

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5198/MUM/2019
Assessment Year: 2015-16**

Balaji Trading Corporation,
311, 3rd floor, Sujata
Chambers, Abhaychand
Gandhi Marg, Opp Katha
Bazar, Nr. Masjid (W) Station,
Mumbai-400 009.

**PAN No. AAIFB 2537 M
Appellant**

Vs. Commissioner of Income Tax-
17(1),
Room No. 117, Aayakar Bhavan,
M.K. Road,
Mumbai-400020.

Respondent

Assessee by : None
Revenue by : Mr. Sanjay J. Sethi, DR

Date of Hearing : 04/03/2021
Date of pronouncement : 19/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2015-16. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-28, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 04.03.2021, neither the assessee nor its authorized representative appeared before the Bench on the above date. As there is non-compliance by the assessee, we are proceeding

to dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The ground of appeal filed by the assessee reads as under :

“On the facts and circumstances of the case, the Income Tax Officer has erred in considering the amount of stamp duty paid on shop and added to total taxable income. The amount of stamp duty was paid by the assessee at the time of transferred of shop to retired partner (Mr. Ganesh Shaligram Patil a retiring partner). Total stamp duty paid on transfer property was Rs.5,16,900/- out of this stamp duty was Rs.2,62,500/- and registration fees was Rs.30,000/- was paid at the time of transfer of Ganesh Shaligram Patil (retiring Partner) and balance stamp duty was paid as it was pending for payment at the time of property purchase by original owner (SIRAJ TRADERS form whom Balaji Trading Corporation has purchase the property). At the time of transferring the property to retiring partner (i.e Mr. Ganesh Patil), registrar of property told that stamp duty and registration of fees is still not paid by our previous owner (i.e SIRAJ TRADERS) so to get the clear title we had paid the registration fees which is pending. Firm (i.e Balaji Trading corporation) has purchase the property form SIRAJ TRADERS and SIRAJ TRADER has purchased the property form Mr. ZAINUDDIN JIWAJI KATHAWALA. When Mr. Zainuddin Kathawala has sold the property to M/s. SIRAJ TRADERS at that time stamp duty and registration fees was not paid so at the time of transfer of property to retiring partner, Firm (i.e Balaji Trading Corporation) has born all the Stamp duty and registration fees. Hence we had claim stamp duty and registration fees as cost of transfer the property at the time of calculation of capital gain.”

3. Briefly stated, the facts of the case are that, the assessee filed its return of income for the assessment year (AY) 2015-16 on 28.09.2015 declaring total income of Rs.21,21,610/-. The assessee has shown sale price of a shop at Rs.51,97,500/-. The dispute here is the claim made by the assessee in its computation of income that the cost of selling the said shop

was Rs.5,00,400/-. During the course of assessment proceedings, the AO asked the assessee to justify its claim with documentary evidence. In response to it, the assessee *vide* letter dated 27.12.2017 explained that this amount was spent by the assessee on account of stamp duty of the previous owner as it was not paid at the time of acquiring the property. Thereupon, the AO asked the assessee to produce documentary evidence to substantiate its above claim. Noting that the assessee failed to file the relevant documentary evidence in the form of bank account statement and challans, the AO made a disallowance of Rs.5,00,400/- under the head "Short Term Capital Gain".

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) *vide* order dated 24.04.2019 confirmed the above disallowance made by the AO by observing that :

"5.4 According to the AO, the amount of Rs.5,00,400/- being aggregate of various amount of stamp duty was to be disallowed, since, no documentary evidence was adduced by the appellant before him. In the appellate proceedings, the appellant submitted copies of challans in support of the claim. However, I find that none of the challans show payment made by the appellant firm, rather the challans are in various different names. For the appellant to show that the impugned disallowance as above is erroneous, it has to lead evidence in the form of challans drawn in the name of the appellant firm so as to prove that the payment has indeed made by the appellant. Contrary to this, the record shows that the payments are not made by the appellant firm but rather by different persons.

5.5. Therefore, neither the payment by the appellant firm nor the proximate link with the STCG can be established as per above discussion. Hence, I find that as such there is no logical justification to interfere with the order of the AO. Accordingly, the disallowance of Rs.5,00,400/- is upheld.

5. The Ld. DR supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. During the course of appeal hearing before the Ld. CIT(A), the assessee had submitted (para 5.1 of the impugned order) that the following stamp duty amount through challans was paid :

Sr. No.	Date	Name	Amount	Remarks
1.	11/12/2014	Ganesh Shaligram Patil	30,000/-	Bank of Baroda
2.	11/12/2014	Ganesh Shaligram Patil	2,62,500/-	
3.	11/12/2014	Ganesh Shaligram Patil	300/-	Cash
4.	29/01/2015	Siraj Traders	1,49,400/-	Trf. To Ganesh
	29/01/2015	Siraj Traders	74,700/-	Patil Rs.4,00,000/- on 21.01.2015
		Total	5,16,900/-	

Thus the contentious issue in the present case can be resolved once the assessee files evidence that it has paid stamp duty. Therefore, we set aside the order of the Ld. CIT(A) on the above issue and restore the matter to the file of the AO to pass an order afresh after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO.

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

Order pronounced in the open Court on 19/03/2021.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 19/03/2021
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai