

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

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6641/M/2014  
Assessment Year: 2009-10**

Asstt. Commissioner of Income Tax, Circle-3, Room No.02, 6 <sup>th</sup> Floor, Ashar IT Park, B-Wing, Wagle Indl. Estate, Thane (W)-400 604	Vs.	Mr. Nitin Murji Faria, 603/604, Konark Tower, Opp Sai Baba Temple, Ghantali Mandir Road, Thane (W) – 400 602 <b>PAN: AAHPF 6039K</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Subodh Ratnaparkhi, A.R.  
Revenue by : Shri Suman Kumar, D.R.

Date of Hearing : 24.01.2018  
Date of Pronouncement : 16.03.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 07.07.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The grounds raised by the assessee are as under:

"On the facts and in the circumstances of the case, and in law, the Id. CIT(A)-I, Thane has not appreciated the fact that the sale agreement was registered between Shri Nitin Murji Faria along with Shri Ashok Murji Faria and M/s Ishwar Land Developers Pvt. Ltd. on which capital gain is payable.

2. The appellant prays the order of the Ld. CIT(A)-1, Thane, may be vacated and that of the Assessing Officer be restored.

3. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary."

3. The only effective ground is ground No.1 which is against the order of Ld. CIT(A) not appreciating the fact that while agreement was registered

between Shri Nitin Murji Faria and M/s. Ishwar Land Developers Pvt. Ltd. on the basis of which the capital gain is calculated and offered to tax .

4. The facts in brief are that the assessee is engaged in the business of garment trading and filed his return of income on 28.03.10 showing the income of Rs.16,10,185/-. The case was reopened under section 147 of the Act and notice u/s section 148 of the Act was issued accordingly which was complied with the assessee by filing return of income on 27.12.2012 declaring an income of Rs. 16,84,185/-. The case of the assessee was re-opened to assess the capital gain which has escaped assessment. The assessee had purchased land for Rs.68,83,930/- in joint ownership with his brother Shri Ashok Murji Faria on 11.05.2007. The said property was sold to M/s. Ishwar Land Developers Pvt. Ltd. on 27.08.2008 for Rs.3,42,78,125/-. According to the AO, the agreement qua selling the said land to Shri Pravin H. Thakkar on stamp paper of Rs.100/- was not registered and therefore he doubted as to genuineness of transaction and thus came to the conclusion that short term capital gains as escaped assessment and accordingly after recording the reason the assessment was reopened and notice under section 148 was issued on 09.02.12. Thereafter, the AO vide order sheet entry 27.12.12 asked the assessee to file the details of land and agreement of land etc. and accordingly thereafter a show cause notice was issued to the assessee as to why the capital gain should not be taxed proportionately in the hand of Shri Nitin Murji Faria (assessee) for the sale of land to M/s. Ishwar Land Developers Pvt. Ltd. The assessee replied vide letter dated 18.01.13 that the nature of the land has not changed and the land remained agricultural land. The Ld. A.R. submitted that M/s. Ishwar Land Developers Pvt. Ltd. paid consideration amount to Shri Nitin Murji Faria and Shri Ashok Murji Faria who in turn paid to Shri Pravin H. Thakkar with whom they have entered into agreement to sell. Finally, the AO came to the conclusion that the assessee along with Shri Ashok Murji Faria sold the land to M/s. Ishwar Land Developers Pvt. Ltd. and calculated the

short term capital gain by taking sale consideration at Rs.3,42,78,124/- and purchase cost at Rs.68,83,930/- and short term capital gain of Rs.2,73,94,124/- The share of Shri Nitin Murji Faria worked out at Rs.1,36,97,062/- and accordingly the same was added to the total income of the assessee.

5. In the appellate proceedings, the Ld. CIT(A), after considering the contention and submissions of the assessee, allowed the appeal of the assessee by observing and holding as under:

“14. I have carefully considered the appellant's submissions, the observations of the AO in the assessment order and the facts of the case. The appellant alongwith his brother Shri Ashok M. Faria had purchased land on 11.05.2007, each having V2 share in the same, for a total consideration of Rs. 68,83,930/- including stamp duty and registration charges. This land was sold on 27.08.2008 to M/s. Ishwar Land Pvt. Ltd. for an amount of Rs.3,42,78,125/-. However, the appellant offered short term capital gains amounting to Rs. 15,58,035/- for taxation by taking sale consideration of the land at Rs. 1,00,00,000/-. The appellant had taken the sale consideration at Rs. 1,00,00,000/- for the reason that he had entered into an agreement dated 29.07.2008 with one Shri Pravin H. Thakkar with an understanding that the said land would be transferred to him or his nominee for an amount of Rs. 1,00,00,000/- and any amount in excess of Rs, 1,00,00,000/- would therefore, belong to Shri Pravin H. Thakkar. The appellant accordingly offered short term capital gain for taxation by taking the sale consideration of Rs.1,00,00,000/- only. The AO, however, calculated taxable short term capital gain in the appellant's hands by taking the sale consideration of Rs. 3,42,78,125/- by doubting the validity of the agreement on various grounds i.e. that the agreement with Shri Pravin H. Thakkar dated 29.07.2008 had been entered into by the appellant just before the land was sold to M/s. Ishwar Land Pvt. Ltd and observing that the 'bayana' as well as the sale consideration from M/s Ishwar Land Pvt Ltd had been received by the appellant and his brother and not by the said Mr Pravin Thakkar.

15. The appellant has placed on record a copy of the agreement dated 29.07.2008. The AO has not pointed out any discrepancy or any falsity in the same. Therefore, this agreement entered into by the appellant and his brother with Shri Pravin H. Thakkar cannot be rejected merely on the ground that this was not registered and that the same was entered into just before the sale of land took place. Moreover, Shri Pravin H. Thakkar himself has admitted in his affidavit / confirmation letter filed before the AO, a copy of which has been placed on record, that he had received the sale consideration of Rs. 3,42,78,125/- and that both the purchases as well as sale of the land had duly been recorded by him in his books of account for A.Y. 2009-10. The resulting profit from the transaction amounting to Rs. 2,31,44,125/- has also been offered by him for taxation as business income in his return of income for

A.Y. 2009-10. Therefore, this part of transaction has duly been accounted for and offered for taxation by Shri Pravin H. Thakkar. Therefore, no adverse inference should have been drawn by the AO as far as this part of transaction is concerned.

16. It may be mentioned here that the similar addition was made in the hands of Shri Ashok Murji Faria, the appellant's brother, who also had half share in the property, by the AO in his case for A.Y. 2009-10. The CIT(A)-II, Thane, vide his order dated 15.01.2013 in Appeal No. 593/11-12 has allowed the appellant's appeal by holding as under –

"4. I have carefully considered the facts on record and submission of the appellant. I find that the agricultural land in question was purchased by the appellant along with his brother Shri. Nitin M. Faria from Shri. Rajiv Ganpat Rakvi vide a Registered Agreement dt. 11/05/2007 for total consideration of Rs. 68,83,930/- including stamp duty and registration charges. Thus, the share of appellant in the cost of acquisition of agricultural land worked out to Rs. 34,41,965/-. Undisputedly, the source of finance of purchase of the land under consideration was Shri. Pravin H Thakkar. Shri. Pravin H. Thakkar was also examined in this regard by the ITO, Ward 1(2), Thane, during the course of assessment proceedings u/s. 143(3) in the case of Shri. Nitin M Faria for A. Y 2008-09. In his statement c/t. 2111212010, Shri. Pravin H Thakkar has also deposed before the ITO, Ward 1(2), Thane, that he financed the purchase of land jointly by Shri. Nitin M. Faria & Shri. Ashok M. Faria. This statement was recorded by the A. 0 in order to examine source of investment by Shri. Nitin M. Faria. The amount financed by Shri. Pravin H Thakkar is duly reflected in his Balance Sheet as also in the Balance Sheet of appellant as on 3110312008, copies of which are placed on record. The assessment of Shri. Pravin H Thakkar has been also completed for the year under consideration by the ITO, Ward 3(4), Thane on 22/12/2011 wherein profit on sale of this land disclosed has been assessed. Documents furnished during appellate proceedings reveal that the cost of land and sale proceeds have been duly incorporated by Shri. Pravin H. Thakkar in purchases & sales, respectively, while computing his income for the year under consideration. Under these circumstances and also in view of the documentary evidences available on record, it is clearly established by the appellant that the purchase of land by the appellant as well as his brother was actually financed by Shri. Pravin H Thakkar and the same was registered in the name of appellant and his brother as he could not get the same registered in his name due to restrictions of Land Revenue Laws. Further, the sale consideration received from purchaser of the land under consideration i.e. M/s. Ishwar Land Pvt. Ltd has also gone to Shri. Pravin H Thakkar over and above Rs. 1,00,00,000/- as agreed upon vide an agreement dt. 29/07/2008. Moreover, the A.0 himself has considered the appellant and his brother as benamies of Shri. Pravin H Thakkar. As per the established legal position, the income earned by benamies actually pertained to the main person. Thus, merely because the agreement dt. 29/07/2008

for purchase of land by Shri. Pravin H. Thakkar for Rs. 1,00,00,000/- was not registered, no adverse inference can be drawn in view of the other documentary evidence available on record which are capable of verification. Moreover, Shri. Pravin H. Thakkar has shown the income from the said land transaction as short term capital gain in his return of income, which has not been disputed during the course of his assessment proceedings. In view of these facts, Jam of the considered view that the income arising from sale of land over and above the sale consideration of Rs. 1, 00, 00,000/- does not pertain to the appellant and accordingly, I hold that no addition on this account is called for. Thus, the appellant succeeds in respect of grounds No. 1A & 1B.

4.1 Since the appellant has paid the sale consideration to Shri. Pravin H Thakkar over and above Rs. 1.00 crore in lieu of the original purchase of the land having been financed by Shri. Pravin H Thakkar, such payments became cost of acquisition so far as appellant and his brother are concerned. Thus, in view of these reasonings also, entire sale consideration cannot be taxed in the hands of appellant along with his brother. Accordingly, the appellant succeeds in respect of Ground No.1C also.

4.2 Vide Ground No. 2, the appellant has raised a basic question regarding the capital asset requesting that the same may kindly be treated as agricultural land because the same is situated at village Vengoan, Tal. Karjat, District Raigad. This ground of appellant cannot be accepted at this stage as no such ground was raised before the A. O during the course of assessment proceedings and hence the same is not arising from the order of A.O. Moreover, the appellant himself has shown Short Term Capital Gain on the sale of land under consideration and no evidence regarding his intention and actual use of the land for the purpose of agricultural has been filed. Thus, this ground being baseless is dismissed".

17. In view of the detailed facts of the case as discussed above, and also in view of decision of CIT(A)-II, Thane in the appellant's brother's case as reproduced above, it is held that the appellant had rightly offered for taxation the short term capital gain from the land by taking the sale consideration at Rs. 1,00.00,000/- in terms of agreement dated 29.07.2008 with Shri Pravin H. Thakkar. The addition of Rs. 1,36,97,062/- is therefore, directed to be deleted."

6. We have heard the rival submissions and perused the material on record. The Id DR relied on the order of AO and prayed before the bench that the agreement to sell entered into by the assessee with Shri Pravin H. Thakkar dated 20.07.2008 was not registered and therefore can not be relied upon and

was rightly doubted by the AO whereas the Ld AR relied on the order of CIT(A). The undisputed facts are that the assessee purchased land on 11.05.2007 with having share of 50% each for a consideration of Rs.68,83,930/-. Land was sold on 27.08.08 to M/s. Ishwar Land Developers Pvt. Ltd. for an amount of Rs.3,42,78,125/- and the assessee offered a short term capital gain of Rs.15,58,035/- for taxation by taking the sale consideration at Rs.1,00,00,000/-. The said consideration was taken by the assessee as he along with his brother had sold the land by way of agreement to sell dated 20.07.08 to one Shri Pravin H. Thakkar for an amount of Rs.1,00,00,000/-. Therefore any excess of Rs.1,00,00,000/- would be belong to Shri Pravin H. Thakkar. Accordingly, assessee offered capital gain for taxation by taking consideration at Rs.1,00,00,000/- only. Whereas the AO calculated the short term capital gain by taking sale consideration of Rs.3,42,78,125/- by doubting the genuineness of the agreement with Shri Pravin H. Thakkar which was entered into 29.07.2008. The assessee submitted before us that the AO has not pointed out any discrepancy in the agreement dated 29.07.2008 and doubted the same for the reason that the said agreement was not registered as it was executed on a stamp duty of Rs.100/-. It is also undisputed that the Ld. CIT(A) has also recorded a finding of the fact that Shri Pravin H. Thakkar has duly offered to tax the capital gain on the sale consideration of Rs.3,42,78,125/-. Thus the Ld. CIT(A) recorded the finding of the fact that the Shri Pravin H. Thakkar duly recorded in his books of accounts in A.Y. 2009-10 sales of land amounting to Rs.3,42,78,125/- and the resultant profit of Rs.2,31,44,125/- was also offered to tax in the same year. Thus the entire consideration of Rs.3,42,78,125/- was offered to tax in two hands i.e. assessee and his brother on one hand and Shri Pravin H. Thakkar on the other. Thus, there is no evasion of tax of any amount whatsoever in the whole transaction. We are therefore, in concrete agreement with the conclusion reached by the Ld. CIT(A) that short term capital gain as computed by the AO at Rs.1,36,97,062/- in the hands of assessee by ignoring the agreement dated 29.07.2008 with Shri

Pravin H. Thakkar is wrong and against the facts on record. More over there is no loss of revenue to the departments as both the parties involved in the transactions have paid the tax. In view of this , we uphold the order of CIT(A) by dismissing the appeal of the revenue.

7. In the result, appeal filed by the Revenue is dismissed.

**Order pronounced in the open court on 16.03.2018.**

**Sd/-  
(Joginder Singh)  
JUDICIAL MEMBER**

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

Mumbai, Dated: 16.03.2018.

\* 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.