

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.3910/M/2014
Assessment Year: 2010-11**

DCIT-24(3), R. No.701, C-11, 7 th Floor, B.K.C. Bandra (E), Mumbai - 51	Vs.	Mr. Mahul Bhaskarbhai Patel, 2 nd Floor, Prabhu Niwas, 99, Jawahar Nagar, Goregaon West, Mumbai - 63 PAN: AAFPP9359N
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Reepal G. Tralshawala, A.R.
Revenue by : Shri Suman Kumar, D.R.

Date of Hearing : 29.06.2017
Date of Pronouncement : 14.07.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 25.03.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The short facts of the case are as under:

The assessee is employed with Laxmi Industrial Estate which is engaged in construction of galas in industrial zone at Andheri. The assessee has purchased 8 galas from Laxmi Industrial Estate wherein he is employee. The market value of the said property is higher than the sale value of the property. The detail of purchased along with market value of the properties are as under:

Sr. No.	Unit No.	Area	Date of Agreement	Amount (Rs.)	Market Value (Rs.)
1	19	590	02.07.2009	2360000	4869200
2	349	500	09.10.2009	1000000	3300992

3	350	500	09.10.2009	1000000	3300992
4	448	500	04.11.2009	1000000	3300992
5	449	500	04.11.2009	1000000	3300992
6	501	500	23.12.2009	2000000	2888368
7	502	500	23.12.2009	2000000	2888368
8	503	500	02.02.2010	2000000	3640000

From the above it is noticed that the assessee has purchased the properties from Laxmi Industrial Estate at lower price than market value of these properties. As per provisions of section 17(iii) of the Act, “the value of any benefit granted or provided free of cost or concessional rate in any of following cases:

- (a) by a company to an employee who is a director thereof;
- (b) by a company to an employee being a person who has a substantial interest in the company;

The assessee is an employee of Laxmi Industrial Estate having salary income. Therefore, provisions of section 17(iii) of the Act are applicable to the facts of this case. Therefore, AO has added an amount of Rs.1,51,29,904/- i.e. difference between sale value and market value which is treated as perquisite in lieu of salary as per provisions of section 17(iii) of the Act.

3. Matter carried to Ld. CIT(A) and the Ld. CIT(A) has allowed the claim by observing as under:

“3) I have carefully gone through the submission of the appellant along with the paper books, grounds of appeal and Statement of Facts and the assessment Order. During the course of assessment proceedings itself the appellant had filed letter dated 04-01-2013 stating that the agreement for this properties have made in earlier years. The authorized representative has submitted before me the date of possession of the said properties along with the details of rent received for the said properties along with supporting Leave & License agreement, and Municipal taxes & Society Bills paid by the Appellant in earlier years. The authorized representative had also submitted copy of computation of income wherein the above rental income was duly reflected in earlier years. Further, it was also pointed out to me that , for the purpose of Income Tax Act section 2(47) transfer includes possession of immovable property given without registration of Conveyance Deed, and also transactions in agreement to Buy or Sale any immovable property or any rights thereon. Considering the above facts it is clear that the

appellant has purchased the various properties during the earlier years and not during the current period relevant to AY 2010-11 and only registration of the said properties was done during the current year, and **hence the addition of Rs.1,51,29,904/- made by the Assessing Officer is not justified and is directed to be deleted."**

4. We have heard the rival contentions of both the parties. In this case, we find that the assessee before Ld. CIT(A) has submitted the details of various galas purchased from his employer in the earlier year which were submitted in a chart wherein the details of original date of purchase agreement, payment made against the said agreement, date of registered agreement, market value of the registered agreement, details of comparative agreement entered into during the year of purchase by the employer and stamp duty value thereof were mentioned. The assessee has submitted the copy of computation of income, balance sheet, capital account, details of rent received and property tax paid on various galas for A.Y. 2010-11. The assessee has also submitted the details of rent received and property tax paid for A.Ys. 2009-10, 2008-09 & 2007-08 along with sample leave & license agreement which proves that assessee was in possession of said galas from August, 2004 onwards. The Ld. CIT(A) has verified all these documentary evidences and deleted the addition. Therefore, our interference is not required.

5. In the result, departmental appeal is dismissed.

Order pronounced in the open court on 14.07.2017.

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 14.07.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.