

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 551/Mum/2017

(निर्धारण वर्ष / Assessment Year 2006-07)

Mr. Bharat J Patel C-53, Pravasi Industrial Estate, Off Aarey Road, Goregaon (E), Mumbai-400 006	Vs.	The Income Tax Officer, ward 9(3)(2), Aayakar Bhavan, 2 nd Floor, New Marine Lines, Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN NO. AFCPP8352D		

Assessee by : Ajay R Singh, AR

Revenue by : P R Chauhan, DR

Date of hearing: 16-05-2018 Date of pronouncement : 31-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Assessee is arising out of the order of Commissioner of Income Tax (Appeals)-20, Mumbai [in short CIT(A)], in appeal No. CIT(A)-20/ITO-12(1)(3)/IT-274/2014-15 dated 28.10.2016. The Assessment was framed by the Income Tax Officer, Mumbai Ward 9(3)(2) Mumbai (in short 'ITO') for the A.Y. 2006-07 vide order dated 11-12-2008 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue contested by assessee is against the order of CIT(A) confirming the action of the AO in ignoring the cost of construction for constructing the 4th Floor for the purpose of computation of capital gains. For this assessee argued that the he is interesting in adjudicating the following ground No. 2: -

“2. On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeal) ignored the construction cost of Rs. 18,18,000/- for Constructing the 4th Floor in existing property for ₹ 18,18,000/- the construction cost is carried forward from 2000-2001.”

3. Briefly stated fact are that Jashbhai Maganbhai Patel (HUF) was in possession of various immovable properties being land and building situated at various places in Dindoshi Village of Borivali Taluka of Bombay Suburban District. Shri Jashbhai Maganbhai Patel died on 30.01.1985 and accordingly, due to difference in the family members, JM Patel (HUF) was partitioned in a premise suit bearing No. 954 of 1998 and the suit decree was accorded by the consent terms filed by the parties on 23-03-1999. According to the above judgement and order of the Hon'ble High Court, the immovable property awarded to the assessee incudes immovable properties being land and building situated at village Dindoshi, Dindoshi Village of Borivali Taluka of Bombay Suburban District bearing CTS No's from 51/5 to 51/14, 59/A (part) and 58. This property No. 58 was awarded with a structure of ground floor plus upper three floor known as 'C' Wing of Pravasi Industrial Estate, Vishweshwar Nagar Road, off. Aarey Road, Goregaon (E), Mumbai-400 063. The assessee became the absolute owner of the above stated property by virtue of consent decree awarded by Hon'ble Bombay High Court in suit No. 954



of 1998. The assessee sold this property for a sale consideration of ₹ 48.59 lakhs as against the value determined by Stamp Valuation Authority at ₹ 66,23,540/-. The AO required the assessee to explain as to why the provisions of section 50C of the Act be not adopted for computing long term capital gains. The assessee consented for adoption of stamp duty valuation for substituting the consideration amounting to ₹ 66,23,540/- as against a sum of ₹ 48.59 lacs. The assessee claimed that it has constructed 4th floor in the year 2000-01 and the cost of construction in the year 2000-01 was ₹ 18.18 lacs i.e. the cost of improvement. The assessee claimed that the same should be allowed to the assessee as cost of acquisition for the purpose of computation of capital gains. But the AO has not allowed the cost of acquisition on construction of fourth floor i.e. construction of Gala No. C-54 of the C wing, the AO took the value as on 01.04.2002 at ₹ 1,05,468/- and computed the long term capital gains at ₹ 37,13,631/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) confirmed the action of the AO and matter was travelled to ITAT in first round. The Tribunal restore the issue to the file of the CIT(A). In term of the above order of the ITAT, the CIT(A) again affirm the action of the AO vide para 5 as under: -

“5. I have gone through the assessment order, order of the Hon'ble ITAT, Mumbai 'B' Bench, order of CIT(A)-20 and also the submissions of the appellant. It is noted that the matter has been dealt with and decided by my predecessor vide order dt. 21.10.2010 in appeal no. CIT(A)20/9(3)(2)/I.T.195/2008-09. This order is detailed and well-reasoned one which I am inclined to follow since no. new facts or submissions have been brought on record. It is



seen that the only issue is regarding the computation of long term capital gain at 37,13,631/- as against the returned loss of t 5,02,657/- by the assessee. The value adopted for stamp duty purpose was 66,23,540/-. The gala had been acquired in the year 2002-03. It was originally acquired at the cost of 1,05,468/- by its previous owner in the year 1991-92. The A.O. therefore took the cost of acquisition u/s 49(1) at t 1,05,468/- and substituted the stamp duty value for apparent sale consideration. The appellant claimed that it had incurred cost of improvement of

18,18,000/- during the year 2000-01. The A.O. and my predecessor had observed that the assessee did not furnish any evidence to support the claim of improvement. On this basis the long term capital gain was worked out at 65,06,275/- after giving benefit of indexation to cost with reference to the year 2002-03. After allowing set off of claimed loss the long term capital gain was worked out at 37,13,631/-. It is seen that during current proceedings also the appellant has failed to establish through any material evidence the claim of cost of improvement claimed in the computation of long term capital gain. It is for this reason the claim of the assessee is difficult to accept and the same is rejected. The addition made by the A.O. on



this issue is upheld. Accordingly, the grounds of appeal are dismissed.”

Aggrieved, now assessee is in second appeal before Tribunal

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the facts of the case that this property became the property of the assessee by virtue of consent decree passed by Hon'ble Bombay High Court in suit No. 954/1998 passed on 23.03.1999. As per the agreement of sale dated 22.03.2006 this property i.e. 4th floor of C Wing was constructed by the assessee and the relevant clause 7 and 8 of the agreement reads as under: -

“7) Accordingly a gala was duly constructed on the floor of the "wing of industrial Estate and was officially handed over to the said Vendor in the 2002-03. The said Gala bearing No. C-54 of the c" wing of the said Pravasi I Estate is admeasuring about 215.04 Sq.Mtrs. (Built up Area) equivalent Sq. Ft. (Built up area and is part and parcel of CTS No. 51/5 to 51/14, 59/A d 58 of Dindoshi village, Taluka Son va/i of Mumbai suburban District which particularly described in the Schedule hereunder written. The said Gala No. C-54 of the 'C" wing of the said Pravasi Industrial Estate Co-Operative Society (proposed) is being assessed separately by the Municipal Corporation Of Greater Mugnai from the year 2002-03 and it stands in the name of the said vendor.



8) Thus the Vendor is absolutely entitled and possessed of or otherwise well and sufficiently entitled to the said fourth floor Gala bearing Number C-54 in the "C wing of the said Pravasi Industrial Estate Co-Operative Society Ltd. (proposed)."

5. The learned Counsel for the assessee before me stated that the assessee spent an amount of ₹ 18.18 lakhs for constructing 4th Floor and unit No. 54 during the year 1999-2000 and he referred to the confirmation letter from society dated 02.02.2010 stating that the assessee was the owner of industrial gala No. C-64 on which 4th floor of this gala was constructed by Shri Bharat J Patel, the assessee. The learned Counsel for the assessee drew our attention to the return of income filed for AY 2000-01 along with balance sheet as on 31.03.2000, wherein an additional cost of construction for 4th floor at C-54 is declared at 18.18 lakhs apart from inherited cost of the property at ₹ 1,05,468/-. The learned Counsel for the assessee stated that this cost is carried forward for all along till AY 2006-07 at the time of the sale of the property. The learned Counsel for the assessee also drew our attention to the addendum to memorandum of sale dated 22.03.2006, which is enclosed at page 83 of assessee's paper book that the assessee has spent of ₹ 18.35 lakhs for constructing this gala No. 54 on 4th floor of said Pravasi Industrial Estate. The relevant addendum to agreement dated 22.03.2006 reads as under : -

"the party of the first part had informed the purchaser that in past he had to receive certain amounts from respective purchaser of said gala, who were members of the said society being outstanding dues on account of Premium



Charges. This purchaser did not pay the said amount to Mr. Bharat J Patel Mr. No 54 on 4th floor on the said Pravasi Industrial Estate and the amount was spent and settled before the proposed society came into existence. This gala No 54 on 4th floor was not constructed by proposed society but the same was constructed by the Mr. Bharat J Patel and was handed over the official possession before society came into existence.

In clause 7 it is stated that gala No 54 was duly constructed on 4th floor of C wing of pravasi Industrial estate before the year 2002-03 but was officially handed over to the said vendor Mr. Bharat J Patel in the year 2002-03 and this year it was separately assessed by Municipal Corporation of Greater Mumbai from the year 2002-03.”

6. In view of the above, the learned Counsel for the assessee stated that the AO should have allowed the cost of construction while computing the long term capital gain. When these facts were confronted to the learned Sr. Departmental Representative, he only relied on the assessment order.

7. I have heard the rival contentions and gone through the facts and circumstances of the case. I find that the only dispute contested before me is whether the cost of production spent by assessee in construction of 4th floors at ₹ 18.18 lacs in construction of the above gala and this should be allowed as cost of construction from the year 1990-00 relevant to AY



2000-01. In view of the above facts discussed, I direct the AO to allow the cost of construction of ₹ 18.18 lacs because the assessee has ample evidence to demonstrate that he has incurred this cost for construction of this 4th Floor of Gala 54 of C Wing of Pravasi Industrial estate during the year 1999-2000. The AO will compute the long term capital gain accordingly. The appeal of the assessee is partly allowed.

8. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 31-05-2018.

आदेश की घोषणा खुले में दिनांक 31-05-2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-05-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI