



ITA No.6246/Mum/2018
Jayantilal Tokershi Dedhia
Assessment Year: 2015-16

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6246/Mum./2018
(निर्धारण वर्ष / Assessment Year: 2015-16)

Shri. Jayantilal Tokershi Dedhia Plot No.75, Shanti Niwas Kansai Section Ambernath (E), Maharashtra- 421 501.	बनाम/ Vs.	DCIT (OSD)-Circle-2, 2 nd Floor, Mohan Plaza Wayale Nagar, Khadakpada Kalyan (W), Maharashtra-421 301.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJQPD-8550-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Bhadresh Doshi-Ld. AR
Revenue by	:	Ms. Usha Gaikwad –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	07/12/2020
घोषणा की तारीख / Date of Pronouncement	:	04/01/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2015-16 contest the order of Ld. Commissioner of Income-Tax (Appeals)-3, Thane [in short referred to as ‘CIT(A)’], Appeal No.10201-THN/17-18 dated 01/08/2018 on certain grounds of appeal.



2. The Ld. AR for assessee, at the outset, pressed only for additional grounds of appeal in view of the fact that another assessment has been framed subsequently for AY 2012-13 u/s 143(3) r.w.s.147 of the Act and the same has bearing on the issue. The additional ground of appeal read as under: -

On the facts and circumstances of the case and in law, the appellant may please be allowed a relief to the extent of the value of flats / shops which has already been taxed in A.Y.2012-13 vide assessment order dated 27-12-2018 passed under Section 143(3) r.w.s. 147 of the Income Tax Act and thereby reducing the capital gain arising upon transfer of said flats /shops during the year under consideration to that extent.

It is evident that the assessee while accepting the quantum additions as made during the year, is only seeking relief of capital gain to the extent that has already been taxed in AY 2012-13. The Ld. DR submitted that the issue being factual matter would require verification and therefore, it may be restored back to Ld. AO.

3. We find that an assessment has been framed for the year under consideration u/s 143(3) on 29/12/2017. It transpired that the assessee entered into development agreement with an entity namely M/s Ami Infra vide agreement dated 23/01/2012 and received 9.66% area in the project which include certain flats and shops. The details of the same have already been extracted in para-4 of the order. In all, the assessee received 9 flats and 5 shops. Out of the same, the assessee sold 4 shops and 1 flat during this year for aggregate consideration of Rs.67.20 Lacs and reflected Long-Term Capital Gains of Rs.64.11 Lacs. However, after perusal of documents and assessee's submissions, Ld. AO concluded that the aforesaid gains would be assessable as Short-Term



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Capital Gains only. The Ld. AO also opined that the said gains should have been offered to tax in AY 2012-13 i.e. in the year in which rights of development were transferred to the builder. The stand of Ld.AO, upon confirmation by Ld. CIT(A), is in further appeal before us.

4. Before us, Ld. AR has submitted that the assessee has accepted the assessment order for AY 2012-13 and therefore, the assessee be allowed a relief to the extent of the value of flats / shops which has already been taxed in A.Y.2012-13 vide assessment order dated 27/12/2018 passed under Section 143(3) r.w.s. 147 of the Income Tax Act. Going by the same, we deem it fit to restore the matter back to the file of Ld. AO for the limited purpose of re-computing the gains earned by the assessee in the light of reassessment proceedings for AY 2012-13 and provide the requisite relief, as available to the assessee. The assessee is directed to provide the necessary details as well as computations.

5. The appeal stand partly allowed for statistical purposes.

Order pronounced on 04th January, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 04/01/2021

Sr.PS, Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File



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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.