

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1042/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-10)

Arthur Anderson & CO 102-B, 10 th floor, Maker Tower F Cuffe Parade, Mumbai Pin: 400005	बनाम/ Vs.	ACIT 11(2), Mumbai Aayakar Bhavan, Mumbai Pin: 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACA4230D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Madhur Agrawal (AR)	
Revenue by:	Shri Rajesh Kumar Yadav (DR)	

सुनवाई की तारीख / Date of Hearing: 09.02.2018
घोषणा की तारीख /Date of Pronouncement: 28.03.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 03.12.2012 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds:-

“1. The Commissioner of Income Tax (Appeals)-3, Mumbai, hereinafter referred to as ‘CIT(A), has erred in confirming adoption of values of the three office premises which were incorrectly computed by the stamp valuation authority, for the purpose of computation of capital gain as per section 50C of the Income Tax Act, 1961.

2. *The CIT(A) has also erred in confirming disallowances of the short term Capital loss of Rs.8,72,034 towards block of office fit ups, Rs.37,74,985 towards block of Furniture and Rs.15,05,946 towards block of equipment.”*

3. The brief facts of the case are that the assessee filed its return of income on 10.02.2010 declaring total income to the tune of Rs.6,57,48,800/-. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny. The notices u/s 143(2) of the Act & 142(1) of the Act were issued and served upon the assessee. The assessee was a firm of Chartered Accountant. The firm discontinued its profession w.e.f. 1st November, 2003 and dissolved their firm on 30th November, 2003. In accordance with the provisions of 176 r.w.s. 189, the assessee prepared the return of income. During the year under assessment the Assessee declared income from the head of capital gains and income from other sources. The assessee was having its offices with nos. 66, 68,69A, 65, 62 and 102B in Maker Tower, ‘F’ Cuffe Parade, Mumbai. During the year, the assessee sold the offices bearing n. 66,68, & 69A with the sale value of Rs.1,50,22,000/-, Rs.2,09,79,000/- and Rs.1,52,81,000/- respectively. On appraisal of the sale-deed, it was found that the value adopted by Stamp Valuation Authority for the purpose of payment of Stamp Duty were of Rs.1,50,22,000/-Rs.2,09,79,000/- and Rs.1,52,81,000/- respectively. Therefore, notice was given and after getting the reply the sale consideration was taken into consideration accordingly regarding the offices 66, 68, 69A within the meaning of

Section 48 of the I.T. Act, 1961. The assessee sold office fit up, furniture & equipment with sale value of Rs.8,22,685/-, Rs.55,23,824/- and Rs.23,71,491/- respectively and has deducted the written down value of the above blocks as appearing in the balance sheet of 2004-05 to arrive at short term capital losses of Rs.8,72,034/-, Rs.37,74,985/- and Rs.15,05,346/- respectively. The assessee did not show properly with regard to the non-realization of the amount with regard to the furniture and fixture. Therefore, the claim was declined and accordingly the addition to the tune of Rs.61,52,965/- was made to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.7,75,72,770/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the said addition, therefore, the assessee has filed the present appeal before us.

ISSUE NO. 1:-

4. Under this issue the assessee has challenged the confirmation of the adoption of values of the three office premise computed on the basis of stamp valuation of Revenue authority for the purpose of computation of capital gain as per Section 50C of the I.T. Act, 1961. The Ld. Representative of the assessee has argued that the collector office had computed market value based upon the rate of Rs.3,50,900/- per sq. meter for zone ½ instead of Rs.3,25,100/- per sq. meter for correct zone no. 1/5A. but the Assessing officer has wrongly

considered the zone ½ which is an apparent error as office situated at plot nos. 73A, 74, 83, 84 and 85 fell under zone 1/5A having rate of Rs.3,25,100/- per sq. meter, therefore, in the said circumstances the Assessing Officer has wrongly considered value for assessing the short term capital gain which is not liable to be sustainable in the eyes of law. It is also argued that the assessee received the correct value certificate issued from the office of the Deputy director of Town Planning and Valuation Department, Mumbai certifying the correct zone 1/5A and correct market value to the tune of Rs.3,25,100/- per sq. meter for the plot nos. 73A, 74, 83, 84 and 85 on which the building at Maker Tower F, Cuffee Parade, Mumbai 400005 is located. The said letter was annexed 14 in the paper book and accordingly, the calculation was required to be done by the AO. Therefore, the finding of the CIT(A) affirming the order of the AO is not justifiable. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. After due consideration of the argument advanced by the Ld. Representative of the parties and perusing the record, we noticed that the assessee sold its offices bearing nos.66,68 and 69A and Maker Tower F, Cuffee Parade, Mumbai which were capitalized as part of the block of assets by virtue of sale-deed dated 17th November, 2008 in a consideration of Rs.1,50,22,000/-, Rs.2,09,79,000/- & Rs.1,52,81,000/- respectively. Short term capital gain was computed as sale value exceeding the total block value. The office building plot nos. were situated at plot n.73A

74, 83,84 and 85. The assessee property falls under the zone 1/5A whereas the AO had computed the market value based at Rs. 3,50,900/- per sq. meter for in correct zone no. ½. The calculation seems to be wrong because the property situated in zone 1/5A having different rates whereas calculation was made on the basis of the property stated in the zone ½. The letters of the society are on the file attached as annexure 1A, 1B and 1C which lies at page no. 10,11 and 12 of the paper book. On the asking of the assessee, the Assessing Officer provided the correct zone which lies at page no. 68 of the paper book .In the light of the said evidences, we are of the view that the finding of the CIT(A) is not correct because these piece of evidence were not considered by him. Accordingly, we set aside the finding of the CIT(A) on this issue and remand this issue before the AO to re-consider the matter of controversy in the light of the observation made above in accordance with law by giving an opportunity of being heard to the assessee. Accordingly, this issue is being decided in favour of the assessee against the revenue.

ISSUE NO. 2:-

5. Under this issue the assessee has challenged the confirmation of disallowance of the short term capital loss of Rs.8,72,034/- towards block of office fit ups, Rs.37,74,985/- towards block of furniture and Rs.15,05,946/- towards block of Equipment. It is argued that the Ld. Representative of the assessee that the assessee was running his

business in the six offices and three offices were sold in the F.Y. 2008-09 and the remaining assets was shown in records in view of Section 32(3) of the Act. It is argued that the block assets ceased to be exist in the F.Y. 2008-09 and difference between of sub-value and share value of claimed as short term capital gain loss. The partner confirmed the loss which was written in the books but the AO did not allow the same, therefore, the finding of the CIT(A) is wrong and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. In view of the argument advanced by the Ld. Representative of the parties and perusing the record. We arrived at this conclusion that this issue was not properly considered by the Assessing Officer in the light of the evidence adduced by the assessee. The assessee sold three premises in the F.Y. 2008-09. The assets which was saleable, was sold in the F.Y. 2008-09 and the remaining was written in view of the provision u/s 32(1)(b) of the Act. The difference between the pending stock value and sale value was claimed as short term capital loss. The partners have also filed the confirmation dated 19.09.2011 with regard to the remaining assets written in the books copy of which enclosed as annexure 20. Certificate copy of ledger account salary was also submitted before the AO which was nowhere discussed. The balance has been shown as nil in connection with the said three offices in the year ended March 31st, 2009. The assessee has also submitted the report of independent valuer in its return in the March 2009. These

piece of evidence nowhere considered and discussed while deciding the issue no. 2. In view of the observation made in deciding this issue we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the finding of the CIT(A) on this issue and direct the AO to decide the matter afresh after giving an opportunity of being heard to the assessee in accordance with law. Accordingly, this issue is being decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purpose.

Order pronounced in the open court on 28.03.2018.

Sd/-

Sd/-

(G.S. PANNU)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28.03..2018

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
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**