

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'E', मुंबई ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES "E", MUMBAI**

**Before Shri Saktijit Dey, JM and Shri Manjunatha G, AM**

ITA No.5618/Mum/2012 : Asst.Year 2007-2008

M/s.Thingna & Contractor G-3, T.V.Industrial Estate 248-A, S.K.Ahire Marg, Worli Mumbai – 400 030. <b>PAN : AAFT1050D.</b>	Vs.	The Asst.Commissioner of Income-tax Range 11(3) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : Ms.Anjala Praveen

प्रत्यर्थी की ओर से /Respondent by : Shri V.Justin, DR

सुनवाई की तारीख / Date of Hearing : 18.01.2018	घोषणा की तारीख / Date of Pronouncement : 24.01.2018.
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**आदेश / ORDER**

**Per Saktijit Dey (JM) :**

This appeal by the assessee is against the order dated 25.06.2012 of the learned Commissioner of Income-tax (Appeals) – 2, Mumbai for the assessment year 2007-2008.

2. Ground no.1 is not pressed, hence dismissed.

3. The issue arising for our consideration in grounds No.2 to 5 are in relation to excess addition of Rs.2,99,380 made as short term capital gain arising from sale of office premises.

4. Briefly the facts are the assessee, a firm of Chartered Accountants, filed its return of income for the impugned assessment year on 19.01.2009 declaring total income of Rs.39,98,706. During the assessment proceedings, the Assessing Officer from the material on record found that in the relevant previous year, the assessee had sold an office premises at Worli, Mumbai for a sale consideration of Rs.45,00,000. However, while computing short term capital gain, the assessee had reduced an amount of Rs.8,00,000 towards cost of improvement from the gross sale consideration of Rs.45 lakh and arrived at net sales consideration of Rs.37,00,000, wherefrom the assessee reduced written down value of the block amounting to Rs.29,34,253 and offered short term capital gain of Rs.7,65,747. The Assessing Officer, after calling upon the assessee to furnish copy of sale deed, proof of acquisition, original cost, written down value and cost of improvement and examining them found that as per the registered sale deed, stamp valuation authority has valued the fair market value of the property at Rs.42,60,984. He therefore was of the view that as per section 50C of the Act, the value determined by stamp valuation authority should be considered as deemed sale consideration. Therefore, he called upon the assessee to explain why the difference of Rs.8 lakh claimed towards cost of improvement should not be disallowed. In response to the query raised by the Assessing Officer, the assessee submitted its reply vide letter dated 30.10.2009 objecting to adoption of valuation made by the stamp duty authority. On the basis of the objection made by the assessee, the Assessing Officer made

reference to the Departmental Valuation Officer (DVO) for determining the fair market value of the property, who determined the fair market value of the property at Rs.39,99,380. The Assessing Officer adopting the value determined by the DVO, reduced therefrom WDV of the block of asset as per books amounting to Rs.29,34,253 and determined the short term capital gain at Rs.10,65,127. The assessee having shown short term capital gain of Rs.7,65,747, the difference of Rs.2,99,380 was added back to the income of the assessee. The assessee challenged the addition before the first appellate authority on various grounds. However, the learned first appellate authority sustained the addition made by the Assessing Officer dismissing the grounds raised by the assessee.

5. We have considered the rival submissions and perused the materials on record. On a perusal of the registered sale agreement dated 5<sup>th</sup> May, 2006, a copy of which is at page 49 of the paper book, it is noticed that as per the terms of this sale agreement, the sale consideration is Rs.45 lakh. It is a fact on record that the stamp duty authority has determined the value of the subject property at Rs.42,60,984, which is less than the sale consideration of Rs.45 lakh. Thus, prima facie, the provisions of section 50C are not applicable. Therefore, the Assessing Officer fell in error in applying the provisions of section 50C of the Act and adopting the fair market value determined by the DVO. No doubt, the issue in dispute between the parties is the claim of cost of improvement amounting to Rs.8 lakh. It is evident that the

assessee has computed short term capital gain on net sale consideration of Rs.37 lakh after reducing an amount of Rs.8 lakh from the agreed sale consideration of Rs.45 lakh. Whereas, the Assessing Officer has computed short term capital gain on the FMV of Rs.39,99,380 determined by the DVO. Thus, in a way the Assessing Officer has allowed part of the cost of improvement claimed by the assessee. Moreover, the assessee having itself shown the value of the property at Rs.45 lakh, which is more than FMV determined by the stamp valuation authority as well as DVO, no addition can be made merely on the basis of determination of FMV by the DVO. Accordingly, we delete the addition of Rs.2,99,380 made to the short term capital gain computed by the assessee. Grounds are allowed to the extent indicated above.

6. In the result, the assessee's appeal is partly allowed.

Order pronounced on this 24<sup>th</sup> day of January, 2018.

आदेश की घोषणा दिनांक: को की गई ।

Sd/-

(Manjunatha G)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24<sup>th</sup> January, 2018.

Devdas\*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.

4. आयकर आयुक्त / CIT(A) - 2, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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