

No denial of indexation benefit at assessment stage just because long-term capital gain wasn't declared in ITR

Summary – The Mumbai ITAT in a recent case of Sanju Verma, (the Assessee) held that where assessee earned long-term capital gain on redemption of HSBC Mutual Fund and it had not declared said gain in return of income filed, capital gain earned by assessee was chargeable to tax under section 112(1)(a) and merely because it had not filed details of capital gain in return of income filed, it could not be denied benefit of provisions of section 112(1)(a)

Facts

- The assessee invested a certain amount on 15-7-2008 in mutual fund units of HSBC. During the assessment year 2010-11, it earned long-term capital gain on redemption of HSBC Mutual Fund [HSBC MF]. It had not declared the said long-term capital gain in the return of income filed. During the course of assessment proceedings, it offered to pay tax on the long-term capital gain.
- The Assessing Officer added the amount of long-term capital gain to the total income of the assessee and brought it to tax at special rate of 20 per cent without giving the benefit of cost inflation indexation.
- The Commissioner (Appeals) upheld the addition made by the Assessing Officer. He further held that since the assessee had not disclosed the long-term capital gain in the return of income filed and had not availed of the option of choosing of the method of calculation of the capital gains tax, the Assessing Officer was free to adopt either method with or without applying cost inflation index. Thus he directed the Assessing Officer to calculate tax on the long-term capital gain at the rate of 10 per cent without indexation or 20 per cent with indexation, whichever was favourable to the revenue.
- On appeal to Tribunal:

Held

- The assessee being an individual has earned long-term capital gain on redemption of HSBC M.F. which is chargeable to tax under section 112(1)(a) read with the first proviso to section 112(1). The assessee has not declared the said capital gain in the return of income filed. However, as per the provisions of section 112(1)(a), any income arising to an individual from transfer of long-term capital asset which is chargeable to tax under the head 'capital gain' is chargeable to tax at the rate of 20 per cent after allowing the benefit of the cost inflation indexation as provided in the second proviso to section 48. However, with respect to the income arising from the transfer of long-term capital asset being listed securities or units or zero coupon bonds for the instant assessment year under appeal shall be chargeable to tax at the rate of 10 per cent of the amount of capital gain before giving effect to the second proviso to section 48, *i.e.*, without applying cost inflation index to the

cost of acquisition or cost of improvement of the said capital assets being listed securities or units or zero coupon bonds.

- The above stated chargeability to tax of long-term capital gains with or without the benefit of indexation under section 112 read with second proviso to section 48 is to be availed at the option of the taxpayer, whichever is more beneficial to the taxpayer.
- The taxes are to be collected by the authority of law as per the mandate of the Act. Merely because the assessee has not filed the details of long-term capital gain in the return of income filed, it cannot be denied the benefit of provisions of section 112(1)(a) read with the first proviso to section 112(1).
- The assessee being an individual is entitled to choose the option whichever is more beneficial to it as are available under section 112(1)(a) read with first proviso to section 112(1), provided other conditions are fulfilled. The assessee has right to choose to be taxed on long-term capital gain arising from the transfer of HSBC MF either at the rate of 20 per cent after claiming the benefit of cost inflation indexation as provided in section 112(1)(a) read with second proviso to section 48 or to be chargeable to tax at the rate of 10 per cent without adjusting the cost of acquisition or improvement with cost inflation index as per provisions of section 112(1)(a) read with first proviso to section 112(1) in the case of long-term capital gain arising on transfer of listed securities or units or zero coupon bonds as applicable for the instant assessment year provided other conditions are fulfilled.
- Thus the Assessing Officer was to be directed to allow the benefit of choosing the option to the assessee in accordance with the provisions of section 112(1)(a) read with first proviso to section 112(1), after verifying that all other conditions as stipulated under the Act for claiming the aforesaid benefits are duly fulfilled by the assessee.