

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5710/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Iqbal Usmangani Khatri 628, Khatri House, 13 th Road, Khar (W), Mumbai- 400052.	बनाम/ Vs.	Dy. CIT, Central Circle-2(3) Mumbai (earlier CC-9) CGO Bldg, Annexe 8 th Floor, M.K. Road, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQPK7940M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Hari Raheja (AR)	
Revenue by:	Shri Kumar Padmapani Bora (DR)	

सुनवाई की तारीख / Date of Hearing: 20/01/2020
घोषणा की तारीख /Date of Pronouncement: 05/02/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 01.10.2015 passed by the Commissioner of Income Tax (Appeals) - 48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.

2. The assessee has raised the following grounds: -

- “1) *On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.46,54,750/- made by the Assessing Officer as short term capital gain on sale of immovable property at Borvili.*



2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.3,70,154/- made by the Assessing Officer as unexplained investment u/s 69 of the Act."*

3. The brief facts of the case are that assessee filed his return of income on 30.09.2010 declaring total income to the tune of Rs.2,716,440/- for the A.Y. 2010-11. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is in the business of property development, undertaking civil contract works and trading of building materials. The assessee has shown the net profit at Rs.28,31,440/-. The assessee purchased property bearing survey no.12, part no.4, CTS no.98, FP No.439, 445 TPS admeasuring 1147 sq. mt for a sum of Rs.50 lakhs vide registered agreement dated 16.01.2010. Thereafter, the same property got transferred by way of sale agreement registered on 30.01.2010 for a sum of Rs.1 crores against its market value of 6,947,507/- to M/s. S. J. Enterprises. The sale and purchase transactions have been reflected in balance-sheet and profit/gain have not been declared because the subject property was under litigation in suit no.875 of 2010 before Hon'ble City Civil Court Dindoshi, Mumbai. The notice was given and after the reply of the assessee, the short term capital gain in sum of Rs.4,654,750/- was assessed and added to the income of the assessee. The assessee made the payment towards stamp duty at Rs.315,250/- & Registration at Rs.30,000/- on account of total cost of acquisition of the said property. The total cost in the hands of assessee was amounting to Rs.5,345,250/-. However, the assessee has recorded an amount of Rs.4,975,096/- only against the said property in the balance-sheet under the head 'current asset'. On being confronted to the assessee but assessee failed to explain the difference of



Rs.370,154/- so the same was added to the income of the assessee u/s 69 of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the said addition, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1

4. Under this issue the assessee has challenged the confirmation of addition in sum of Rs.4,654,750/- raised by AO as short term capital gain on sale of immovable property at Borvili. The facts are not in dispute. The assessee purchased the property bearing survey no.12, part no.4, CTS no.98, FP No.439, 445 TPS admeasuring 1147 sq. mt for a sum of Rs.50 lakhs vide registered agreement dated 16.01.2010. Thereafter, the same property was got transferred by way of sale agreement registered on 30.01.2010 for a sum of Rs.1 crores against its market value of 6,947,507/- to M/s. S. J. Enterprises. The assessee reflected the sale purchase in his balance-sheet. The gain was not offered to tax on account of this fact that the property was under litigation in suit no.875 of 2010 before Hon'ble City Civil Court Dindoshi, Mumbai. The matter of controversy in the litigation is that the Assessee purchased the property in dispute from Shri Moreshwar Naru Vaith & Ors by conveyance deed dated 31.12.2009 in consideration of Rs 50,00000 which was sold to M/s. S. J. Enterprises. Subsequently it came into the knowledge that the owner has sold the property to one Shri Shashikant M. Gandhi in the year 1990-91. Shri Shashikant M. Gandhi filed the civil suit before City Civil Court Dindoshi, Mumbai who granted the stay on property to prevent any transaction till the disposal of suit. Accordingly, the assessee did not declare any profit/gain out of the sale of



the property being the matter of controversy pending before the court of law. However the everything has been shown in the balance-sheet. No doubt, the assessee received the money on account of transaction dated 16.01.2010 but the transferred has to be completed yet which is the subject matter of the decision of the City Civil Court Dindoshi, Mumbai. Taxing the short term capital gain in the hands of the assessee nowhere same justifiable because the transaction may become infructuous in future due to the outcome decision if any of the Civil Court. Therefore, it seem justifiable to tax the transaction after the decision of the City Civil Court Dindoshi, Mumbai if the transaction decided in favour of Assessee. Result of the suit certainly decide the liability if any. Accordingly, we set aside the finding of the CIT(A) on this issue and decide the issue in favour of the assessee against the revenue.

ISSUE NO.2

5. Under this issue the assessee has challenged the addition in sum of Rs.3,70,154/- u/s 69 of the Act. The assessee has paid a sum of Rs.50 lakhs as the cost of property vide registered agreement dated 16.01.2010. The payment were made toward the stamp duty of Rs.3,15,250/- and registration at Rs.30,000/- resulting in that the total cost of acquisition of the said property in the hands of assessee was of the amount of Rs.53,45,250/-. The assessee has recorded an amount of Rs.49,75,096/- only against the said property in the balance-sheet under the head current asset. The difference was in sum of Rs.3,70,154/- when the assessee was confronted difference the assessee failed to substantiate the claim, therefore, the additional investment in sum of Rs.3,70,154/- was added to



the income of the assessee u/s 69 of the Act. The situation was same before the CIT(A) as well as before us. No distinguishable facts have been produced before us. The assessee has not brought on record any details in support his case to explain the difference of Rs.3,70,154/-. The assessee failed to substantiate the claim by adducing any cogent and convincing evidence on record, therefore, we are of the view that the CIT(A) has rightly confirmed the addition in sum of Rs.3,70,154/-. Accordingly, we affirm the finding of the CIT(A) on this issue and decide this issue in favour of the revenue against the assessee.

7. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 05/02/2020.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 05/02/2020
Vijay Pal Singh/ Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

आदेशानुसार/ BY ORDER,

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