

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

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

**ITA No.1895/Mum/2018
(Assessment Year :2014-15)**

Shri Kuldeep Atmaram Pathania Shop No.1, Row-5 Truck Terminal Complex Kalamboli, Navi Mumbai	Vs.	Income Tax Officer-Ward-5 Trifed Tower, 2nd Floor Sector - 17, Opp.Khanda Colony, New Panvel (W) Dost: Raigad - 410 206
PAN/GIR No.AEXPP4022J		
(Appellant)	..	(Respondent)

Assessee by	Shri Jitendra Jain
Revenue by	Shri M.K.Singh
Date of Hearing	11/10/2019
Date of Pronouncement	16/10/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1895/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Thane in appeal dated 30/01/2018 (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 22/12/2016 by the Id. Income Tax Officer, Ward - 5, Panvel (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal is as to whether the Id CITA was justified in directly applying the value fixed by stamp

valuation authority in terms of section 50C of the Act for the sale of plot ignoring the request of the assessee to make reference to valuation officer , in the facts and circumstances of the case. The assessee had also raised an additional ground wherein he had contested the provisions of section 50C of the Act cannot be invoked on the sale of leasehold rights.

3. The brief facts of this issue are that the assessee acquired the lease of Plot No. 386 , Road No. 3, Kalamboli, Tal, Panvel, Dist. Raigad in the Asst Year 2006-07 for the consideration of Rs 6,50,000/- including the lease premium of Rs 35,000/- and paid the stamp duty and registration charges of Rs 32,730/- thereon. The above said plot of land admeasuring 250 sq.mtr was sold and agreement to sale made by the assessee with M/s Om Ganesh Lifters for the consideration of Rs 14,00,000/- on 7.9.2011 falling in Asst Year 2012-13. On 15.7.13 falling in Asst Year 2014-15, the plot was sold by M/s Om Ganesh Lifters to M/s Technical Industries through registered sale deed and assessee had agreed to sign the sale deed for the transfer of the plot directly to M/s Technical Industries Steel in good faith. The assessee pleaded that capital gains on sale of plot is assessable in his hands in Asst Year 2012-13 as possession of the said plot was handed over by the assessee to M/s Om Ganesh Lifters pursuant to agreement to sale entered on 7.9.2011 on sale consideration of Rs 14 lakhs. The Id AO observed that the assessee had signed the registered sale agreement on 15.7.13 in respect of sale of plot of land to M/s Technical Industries Steel, but had not reported any capital gains in the return filed for Asst Year 2014-15. Despite several notices issued to the assessee, no response was forthcoming from the assessee in this regard. Accordingly, the Id AO resorted to obtain information u/s 133(6) of the Act from the Sub-Registrar, Panvel which revealed that the assessee had

acquired the leasehold rights on plot of land in Asst Year 2006-07. The Id AO observed that from the registration receipt enclosed with the sale agreement, that the said plot was purchased for total consideration of Rs 35,000/- in 2006. The Id AO obtained the value in terms of section 50C of the Act from the Sub-Registrar, Panvel in respect of sale of plot of land in Asst Year 2014-15 at Rs 54,50,000/-. Accordingly, after giving the benefit of indexed cost of acquisition of land, the Id AO computed the long term capital gains on sale of plot as under:-

Full value of consideration as per section 50C	54,50,000/-
Less: Indexed cost of acquisition of Rs 35000	71,285/-

Long Term Capital Gain **53,79,215/-**

4. Before the Id CITA, the assessee claimed that the plot of land was acquired on 21.3.2006 for Rs 6,00,000/- and produced a receipt dated 7.6.2006 issued by the Office of the Collector of Stamps. The Id CITA observed that on careful perusal of the said receipt, it revealed that the figure of Rs 6,00,000/- appears to have been fabricated by mentioning the same in the receipt by a different pen and original receipt was not produced by the assessee for rebutting the same. Accordingly, the Id CITA rejected the claim of purchase price of plot of land at Rs 6,00,000/-. The Id CITA observed that the assessee vide submission dated 30.1.2018 changed his claim of purchase cost to Rs 1,98,930/- as against Rs 6,50,000/- originally claimed.

4.1. The Id CITA observed that the said land claimed to be sold by way of an agreement to M/s Om Ganesh Lifters. In support of the claim, photocopy of agreement to sale entered into between assessee and M/s Om Ganesh Lifters on 7.9.2011 on stamp paper of Rs 100 for total

consideration of Rs 14 lakhs (Rs 7 lakhs credited on 22.2.2011 and another Rs 7 lakhs credited on 24.2.2011 in the bank account of the assessee) was filed. The assessee pleaded before the Id CITA that the said agreement was not registered, as per mutual understanding between the assessee and M/s Om Ganesh Lifters and in due course, M/s Om Ganesh Lifters had sold the said plot on 15.7.2013 to M.s Technical Industrial Steel for total consideration of Rs 16,00,000/- . Against this sale transaction, it was claimed by the assessee that the assessee had received Rs 16 lakhs in his bank account on 17.7.2013 from M/s Technical Industrial Steel and out of the said amount, he had paid Rs 14 lakhs to M/s Om Ganesh Lifters on 22.7.2013. Bank statements supporting the fact of receipt of Rs 16 lakhs and payment of Rs 14 lakhs stated supra were also filed before the Id CITA.

4.2. The Id CITA on the given set of facts observed that M/s Om Ganesh Lifters had not come into picture in these transactions, as the sale was directly registered by the assessee in favour of M/s Technical Industrial Steel and accordingly received Rs 16 lakhs in his bank account on 17.7.2013. He observed that since the deal was finalized between the assessee and M/s Technical Industrial Steel, it is the assessee who is assessable to capital gains in respect of these transactions. He observed that the monies received in the sum of Rs 14 lakhs by the assessee from M/s Om Ganesh Lifters is nothing but an advance which has been repaid by him on 22.7.2013. He observed that the plot was in possession of the assessee and was never handed over to M/s Om Ganesh Lifters and accordingly the claim made by the assessee in this regard was rejected by the Id CITA.

4.3. With regard to the cost of acquisition, the Id CITA accepted the claim of the assessee vide letter dated 30.1.2018 and accepted for adoption of cost of plot of land at Rs 1,98,930/- as against Rs 6,50,000/- claimed earlier.

4.4. The Id CITA observed that since the assessee had registered the plot of land in favour of M/s Technical Industrial Steel on 15.7.2013 and also had not disputed the market value of Rs 54,50,000/- before the stamp duty officer, the long term capital gains is to be computed by considering the full value of consideration in terms of section 50C of the Act at Rs 54,50,000/- after reducing the indexed cost of acquisition for Rs 1,98,930/-.

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

6. We have heard the rival submissions and perused the materials available on record. We find that the Id AR before us had submitted an assignment agreement dated 15.10.2004 entered into between M/s Agrahari Steel Traders, a partnership firm and the assessee . The said agreement states as under:-

- a) M/s Agrahari Steel Traders had taken the Plot No. 386, Road No. 3, admeasuring 250 sq.mtr on lease from M/s City and Industrial Development Corporation of Maharashtra Limited for a period of 60 years;
- b) M/s Agrahari Steel Traders due to certain difficulties could not complete construction of the building as desired within the stipulated time and also expressed its intention that it is no longer interested to construct the said plot of land warehousing as stipulated by the Corporation within the specific period of 3 years;

- c) The assessee (i.e Kuldeep Atmaram Pathania) was in need of a place for warehousing and accordingly had approached M/s Agrahari Steel Traders with a request to assign and transfer its all rights, interest acquired by the plot under the agreement to lease for consideration.
- d) M/s Agrahari Steel Traders agreed to assign the said plot of land along with the boundary wall on as is where is basis to the assessee for a total consideration of Rs 1,30,000/- which is including the cost of boundary wall to the assessee.
- e) The assessee agreed to complete the construction of the said plot of land as per the plans to be approved by the town planning officer of the Corporation and other conditions as stipulated.

6.1. We find that the assessee vide its application for admission of additional evidence under Rule 29 of the Tribunal Rules dated 8.5.2019 had submitted that the aforesaid Articles of Assignment dated 15.10.2004 pursuant to which the assessee had acquired the subject mentioned plot of land on lease was never filed before the lower authorities in view of the fact that the wife of the accountant of the assessee was suffering from kidney ailment during the course of assessment proceedings and ultimately passed away, due to which the accountant was not attending to the office which eventually led to non-furnishing of proper details to the Chartered Accountant representing the assessee before the lower authorities. Hence the concerned CA also could not attend the assessment proceedings. Later in December 2016, there was a marriage in the family of the assessee and assessee was the guardian of his nephew who got married and in view of the same, the assessee was in Kangra, Himachal Pradesh and hence was not attending office. These crucial papers could not be produced before the lower authorities and

accordingly prayed for admission of the same. We find that these documents go to the root of the matter for adjudication of the issue before us and hence we deem it fit and appropriate in the interest of justice and fairplay, to admit the same and remand this issue to the file of Id AO for denovo adjudication of the entire issue on the aspect of capital gains to be decided afresh in accordance with law. The assessee is at liberty to furnish further evidences, if any, in support of his contentions. Accordingly, the original grounds raised by the assessee are allowed for statistical purposes. We also deem it fit and appropriate to admit the additional grounds raised by the assessee wherein it was contended that what was actually acquired by the assessee was only a leasehold right in the plot of land and that when the said right was sold for Rs 16 lakhs to M/s Technical Industrial Steel, the said consideration cannot be substituted by the value fixed by the stamp valuation authority u/s 50C of the Act. Since we had remanded the entire issue to the file of Id AO for denovo adjudication, the dispute raised by the assessee in the additional ground also deserves to be remanded back to the file of Id AO for denovo adjudication. Accordingly, the additional grounds raised by the assessee are also allowed for statistical purposes.

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

Order pronounced in the open court on this 16/10/2019

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 16/10/2019
KARUNA, 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,

(Asstt. Registrar)
ITAT, Mumbai