / other documents and pleaded that sale consideration in question included cost of building as well (supra). The same were never filed in the lower appellate proceedings till passing of order under challenge dated 24.1.1014. The CIT(A) rejected the assessee's arguments. Therefore, it has filed the instant appeal.

6. We have heard both sides and gone through the relevant findings. It is made clear that there is no evidence filed before us to rebut the CIT(A)'s findings that the sale consideration did not include value of the building or disputing its acknowledgement in the sale deed (supra) of having received full sale price. Even the sale deed in question has not been placed on record. Therefore, we affirm the CIT(Appeals)'s findings and reject the assessee's ground.

I.T.A. No. 2059/Mds/2014 is dismissed.

7. Now we come to I.T.A. No. 2060/Mds/2014 (Assessment Year 2000-2001) challenging addition of written back sum of

₹22,80,832/- under Section 41(1) of the Act treated as cessation of liability. The assessee had written back this amount due to M/s NEPC as no longer payable. It would not treat this sum as taxable income since no corresponding debit had been claimed. The relevant note in computation stated the sum as unpaid purchase consideration of capital account treated as capital income/receipt. The assessee had purchased windmills from M/s NEPC for a sum of ₹1.02 crores on 26.09.1997. It would capitalize the entire amount and claim depreciation thereupon. Lateron, it chose not to pay the balance amount of ₹22,80,832/- The Assessing Officer invoked Section 41(1) of the Act and treated this amount as profits arising from cessation of liability. He observed that the assessee had already claimed entire expenditure in its Profit & Loss account. This resulted in the impugned addition. The CIT(A) has also sustained the Assessing Officer's action.

8. Heard both sides. Record perused. It has come on record that the assessee had already claimed the entire purchase cost of ₹1.02 crores (including the impugned sum) in its profit & loss account and claimed depreciation. The case file

reads that this sum written back has already been forming part of the above said capitalization exercise. In these circumstances, we find no ground to interfere with the lower authorities' action in invoking Section 41(1) of the Act for treating it as profits arising from cessation of liability. The assessee fails to point out any factual or legal infirmity in the findings under challenge. The CIT(A)'s order is upheld.

I.T.A. No. 2060/Mds/2014 is dismissed.

9. To sum up, assessee's both the appeals I.T.A. No. 2059/Mds/2014 and I.T.A. No. 2060/Mds/2014 are dismissed.

Order pronounced on Wednesday, the 11th of March, 2015 at Chennai.

sd/-	sd/-
(A.Mohan Alankamony)	(S.S. Godara)
(ए. मोहन अलंकामणी)	(एस.एस. गोदारा)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 11th March, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Chennai
4. आयकर आयुक्त/CIT, Chennai-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.