

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

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

**ITA No.5494/M/2012
Assessment Year: 2009-10**

ITO – 25(2)(3), Wd. 21(1)(4), C-10, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai	Vs.	Shri Gokuldas H. Parikh, Gokul Niwas Bajaj Road, Vile Parle (W), Mumbai – 400 057 PAN: APNPP5390J
(Appellant)		(Respondent)

**ITA No.7197/M/2013
Assessment Year: 2009-10**

Late Shri Gokuldas H. Parikh, Represented by Legal heir Rajesh Gokuldas Parikh, Gokul Niwas Bajaj Road, Vile Parle (W), Mumbai – 400 057 PAN: APNPP5390J	Vs.	ITO – 25(2)(3), Wd. 21(1)(4), C-10, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Pradip N. Kapasi, A.R.
Revenue by : Shri Tufail Ahmed Khan, D.R.

Date of Hearing : 20.09.2017
Date of Pronouncement : 24.11.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeals one by the assessee and the other by the Revenue have been preferred against the order dated 21.06.2012

of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

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

The facts of the case in brief are that in view of the recovery proceedings in case of M/s. Parikh Brothers, the immovable property being plot of land with bungalow constructed thereon at Vile Parle, Mumbai was attached by the TRO. The assessee was partner in firm M/s. Parikh Brothers along with his brother. The said plot was originally owned by Shri Hiralal O. Parikh who was father of the assessee and on the said plot there was double storied construction was done by father in 1955. After the death of father, the assessee along with the brother inherited said land along with building. The said property after attachment by TRO was auctioned by TRO and the sale was confirmed by the TRO at a consideration of Rs.20.21 crores and the dues outstanding against the firm M/s. Parikh Brothers was adjusted against the sale consideration and remaining sale proceeds were paid back to the assessee. Sale proceeds was divided between assessee and his brother. The 50% of gross sale proceeds i.e. Rs.10,10,50,000/- was adopted as sale consideration for purpose of computing long term capital gain. Since no return was filed by the assessee the case was reopened u/s. 147 by issuing of notice u/s. 148 dated 22.01.2010. The assessee claimed that since the property belongs to his father the assessee has not sold the same. Therefore, no capital gain is attracted in the hands of the assessee. The

Assessing Officer (hereinafter referred to as the AO) completed ex-parte order and benefit of cost of acquisition was given.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) did not allow the appeal of the assessee.

4. The Ld. A.R. submitted that the assessment was passed ex-parte and the reopening is not valid. The Ld. A.R. also submitted that the AO computed the long term capital gains on the entire amount without giving cost of acquisition. The Ld. A.R. submitted that assessee has taken grounds from 1 to 3 and four additional grounds were also taken. The property was not owned by the assessee but it belongs to his father and it becomes a property of estate of father. The capital gain was taxable in hands of assessee executed under section 168 and as per the law assessee was 1/5th owner. The year of taxation should be A.Y. 2008-09 in which year the transfer took place, therefore, the proceeding is illegal. The Ld. A.R. also submitted that transfer of property was by TRO and he alone had auctioned the property and there is no transfer. Therefore, assessee is not liable to tax. No consideration was released unless tax of partnership was paid. Therefore, the taxes recovered should be either reduced from auctioned sale or deducted as expenditure for transfer.

Assessee has also taken additional ground before us by way of a paper book by filing the synopsis. During the course of hearing, the Ld. A.R. submitted that matter requires verification at the stage

of AO as the AO and the Ld. CIT(A) have not dealt with this issue in detail. Therefore, assessee's appeal may be restored to the file of AO so that assessee can agitate all these issues before the AO.

5. The Ld. D.R. relied upon the order of the Ld. CIT(A).

6. We have heard the rival contentions of both the parties. We find that the assessee has taken the grounds and additional grounds which were not dealt by AO and Ld. CIT(A). Therefore, in the interest of justice, we are of the view that the issue may be determined by the AO after giving due opportunity of hearing. Therefore, we restore this issue back to the file of AO to decide all the points which are raised by the assessee in his written submissions and decide the matter afresh after giving due opportunity of hearing.

ITA No.5494/M/2012 (Departmental Appeal)

7. The only effective ground taken by the Revenue is in respect of the relief given to the assessee by accepting the indexed cost value on the basis of the valuer's report.

8. The Ld. CIT(A) has decided the appeal in favour of the assessee and against the department by observing as under:

"3.3. I have considered argument of the Ld.AR. So far as the contention of the appellant that no LTCG is chargeable in hands of appellant, the same is not tenable as even if the same has been forcibly made by TRO but still the LTCG is chargeable in case of compulsory acquisitions as the same also falls within the meaning of transfer. The copy of the valuation report of the Registered Valuer was not furnished during the assessment proceedings, the same was an additional evidence. No such details could be given before the AO as it was being claimed that no capital gains was chargeable in hands of

appellant, therefore no valuation report was furnished during the course of the assessment proceedings. It is well settled principle that even if cost of acquisition is not ascertainable, the benefit of cost of acquisition is to be allowed as per the fair market value of the property as on 1.4.81. Under these circumstances, the copy of the valuation report was forwarded to the AO for his comments. The AO vide his remand report dated 26.04.2012 which has been forwarded by the JCIT 21(1) vide dated 1.5.2012, wherein it has been contended that though report of the Government Recognized Valuer is not of the Department Valuer but same may be considered on merit. The appellant is 77 years of age and the said property has been sold by the TRO forcefully to recover the outstanding demands of the firm M/s. Parikh Brothers. The A.O. while taxing LTCG in the hands of the assessee should have allowed the deduction for indexed cost based on some parameters or made the reference to the DVO for ascertaining fair market value as on 1.4.81. Reduction of cost for computing the capital gains is a statutory deduction which cannot be denied just because no such details were furnished because before the AO the assessee was disputing taxability of LTCG at all. Having not done so at the time of assessment proceedings, the only option left with the assessee is to get valuation report after assessment order is passed. Under these circumstances, the Registered Valuer's report though being submitted for the first time during the appellate proceedings is to be admitted, as the AO also in his remand report has not found any discrepancy with said valuation report. The report of the Registered Valuer valuing property at Rs.49,88,325/- as on 14.81 seems to be reasonable. Under these circumstances, the cost of acquisition as on 1.4.81 still have to be taken at Rs. 49,88,325/- which after applying indexation cost comes to Rs.2,90,32,051/- which is required to be reduced from the 10,10,50,000 being 50% share of gross sale consideration. Accordingly the LTCG taxable in hands of appellant would come to Rs.7,20,17,949/-. The AO is therefore directed to assess the LTCG in hands of appellant at Rs 7,20,17,949/- only."

9. During the course of hearing, we find that the Ld. CIT(A) has called for the remand report and the Ld. CIT(A) has allowed the claim of the assessee as per law. Moreover, the report of registered value of Rs.49,88,325/- was considered to be reasonable.

10. During the course of hearing, the Ld. D.R. did not bring any evidence contrary to the finding of Ld. CIT(A). Therefore, we dismiss the departmental appeal.

11. In the result, assessee's appeal is allowed and the departmental appeal is dismissed.

Order pronounced in the open court on 24.11.2017.

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 24.11.2017.

* 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.