

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई [शिविर: कोयमबत्तूर]

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI [**CAMP: COIMBATORE**]

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1837/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Kwalitty Spinning Mills Ltd.,
Udumalpet Road,
Pollachi – 642 003.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle – 1,
Coimbatore.

PAN : AABCK 3313 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate &
Shri T. Kalairaj, CA

प्रत्यर्थी की ओर से/Respondent by : Sh. Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 19.01.2017

घोषणा की तारीख/Date of Pronouncement : 29.03.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Coimbatore, dated 24.03.2016 and pertains to assessment year 2009-10.

2. The only issue arises for consideration is computation of capital gains.

3. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee sold an agricultural land situated in Solapalayam village. According to the Ld. counsel, the assessee, in fact, received ₹4,18,20,000/- during the year under consideration. However, the physical possession of the property was not handed over to the purchaser. The sale deed was not executed, hence, there was no transfer of property within the meaning of Section 2(47)(v) of the Income-tax Act, 1961 (in short 'the Act'). Since no registered sale deed was executed during the year under consideration and the possession of the property was not handed over to the purchaser, according to the Ld. counsel, there was no transfer of property during the year under consideration. In fact, the sale deed was executed on 28.04.2009 which falls in the assessment year 2010-11. Therefore, according to the Ld. counsel, there cannot be any capital gains in the year under consideration. In case the capital gain is to be assessed during the year under consideration, the gain offered for assessment year 2010-11 has to be deleted. Referring to the fair market value under Section 50C of the Act, Ld.counsel submitted that fair market value as on

01.04.1981 has to be estimated for the purpose of arriving at the cost of acquisition in order to determine the long term capital gains.

4. The Ld.counsel for the assessee further submitted that the CIT(Appeals) has also failed to consider the cost of improvement incurred by the assessee to the extent of ₹20,00,000/-. Merely because the assessee could not produce the material evidence to support the claim of the cost of improvement that cannot be a reason to disallow the claim of the assessee totally.

5. On the contrary, Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the assessee claims that possession of property was not handed over during the year under consideration, therefore, there was no transfer. According to the Ld. D.R., the assessee has received entire sale consideration of ₹4,18,20,000/-. No purchaser would pay ₹4,18,20,000/- without taking physical possession of property. Therefore, the CIT(Appeals) has rightly found that it is only logic to assume that no buyer will part with ₹4,18,20,000/- without obtaining physical possession of the property. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer. Referring to the value, the Ld. D.R. submitted that determination of cost of

acquisition as on 01.04.1981 as well as sale consideration by adopting Section 50C of the Act would become academic, therefore, it need not be adjudicated in the present. The assessee claims that it invested more than ₹20,00,000/- for the improvement of the property. However, the assessee could not produce any supporting material for the so called improvement said to be made. Therefore, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the sale deed was executed by the assessee for transfer of land on 28.04.2009, which falls in the assessment year 2010-11. The assessment year under consideration is 2009-10. There is no material to indicate that the assessee handed over the physical possession of the property during the year under consideration. No doubt, the assessee has received ₹4,18,20,000/- during the year under consideration for sale of the property. The CIT(Appeals) found that no person would hand over ₹4,18,20,000/- without receiving physical possession of the property. This Tribunal is of the considered opinion that there cannot be any presumption with

regard to handing over of the property. When the assessee agreed to sell the property and the purchaser willingly accepted the same and paid ₹4,18,20,000/-, in the absence of any indication in the agreement for sale regarding handing over of physical possession, this Tribunal is of the considered opinion that there was no transfer of property during the year under consideration by virtue of provisions of Section 2(47) of the Act. The assessee has filed a copy of the registered sale deed dated 28.04.2009. Clause 8 of the sale deed reads as follows:-

“8. The Vendors have this day delivered vacant possession of the property hereby conveyed and more fully set out in the Schedule hereunder to the Purchasers and also handed over the original title deeds relating to the property hereby conveyed.”

7. In view of specific clause in the registered sale deed, this Tribunal is of the considered opinion that the physical possession was handed over by the assessee to the purchaser only on 28.04.2009 when the sale deed was executed. Therefore, there cannot be any presumption that the assessee handed over physical possession of the property on the date of receipt of sale consideration of ₹4,18,20,000/-.

8. It is common practice to receive part sale consideration or entire sale consideration and to execute the sale deed in a later stage. It is also common practice to hand over physical possession of the property at the time of execution of sale deed. In the absence of any material to indicate about handing over of physical possession to the purchaser whether by way of agreement or arrangement, this Tribunal is of the considered opinion that there is no transfer of property during the year under consideration, hence, there cannot be any levy of capital gain tax.

9. It is also not in dispute that the assessee has offered capital gains for the assessment year 2010-11. When the assessee executed the sale deed and handed over the physical possession of the property on 28.04.2009, this Tribunal is of the considered opinion that the capital gains accrued to the assessee only on 28.04.2009, therefore, the assessee rightly offered the same for taxation during the assessment year 2010-11. In view of the above, we are unable to uphold the order of the CIT(Appeals). Accordingly, the addition made by the Assessing Officer and confirmed by the CIT(Appeals) is deleted.

10. Now coming to application of Section 50C of the Act, as rightly submitted by the Ld. Departmental Representative, it becomes academic. Therefore, it need not be adjudicated during the year under consideration.

11. Coming to the assessee's claim of ₹20,00,000/- as cost of improvement to the property, no doubt, there is no material filed before the lower authorities for claiming the same. Under the provisions of Income-tax Act, the assessee is entitled to cost of improvement. However, it is obligatory on the part of the assessee to produce necessary material in support of cost of improvement. Since the assessee could not produce any material, this Tribunal is of the considered opinion that a reasonable estimation has to be made with regard to cost of improvement. By taking into consideration of the nature of the property and the period of holding, this Tribunal is of the considered opinion that the assessee might have spent nearly ₹3,00,000/- for improvement of the property. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to allow ₹3,00,000/- towards cost of improvement.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 29th March, 2017 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 29th March, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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