

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
ITA NO.2664/MUM/2019(A.Y. 2010-11)
&
S.A.NO.357/MUM/2019
(Arising out of ITA No.2664/Mum/2019,A.Y.2010-11)

Shri Subhash V. Sule,
Bharat Chitra Mandir, Station Road,
Kurla(W), Mumbai 400 070.
PAN:AAUPS1043B Appellant

Vs.

The ITO Ward 26(3)(3),
505,5th Floor, C-11,BKC,
Bandra(E), Mumbai 400051 Respondent

Appellant by : Shri M.Subramanian
Respondent by : Shri Avneesh Tiwari

Date of hearing : 13/09/2019
Date of pronouncement : 13/09/2019

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against order of CIT(A)-38, Mumbai dated 18/01/2019 for assessment year 2010-11.

2. Shri M.Subramanian, appearing on behalf of the assessee submitted that the assessee had inherited 30% share in a parcel of land admeasuring about 1506.3 sq.mts at New Mill Road, Kurla, Mumbai alongwith structures thereon. The assessee during the period relevant to

assessment year under appeal entered into Development Agreement in respect of his share in land for a consideration of Rs.1.30 crores. The assessee received Rs. 10,00,000/- in F.Y.2009-10 as advance. The Assessing Officer in re-assessment proceedings made addition of entire Rs.1.30 crores as Long Term Capital Gain after taking cost of acquisition as 'nil'. In assessment proceedings the assessee could not produce relevant documents to show cost of acquisition. Admittedly, the property inherited by the assessee was acquired prior to 01/04/1981, therefore, cost of acquisition would be fair market value as on 01/04/1981 subject to indexation. The assessee had filed additional evidences before the CIT(A), however, CIT(A) refused to accept the same. The Ld. Authorized Representative submitted that if an opportunity is granted to the assessee, the assessee would produce necessary evidences before the Assessing Officer indicating the cost of acquisition of the asset. The Ld. Authorized Representative further contended that if the issue raised in the appeal is restored to the file of Assessing Officer, stay application filed by the assessee would become infructuous.

3. Shri Avneesh Tiwari, appearing on behalf of the Department vehemently defended the impugned order and prayed for dismissing the stay application as well as the appeal of the assessee. The Ld. Departmental Representative submitted that a perusal of documents on record would clearly show that the assessee had not declared Long Term Capital Gain on transfer of rights in capital asset in the return of income.

4. We have heard the submissions made by rival sides and have perused the orders of the authorities below. The assessee has inherited a share (38%), in a non-agricultural free-hold land admeasuring 1506.3 square meters (approx) at Kurla, Mumbai along with structures standing thereon. A development agreement was executed on 16/11/2009 and the same was registered on 09/12/2009 in respect of said land. The gain arising on assessee's share was assessed to tax under the head "capital gains". However, while computing long term capital gain, cost on acquisition of the said asset was taken as nil by the Assessing Officer. The provisions of section 55(2)(b) of the Act mandate that if any capital asset is acquired prior to 01/04/1981, the cost of acquisition has to be determined with reference to fair market value as on 01/04/1981 and indexed cost has to be determined while computing long term capital gain under the provisions of the Act. In the instant case, it is neither during the assessment proceedings nor during the appellate proceedings, the benefit of cost of acquisition has been given to the assessee. The assessee had filed additional evidences before the CIT(A) for claiming cost of acquisition, however, the CIT(A) has rejected the same.

5. Taking into consideration entire facts, we are of the considered view that the issue raised in appeal needs a revisit to the file of Assessing Officer for recomputation of long term capital gain. The Assessing Officer is directed to recompute long term capital gain after allowing benefit of cost of acquisition in accordance with provisions of the Act. Needless to say, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee before passing order afresh.

6. In the result, impugned order is set aside and the appeal of assessee is allowed for statistical purpose.

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7. Since we have restored the issue raised in the appeal to the file of Assessing Officer, the Stay Application filed by the assessee has become infructuous and the same is dismissed as such.

8. In the result, appeal of the assessee is allowed for statistical purpose and Stay Application filed by the assessee is dismissed as infructuous.

Order pronounced in the open court after hearing the appeal on Friday, the 13th day of September 2019.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 13/09/2019
Vm, Sr. PS(O/S)

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai