

## आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई

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

श्री शमीम याहया, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 7463/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

The Asst. Commissioner of Income Circle-2(2)(1), Room No. 545, 5 <sup>th</sup> floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020	बनाम/ Vs.	M/s Khandelwal Infotech Ltd. 2 <sup>nd</sup> Floor, 2 Rehem mansion, 445 Bhagat Singh Road, Colaba, Mumbai-400 001
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACK1637J		

आयकर अपील सं./ ITA No. 6089/Mum/2018

(निर्धारण वर्ष / Assessment Year 2012-13)

M/s Khandelwal Infotech Ltd. 2 <sup>nd</sup> Floor, 2 Rehem mansion, 445 Bhagat Singh Road, Colaba, Mumbai-400 001	बनाम/ Vs.	The Asst. Commissioner of Income Circle-2(2)(1), Room No. 545, 5 <sup>th</sup> floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Gurbinder Singh, DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	15.12.2020
घोषणा की तारीख / Date of pronouncement:	12.03.2021

**आदेश / ORDER**

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

**PER VIKAS AWASTHY, JM:**

These cross appeals by the Revenue and assessee are directed against the order of Commissioner of Income Tax-5, Mumbai [in short 'the CIT(A)], dated 3<sup>rd</sup> October, 2017 for the AY 2012-13.

2. Notices for hearing of appeals were sent to the assessee through Registered Post with Acknowledge Due (RPAD) repeatedly on the address mentioned in Form no. 36. The said notices have been received back unserved by the postal authorities with remarks "left"/ "not known". The notice was also sent through the office of Departmental Representative. The office of the Departmental Representative has served to the assessee through email, on the email ID furnished by the assessee. The service report furnished by the department shows that email was successfully delivered on mail ID "mcpandey.khandelwals@gmail.com". The assessee has not furnished revised Form 36 intimating his current/ new address. Therefore, the notice sent through email is deemed to be served in accordance with Sec 282(1)(c) read with rule 127 of the IT Rules. Despite serve of notice none appeared to represent the assessee company. It shows that the assessee is not interested in prosecuting the appeal. Under such circumstances, these appeals are taken up for hearing with the assistance of learned Departmental Representative and the material available on record.



3. Brief facts of the case as emanating from the records are; The assessee entered into an agreement for sale of land at Bhandup on 08/12/2008 for sale consideration of Rs. 85 lacs. The registered Deed of conveyance was executed by the assessee on 15<sup>th</sup> June, 2010. In scrutiny assessment proceedings, the Assessing Officer (AO) held that the sale consideration declared by the assessee is less than the fair market value of land as assessed by Stamp Valuation Authority at Rs. 5,78,55,000/- as on 15-06-2010. The AO intended to compute long term capital gain on the value assessed by stamp valuation officer. At the behest of assessee, a reference was made to the Department Valuation Officer (in short DVO) for determination of fair market value. However, before the receipt of report from DVO, the AO passed assessment order determining long term capital after taking the value determined by the Stamp Valuation Authority. The assessee further claimed Rs. 46 lacs as cost of improvement, the same was also disallowed by the AO as no documentary evidence was filed by the assessee to substantiate the claim. Aggrieved, by the assessment order dated 27.03.2015, the assessee filed appeal before the Commissioner of Income Tax (Appeals).

4. During First Appellate Proceedings, the DVO filed his valuation report determining value of property at Rs. 2,82,78,000/- as on 15.06.2010 i.e. the date of execution of the registered Deed of conveyance. The assessee contended before the First Appellate Authority that the value as on the date of executing sale agreement i.e. 08.12.2018 should have been determined by the DVO, as



substantial consideration was received on that date and the possession of land was handed over to the purchaser at the time of execution of Agreement to sell. To support his contention, the assessee placed reliance on the decision of Hon'ble Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia vs. CIT (2003) 260 ITR 491 (Bom). The CIT(A) directed the AO to refer valuation to DVO for determining the value of property as on 08.12.2008 for the purpose of computing long term capital gain u/s 50C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). In so far as, the assessee's claim of cost of improvement of the property, the CIT(A) rejected the contentions in the absence of any cogent evidence to support that the assessee had actually paid Rs. 46 lacs towards the cost of improvement. Against these findings of CIT(A), both the Revenue and the assessee are in appeal.

5. Shri Gurbinder Singh, representing the department submitted that the CIT(A) has erred in directing the AO to refer valuation of property to the DVO to determine the value as on 08.12.2008. The learned Departmental Representative submitted that the assessee has failed to substantiate that the property was in fact transferred to the purchaser on the date of execution of agreement to sale. As per the provision of section 50C of the Act value as on the date of registered document has to be taken for the purpose of determining long term capital gain. After receipt of valuation report from the DVO, the AO passed rectification order under section 154 of the Act, taking the fair market value of the property as determined by the DVO as on 15<sup>th</sup>



June, 2010. The learned Departmental Representative prayed for reversing the findings of the CIT(A) on the issue and restoring the order passed by the AO.

6. We have heard the submission made by learned DR and have examined the orders of the authorities below. The solitary issue raised in the appeal by Revenue is against the findings of CIT(A) in directing the AO to consider fair market value of the property as determined by the DVO on the date of agreement of sale. From the examination of records, we find that the tax effect involved in the present appeal by the Revenue is less than the monetary limit specified by CBDT Circular No. 17 of 2019 dated 03.03.2019 for filing of appeals before the Tribunal. Therefore, without adverting to the merits of issue raised in appeal, this appeal by the Revenue is dismissed on account of low tax effect.

7. The assessee in its appeal has assailed the findings of the CIT(A) in not allowing the deduction of cost of improvement of Rs. 46 lacs. The contention of the assessee before CIT(A) was that Municipal Corporation of greater Mumbai has constructed a Nalla Wall on the land of the assessee and had raised a bill of Rs. 46,12,155/- in February, 2002. The assessee instead of making payment of Rs. 46 lacs to the BMC transferred the said liability with interest to the purchaser and the credit for the said amount was given to the purchaser. Thus, the assessee claimed the benefit of indexed cost of improvement for construction of Nalla Wall on the plot of the assessee.



The CIT(A) has rejected the contention of the assessee by observing that the assessee has not brought on record any document to show that this cost was paid by the assessee. The benefit of indexed cost of improvement can only be claimed where the cost has been actually incurred by the assessee till the date of sale. We concur with the findings of the CIT(A). Accordingly, we uphold the same. The ground raised by the assessee is without any merit, hence, dismissed.

**8. In the Result, appeal by the Revenue and by the assessee are dismissed.**

Order pronounced in the open court on Friday the 12<sup>th</sup> day of March, 2021.

Sd/-

(शमीम याहया/ SHAMIM YAHYA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 12.03.2021

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(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,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**