

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एच', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH**  
**MUMBAI**

सर्व श्री म. बालगनेश, लेखा सदस्य एवं श्री अमर्जित सिंघ, न्यायिक सदस्य

**BEFORE : SHRI M. BALAGANESH, AM**  
**&**  
**SHRI AMARJIT SINGH, JM**

आयकर अपील सं./ITA No.6710/Mum/2016  
(निर्धारण वर्ष / Assessment Year :2011-12)

Shri Kunverji Bachubhai Shah 2-12, Vijay Villa, Guffa Road Jogeshwari (east) Mumbai – 400 060	Vs.	JCIT-24(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AACPS2608A</b>		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

निर्धारिती की ओर से /Assessee by	:	Shri Snehal R. Shah
राजस्व की ओर से /Revenue by	:	Shri B. Yadagiri
सुनवाई की तारीख / <b>Date of Hearing</b>	:	<b>19/06/2019</b>
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	<b>26/06/2019</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.6710/Mum/2016 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-42, Mumbai in appeal No.CIT(A)-42/IT-385/2014-15 dated 16/08/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 24/03/2014 by the Id. Jt. Commissioner of Income Tax- (24)1, Mumbai (hereinafter referred to as Id. AO).

2. We have heard rival submissions. We find that the Id. AO got information that assessee had made huge cash deposits with Indian Overseas Bank, Jogeshwari (E) Branch vide account Nos.033002000002172 & 033001000017299. The assessee was asked to explain the source of various cash deposits made in the said bank accounts. The assessee filed a cash flow statement by considering the sum of Rs.30,64,189/- as opening cash balance as on 01/04/2010 and stated that there was no deficit or negative cash balance at all as could be evident from the said cash flow statement. The Id. AO also observed that the assessee is engaged in the retail business under the name of "Póoja General Stores" where the income was offered to tax on presumptive basis u/s.44AD of the Act in the A.Y.2010-11. Accordingly, the Id. AO observed that since no books were properly maintained by the assessee in terms of Section 44AA of the Act for the A.Y.2010-11, hence, the opening cash balance as on 01/04/2010 to the tune of Rs.30,64,189/- could not be believed and accordingly, the Id. AO adopted the same as Nil. During the course of assessment proceedings, the assessee also made an alternative plea that he had sold two plots during the year and had received cash component from the buyers as under:-

a. Sale of Bolinj SR No. 14,15	-	Rs.23,06,200/-
b. Sale of Viva Infra	-	Rs.28,41,000
		=====
<b>Total</b>		<b>Rs.51,47,200/-</b>
		=====

2.1. We find that the assessee had pleaded that this cash on sale of plots were received by the assessee on various dates and which also needs to be included in the said cash flow statement and when the same is included, there shall be no negative cash balance at all in the said cash flow statement. The Id. AO however, disregarded this contention also of

the assessee and proceeded to arrive at the peak negative cash balance of Rs.43,75,000 and made an addition towards the same as unexplained cash credit u/s.68 of the Act, which was upheld by the Id. CIT(A).

2.2. We have heard rival submissions. We find that it is not in dispute that the cash portion received on sale of plots to the tune of Rs.51,47,200/- had been duly offered to tax by the assessee independently as short term capital gains with other cheque portion of the said transactions. In other words, this cash receipt of Rs.51,47,200 on sale of plots has been duly offered to tax as short term capital gains in the return of income by the assessee. Hence, the same would any way act as a source for the assessee for explaining cash deposits. Moreover, the Id. AR also placed on record Wealth Tax assessment order framed for the A.Y.2011-12 u/s.16(3) r.w.s.17 of the Wealth Tax Act 1957 on 29/03/2016 in assessee's case, wherein the Id. AO had specifically taxed the sum of Rs.21,25,000/- as taxable wealth representing cash balance as per books of accounts as on 31/03/2010. This wealth tax assessment framed by the Id. AO acts as a clinching evidence and that order itself gives the source of opening cash balance as on 01/04/2010 at least to the tune of Rs.21,25,000/-. We direct the Id. AO to consider the opening cash balance of Rs.21,25,000/- and Rs.51,47,200/- (being the cash amount received on sale of plots) and rework the revised cash statements of the assessee. The Id. AR before us provided the workings for the same, however, since it requires factual verification by the Id. AO, we deem it fit and appropriate to remand this issue to the file of the Id. AO for the limited purpose of examining the cash flow statement submitted by the assessee including the aforesaid sums. Accordingly, the ground No.1 raised by the assessee is allowed for statistical purposes.

2.3. The last issue to be decided in this appeal is with regard to adoption of stamp duty value as per Section 50C of the Act in respect of sale of plots.

3. The brief facts of this issue are that the Id. AO observed that the assessee had declared short term capital gain on sale of land at Viva Infra to the tune of Rs.47,59,500/- wherein, the sale consideration value was adopted at Rs.58,41,000/-. The break-up of Rs.58,41,000/- is as under:-

Value as per agreement / sale deed	-	Rs.30,00,000/-
Cash Portion thereof	-	Rs.28,41,000/-
		=====
<b>Total</b>		<b>Rs.58,41,000/-</b>
		=====

3.1. The value determined by the stamp valuation authority u/s.50C was also Rs.58,41,000/-. Hence there is no dispute with regard to this plot of land which was sold.

3.2. The assessee sold another plot of land situated at Bolinj SR No. 14,15 to M/s.Arihant Builders. The sale consideration as per agreement / sale deed was Rs.1,65,00,000/- (1,60,00,000+5,00,000). The assessee voluntarily offered the cash portion received thereof to the tune of Rs.23,06,200/- In effect, the assessee adopted the full value of consideration to the tune of Rs.1,88,06,200/- (1,65,00,000/- + 23,06,200/-). The value determined by the stamp value authority u/s.50C of the Act for the subject mentioned land was Rs.2,72,24,000/-. The Id AO adopted the value as per 50C of the Act despite the fact that assessee had objected to adoption of the same and accordingly, re-worked the short term capital gains on sale of this Bolinj plot, without referring the case to Learned Departmental Valuation Officer (DVO). The action of the Id. AO was upheld by the Id. CIT(A).

4. Aggrieved, the assessee is in appeal before us.

5. We have heard rival submissions. The only dispute that arose for our consideration here is as to whether the sale consideration figure in respect of Bolinj plot had been rightly adopted by the revenue in the

instant case. We find that the Id. AO had adopted the value determined in terms of Section 50C of the Act. The said value has been objected by the assessee during the course of assessment proceedings. Then the only recourse available to the Id. AO is to refer the said property to the Id. DVO for determining the fair market value of the property . This is statutorily provided in Section 50C(2) of the Act. Hence, we direct the Id. AO to refer the property to the Valuation Officer to determine the fair market value of the property in terms of the Section 50C(2) of the Act and decide the sale consideration as full value of consideration based on the outcome of such DVO's report and further based on the provisions of Section 50C of the Act in totality. Accordingly, the ground No.2 raised by the assessee is allowed for statistical purposes.

**6. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on this

26/06/2019

**Sd/-**  
**(अमर्जित सिंघ)**  
**(AMARJIT SINGH)**  
**न्यायिक सदस्य / JUDICIAL**  
**MEMBER**

**Sd/-**  
**(म. बालगनेश)**  
**(M.BALAGANESH)**  
**लेखा सदस्य / ACCOUNTANT**  
**MEMBER**

मुंबई Mumbai; दिनांक Dated  
KARUNA, व.नि.स/*sr.ps*

26/06/2019

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY  
ORDER,

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