



ITA No.3474/Mum/2012  
M/s. Bhagyashali Textiles Mills Pvt. Ltd.  
Assessment Year-2007-08

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.3474/Mum/2012  
(निर्धारण वर्ष / Assessment Year:2007-08)

<b>M/s. Bhagyashali Textiles Mills Pvt. Ltd.</b> 134/140, Govardhan Niketan Cavel St. Ground Floor Behind Swadeshi Market Kalbadevi Road, Mumbai-400 002.	<b>बनाम/</b> <b>Vs.</b>	<b>Income Tax Officer</b> Ward No.4(1)(3) Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAACB-5864-E</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Hari S. Raheja-Id. AR
<b>Revenue by</b>	:	Ms. Samatha Mullamudi-Ld. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	18/10/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	24/10/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member):-**

1. Aforesaid appeal by assessee for assessment year [AY] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-8, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.CIT(A)-8/Cir-4/204/2010-11*



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dated 29/02/2012 on certain grounds of appeal. Although the assessee has raised as many as 5 grounds of appeal along with Form No. 36, however, Ld. Authorized Representative for Assessee [AR], Shri Hari. S. Raheja, submitted that only Ground No. 2 is being pressed in the appeal which reads as under: -

On the facts and circumstances of the case and in law the Ld. Commissioner of Income tax (Appeals) erred in adopting the fair market value at Rs.38,75,000/- on account of the assignment of leasehold right for the purpose of computing Capital gains.”

At the same time, Ld. AR pleaded for admission of additional grounds of appeal filed on 01/09/2017 and 25/07/2018 which are stated to be connected with above ground of appeal. These grounds being connected grounds and hence, taken on record as per the judgment of Hon'ble Supreme Court in **National Thermal Power Co Ltd. vs. CIT [229 ITR 383]**. These Grounds are re-numbered as grounds nos. 2 to 5 which read as under: -

2. The Ld. Assessing Officer as well as the learned CIT(A) has erred in law and on facts in not appreciating that the provisions of section 50C of the Act are not applicable in respect of leasehold rights in foreshore land”
3. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income tax (Appeals) erred in not bifurcating the sale consideration in the ratio of 80:20 between Land and Building respectively.
4. On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income tax (Appeals) erred in not giving adequate directions with respect to computation of Long-Term Capital Gain on Land after granting benefit of Indexation as per 2<sup>nd</sup> proviso to section 48 of the Act.
5. On the facts and circumstances of the case and in law the Ld. Commissioner of Income tax (Appeals) erred in not giving adequate directions with respect to computation of tax on transfer of Long-Term Capital asset @ 20% thereof even though the gain/(loss) is to be assessed under the head Short term Capital Gains.



The Ld. DR submitted that additional grounds were not raised by the assessee before lower authorities and therefore, the same may be remitted back to the file of Ld. AO for reconsideration.

2.1 Facts on record would reveal that the assessee being resident corporate assessee was assessed for year under consideration u/s. 143(3) r.w.s 147 on 28/12/2010 wherein income of the assessee was determined at Rs.42.06 Lacs as against *Nil* return filed by the assessee on 28/03/2009.

2.2 During assessment proceedings, it transpired that the assessee ceased its business operations and sold-off the factory premises along with Plant & Machinery and claimed a loss of Rs.1.53 Lacs & Rs.10.04 Lacs respectively. The subject matter of present appeal before us is computation of gains / loss on Land & Building.

2.3 It transpired that the sale consideration of the premises, which consisted of Land and constructed shed, was reflected as Rs.9.51 Lacs as against market / stamp duty value of Rs.49.54 Lacs. The Written down value (WDV) of the premises was Rs.11.04 Lacs and accordingly, after reducing apparent sale consideration of Rs.9.51 Lacs, the assessee had reflected loss of Rs.1.53 Lacs. The aforesaid facts led Ld. AO to invoke the provisions of Sec.50C against the sale of premises. The opening WDV of the premises was shown to be Rs.5.77 Lacs and the assessee claimed improvements thereupon for Rs.4.45 Lacs which was also denied since there was no logic of carrying out any improvement. Consequently, the gain was worked out to be Rs.43.77 Lacs i.e. Rs.49.54 Lacs (Stamp Duty



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Valuation) Less Rs.5.77 Lacs (Opening WDV) and added to the income of the assessee.

3. Before Ld. first appellate authority, it was, *inter-alia*, contended that the provisions of Section 50C would not apply to depreciable asset. The Ld. first appellate authority, after considering the valuation worked out by Departmental Valuation Officer (DVO), directed Ld. AO to adopt the sale value of Rs.38.75 Lacs. Aggrieved, the assessee is under appeal before us.

4. We have heard rival submissions and perused relevant material on record. The prime argument of Ld. AR revolves around the fact that the Land being leasehold asset, the provisions of Sec. 50C would not apply to the same. The Ld. DR asserted that the provisions would certainly apply to the constructed building.

5. Upon due consideration, we find that the additional grounds have been raised by the assessee for the first time and the same were never in contemplation of Ld. first appellate authority. Further, for proper adjudication of the matter, the true nature of property being sold by the assessee need to be ascertained. Therefore, after consideration of factual matrix, the bench deem it fit to restore the matter back to the file of Ld. CIT(A) to re-appreciate the factual matrix and adjudicate upon additional grounds of appeal raised by the assessee. The Ld. CIT(A) is directed to re-adjudicate the issue de-novo after affording reasonable opportunity of being heard to the assessee, who, in turn, is directed to substantiate his claim, in this regard.



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6. Accordingly, the appeal stands partly allowed for statistical purposes.

*Order pronounced in the open court on 24<sup>th</sup> October, 2019.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 24/10/2019

Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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