

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

**BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3181/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2008-09)

Smt. Sunita Halwan 14,Manav Mandir Acharya P K Atre Marg Worli Hill Road, Worli,Mumbai-400018	बनाम/ v.	Assistant Commissioner of Income Tax, Circle 18(1) Mumbai
स्थायी लेखा सं./PAN : ABYPV8150H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri Govind Javeri
Revenue by :	Sh Sunil Kumar Agarwal,DR

सुनवाई की तारीख /**Date of Hearing** : 09-08-2016

घोषणा की तारीख /**Date of Pronouncement** : 09-08-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 3181/Mum/2013, is directed against the appellate order dated 04th January 2013 passed by learned Commissioner of Income Tax (Appeals)- 16, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2008-09, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 03-12-2010 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee before Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) in the memo of appeal filed with the Tribunal read as under:-

“1. On the facts and circumstances of the case and in law the Commissioner of Income Tax(A) (CIT(A)) erred in confirming the AO’s order in disallowing an amount of Rs.9,29,900/- being the cost of improvement incurred by the appellant in computing short term capital gains.

2. The learned CIT(A) failed to appreciate that the property was purchased and sold along with furniture and the appellant had incurred expenses in only refurbishing the furniture and fixture, which in turn yielded a better sale value of the capital asset in the instant case.”

3. The Brief facts of the case are that the assessee earned short term capital gains of Rs.39,50,040/- on sale of immovable property. During the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act, the assessee was asked by the AO to submit supporting documents for purchase and sale of the asset to substantiate the computation of short term capital gains. The assessee submitted that she purchased premises at shop no. 201, admeasuring 785.59 square feet built up area on 2nd floor of C Building , Anish Tower ,140 , Senapati Bapat Marg, Matunga(West),Mumbai-400 016 for Rs.45,00,000/- vide agreement dated 20-10-2006 and she sold the said shop/office as per sale agreement dated 05-04-2007. The assessee submitted that it spent Rs.24,94,160/- towards development expenses including furniture which was reduced while arriving at short term capital gains. The assessee submitted bills of Nirmala Constructions of Rs.24,94,160/- before the AO towards bills of development expenses including furniture. The same expenses were shown in the Balance Sheet by the assessee as at 31-03-2007. On going through the bills, the AO observed that the assessee has incurred Rs.9,29,900/- towards furniture vide bills detailed in the assessment order dated 03-12-2010. The assessee submitted

that by spending these amounts she is able to get significantly higher price for her shop at Rs.1,12,00,000/- as against the prevailing market price of Rs.49,10,000/- and hence these expenses were claimed as cost of improvement which should be allowed as deduction while computing short term capital gains. The AO allowed Rs.15,64,260/- towards expenses incurred for civil work but the rest of the expenses towards furniture amounting to Rs.9,29,900/- was disallowed by the AO while computing short term capital gain on sale of the shop vide assessment order dated 03-12-2010 passed u/s 143(3) of the Act. The assessee filed first appeal against the assessment order which was dismissed by the learned CIT(A) vide appellate order dated 04-01-2013 whereby learned CIT(A) held that the assessee has incurred these expenses for furniture and not towards improvement of the asset sold.

4. The assessee filed second appeal before the Tribunal and the learned counsel for the assessee contended that as per agreement to sale dated 05-04-2007 vide clause (o) of the agreement , the assessee has carried out alterations and modified the said office premises by incurring expenditure of Rs.25 lacs. It was submitted that the assessee was able to realize good price for sale of the said shop/office of Rs.1,12,00,000/- in short span of time only because it carried out modifications whereby the said amount was incurred which led to higher realization. It was submitted that stamp duty value as determined by stamp duty valuation authorities as on the date of sale was only Rs.49,10,000/- while the assessee was able to get sale value of Rs.1,12,00,000/- and it was mainly due to the said work done by the assessee in the shop/office as per agreed term with the buyer . The assessee submitted that the assessee has filed an application for admission of additional evidences which contained copy of letter dated 28-07-2015 issued by Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Limited whereby they have certified that negotiated changes were duly carried by the

assessee in the said shop/office premises as per requirements of the buyer in the layout, design, interior, fixed and other furniture etc. which formed part of the sale consideration. The assessee also filed an affidavit dated 31-07-2015 as additional evidence. The assessee submitted that these additional evidences are vital to the adjudication of the issues involved in this appeal as it goes to the root of the matter. It was also submitted that similar issue was involved with respect to the adjoining office/shop which was bought by close relative of the assessee Mrs. Anita Santkumar Varma on 20-10-2006 and which was also sold vide agreement dated 05-04-2007 to Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Limited by said Mrs. Anita Santkumar Varma on identical facts, in ITA no 3182/Mum/2013 for assessment year 2008-09 which was adjudicated by ITAT, A Bench, Mumbai vide orders dated 16-03-2016 whereby the Tribunal has admitted the additional evidences by way of confirmation letter of the buyer and the affidavit of the tax-payer and set aside the issues to the file of AO for deciding afresh the issue on the basis of the material on record as well as additional evidences filed by the tax-payer and decide the issue accordingly. Thus, it was submitted that the issues in this appeal are squarely covered by the decision of the Tribunal in ITA No. 3182/Mum/2013 vide orders dated 16-03-2016 in the case of close relative of the assessee on identical facts The learned DR on the other hand relied upon the orders of the learned CIT(A).

5. We have heard the rival contentions and perused the material on record. We have observed that the only issue in this appeal is regarding incurring of cost of improvement of Rs.9,29,900/- which has been claimed to be incurred by the assessee for modifications and alterations towards layout, design, interior, fixed and other furniture etc. which was stated to form part of the consideration and which was agreed by the assessee to be incurred for improvement of the said shop/office while negotiating sale of the said shop/office with the buyer of the said property as per their requirements. This

was stated to be incurred as per agreed terms with the buyer which was stated to have led to higher price realization. The assessee has duly submitted the invoices for incurring of these expenses before the AO/CIT(A) , which the Revenue has not agreed to be for alterations and modification to the tune of Rs.9,29,900/- but incurred for furniture which as per Revenue is not allowable while computing capital gains as per scheme of the Act. The assessee duly pointed out to clause (o) in agreement to sale dated 05-04-2007 whereby it is mentioned that around Rs.25 lacs was spent by the assessee which the assessee also corroborated by submitting additional evidences vide confirmation from the purchaser of the property viz. Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Limited and also supported by affidavit of the assessee dated 31-07-2015. In the similar facts, the Tribunal in the assessee's relative Mrs. Anita Santkumar Varma's appeal in ITA no. 3182/Mum/2013 vide orders dated 16-03-2016 has set aside the matter to the file of the AO for fresh adjudication of the issue after considering the additional evidences filed by the tax-payer in the said appeal. In our considered view, the interest of justice will be best served if the additional evidences submitted in the instant case are also admitted and the issues are set aside and restored to the file of the AO for fresh adjudication after considering the additional evidences on merits, as in our considered view these additional evidences have vital bearing on the adjudication of the matter on merits and these additional evidences may requires examination and enquiry by the Revenue to adjudicate these issues on merits. Needless to say that proper and adequate opportunity of being heard shall be provided by the AO to the assessee in accordance with principles of natural justice in accordance with law. We order accordingly.

6. In the result, the appeal filed by the assessee in ITA NO. 3181/Mum/2013 for the assessment year 2008-09 is allowed for statistical purposes as indicated above.

Order pronounced in the open court on 9th August , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 09-08-2016 को की गई ।

Sd/-
(C N PRASAD)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 09-08-2016

I

आदेश की प्रतिलिपि अद्येष्ठित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "D" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai