

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5344/Del/2017
Assessment Year : 2008-09

ITO Ward-11(3), New Delhi PAN : BWTPS 1911 C	Vs.	Reetu Sharma B-30, Block-B, Jhilmil Colony, Shahdra, New Delhi-110095
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Govind Singhal, Sr. DR
Revenue by	Shri P. C. Yadav, Adv.

Date of hearing:	18/02/2021
Date of Pronouncement:	18/02/2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 19.06.2017 of the Commissioner of Income Tax (Appeals)-22, New Delhi relating to Assessment Year 2008-09.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO has noted that no return of income for A.Y. 2008-09 was furnished by the assessee u/s 139(1) of the Act. AO noted that a Search and Seizure operation u/s 132 of the Act was conducted on 06.09.2011 on Rockland Group of cases and during the course of search investigation, it was found that Rockland Hospital Ltd. had issued sweat equity shares to various persons and assessee is also stated to have received 3 lakh equity shares of Rs.10/- each at a premium of Rs.190 per share from Rockland Hospital Ltd. during the financial year without any consideration, AO noted that assessee had not offered the said benefit as a part of the taxable income and accordingly he came to the conclusion that there was an escapement of income thereby proceedings u/s 147/148 was initiated. AO thereafter, in the assessment framed u/s 143(3) r.w.s 147 by order dated 31.03.2016 determined the total income of the assessee at Rs.6,00,00,000/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who deleted the addition made by the AO by observing as under:

“7. Therefore, following the appellate order in the case of appellant’s husband, Sh. Sushil Kumar Sharma, PAN: AXZPS9955Q, A.Y 2008-09, Appeal No. 220/16-17, order dt. 16.06.2017 passed by CIT(A)-4, the assessment order is annulled.

8. However, following the order in the case of Sh. Sushil Kumar Sharma (supra), it needs to be mentioned M/s Rockland Hospital Ltd., had moved an application before Hon’ble Delhi High Court u/s 101 of the Company’s Act in the year 2009, its vide petition

no. 399/2009 for reduction of the premium on the shares issued to NIL i.e. the premium of Rs. 190 per share was to be reversed. The Hon'ble High Court allowed the petition vide order dt. 26th February, 2010. As a result, the premium was reversed in the books of M/s Rockland Hospital Ltd. in A.Y. 10-11. Therefore, the amount of addition made by AO at Rs. 6,00,00,000/- was apparently at a notional figure, due over valuation by M/s Rockland Hospital Ltd. and even u/s 153C addition of only Rs. 30,00,000/- could have been made and not of Rs. 6,00,00,000/-. However, in the light of discussion of facts in the above judgement, there is no doubt that the shares allotted in the case of appellant cannot be called sweat equity as the appellant was neither an employee nor a director in M/s Rockland Hospital Ltd. The section invoked i.e. section 2(24)(iv) for taxing this amount was, therefore, correct, but for the wrong section i.e. 147/148 under which the proceedings were initiated. The appellant did not challenge the proceedings before the AO. However, section 292B page 2BB can not be invoked due to the decision of Hon'ble ITAT (supra). It needs to be mentioned here that there was a lock-in period of three years for which these shares could not be transferred and in case of transfer of shares after lock-in period the same were to be first offered to existing share holders of the company. If they did not agree to purchase only then the shares could be sold in the open market, but still subject to the approval of the board of directors of the company. In view of these facts there may be a view that the property in shares did not vest in the appellant in A.Y. 08-09 as the said property would vest in appellant only when the appellant gets full rights to dispose off shares i.e. after the lock-in period. In that case, the property in shares would vest in appellant only in A.Y. 11-12 or A.Y. 16-17 (where approval of the Board was received for transfer the shares to trust). Moreover, M/s Rockland Hospital Ltd. had moved the Hon'ble High Court for reduction in the premium. Therefore, the fair market value of the shares had also not crystallized in A.Y. 08-09. The value crystallized in A.Y. 10-11 and right to transfer vested in A.Y. 11-12 or A.Y. 16-17. Technically these shares were allotted without consideration and if the said amount is riot taxable in the hands of appellant u/s 2(24)(iv), irrespective of the section of proceedings, then, it would be an asset acquired by the appellant at zero value. The appellant also has taken the same stand as it is stated in his statement on oath reproduced in the assessment order that the receipt of shares were the capital receipts at zero value. The transfer of these shares to M/s Rockland Hospital Employees Welfare Trust took

place in A.Y. 16-17 as mentioned by the appellant's AR during the course of appellant proceedings. However, the said transfer has taken place without consideration. But the appellant did not furnish the nature of treatment given to this transfer in the hands of M/s Rockland Hospital Employees Welfare Trust. Therefore, this order annulling the assessment order under appeal shall not prejudice any proceedings which the AO made initiate under any provisions of the Act against for any assessment year against, the appellant or any other assessee, if otherwise permissible under the Act.

9. *In the result, the appeal is **allowed.***"

5. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds of appeal:

"1. *Whether on the facts & circumstances of the case, the Ld. CIT(A) was correct in quashing the reopening of the assessment u/s 148 of the I.T. Act by stating that the action should have been taken u/s 153(C) of the Act by holding that transaction of sweat equity shares allotted to the assessee at NIL consideration recorded in the books and observed during the post search investigation would fall within the meaning of word "belong to", as provided u/s 153C of the Act.*

2. *The appellant craves leave, to add, alter or amend any grounds of appeal raised of above at the time of hearing."*

6. Before us, Learned DR pointing to the order of AO and CIT(A) submitted that CIT(A) was not correct in quashing the reopening u/s 147 of the Act by stating that action should have been taken u/s 153C of the Act. He thus supported the order of AO.

7. Learned AR on the other hand supported the order of CIT(A) and further submitted that identical issue also arose in the case of other assessee's namely Shri Rajiv Nigam, Shri Rajat Shubra Chatterjee and Shri Mahesh Prakash Sharma wherein in those cases also addition of sweat equity shares was made by the AO. He submitted that in the case of Mahesh Prakash Sharma (ITA No. 6113/Del/2015) order dated 19.01.2021 and Rajat Chatterjee (ITA No. 2430/Del/2015) order dated 20.05.2016, the Coordinate Bench of Tribunal has decided the issue in favour of the assessee. He further submitted that CIT(A) while deciding the issue in assessee's favour had relied on his own decision in the case of Sushil Kumar Sharma wherein the decision of the Tribunal in the case of Rajat Chatterjee (supra) was followed. He thereafter, pointed to the findings of the Tribunal in the case of Shri Mahesh Prakash Sharma (supra) and submitted that in the present case the grounds reveal that Revenue is not aggrieved on merits. He therefore submitted that no interference to the order of CIT(A) is called for.

8. We have heard the rival submission and perused the material on record. The issue in the present case is deletion of the addition of Rs. 6,00,00,000/- that was made by the AO on account of sweat equity shares received by the assessee without any consideration but deleted by CIT(A). The addition was deleted by the CIT(A) by following his own order in the case of Sushil Kumar Sharma for the reasons reproduced under para 4 hereinabove. We further find that while deciding the issue in the

case of Sushil Kumar Sharma (supra), CIT(A) had following the order of Tribunal in the case of Rajat Chatterjee (supra)

9. Before us, no distinguishing feature in the facts of the case in the year under consideration and that of Sushil Kumar Sharma (supra), Mahesh Prakash Sharma (supra) and Rajat Chaterjee (supra) has been pointed out by the Revenue. Further no fallacy in the findings has been pointed out by the Revenue before us. Revenue has also not placed any material on record to demonstrate the decision of Tribunal in the other cases cited hereinabove has been set aside/overruled or stayed by higher judicial forum. We further find that in the present case Revenue has not challenged the addition of quantum. As far as the quantum is concerned, we find that in other cases i.e. Rajat Chaterjee, Mahesh Prakash Sharma quantum has been deleted. **We therefore, dismiss the ground of Revenue.**

10. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 18.02.2021

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 18 .02.2021

Priti Yadav, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI