

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3579/Mum/2019
(A.Y: 2015-16)

ACIT, Circle – 22(1) Rm No. 322, 3 rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai – 400012.	Vs.	M/s. Asian Chemical Industries, Flat No. 101, Mahir Building, Santacruz (W), Mumbai.400054
PAN/GIR No. : AABAA02702G		
Appellant	..	Respondent

Appellant by :	Shri Azar Zain, Sr. DR
Respondent by :	Shri Veer Kumar Shah, AR

Date of Hearing	08.04.2021
Date of Pronouncement	31.05.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) -34 Mumbai, passed u/s. 143(3) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) is incorrect in holding that the income arisen from sale of property is assessable in hands of coowners, when the agreement has been executed by assessee AOP and consideration has been received in its bank account.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) is wrong in directing AO to allocate the income arisen from sale of property in the hands of co owners, when the assessee has not furnished the evidence of such redistribution to co owners and did not file copy of revised return of income showing the transaction of sale of property in the hands of co owners as per provisions of section 50C of the Act.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in valuing the property on the basis of rental value method ignoring the report of DVO who is having specialized skill for valuation of property and prescribed authority under the Act for such purposes.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in accepting the grounds of objections in respect of valuation of property, when no such objection was submitted before DVO while ongoing process of valuation.*

5. *On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in adopting method for valuation of property sold which suggest the value of property to be same as on 01.04.1981 and during F.Y 2014-15*

6. *On the facts and circumstances of the case and in law, the ld. CIT(A) erred in valuing the property as on 01.04.1981 instead of sending the matter to the file of AO for verification through DVO violating the rule 46A.*

7. *The appellate prays that the order of the Ld. CIT(A) on the above ground be reversed and that the AO be restored.*

8. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. The Brief facts of the case are that the assessee is AOP and owns industrial estate constructed more than 50 years old and industries galas in the estates and has let out on lease and derives rental income. The assessee has filed the return of income on 28.03.2016 with a total income of Rs 50,75,250/-. Subsequently the case was selected for scrutiny and notices u/s 143(2) and 142(1) of Act were issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the documents and evidences and the case was discussed. The A.O. find during the financial year the assessee has received income from house property being industrial galas. In the assessment proceedings, it was brought to the knowledge that the assessee has made sale of 18 properties (Galas) in the industrial compound estate and total sale proceeds received as per sale deed is Rs. 65,30,319/-. The assessee has calculated the capital gains after claiming the proportionate cost of acquisition of properties. But the A.O found the market value of the properties as determined by the Jt.Sub-Register, Mumbai was at higher rate, therefore assessee was asked to

explain the reasons for not adopting the market value and the applicability of provisions of sec. 50C of the Act.

2.1 Whereas, the Ld.AR of the assessee disputed the Sub-register Market value and requested the A.O to refer to District Valuation Officer (DVO) u/s 50C of the Act. Whereas, the D.V.O considering the information on record and directions has valued the 18 properties at Rs. 5,19,27,500/- as the market value. When this matter was put before the assessee, the assessee vide letter dated 30.11.2017 has raised the objections for considering the value as per the DVO in estimating the fair market value. The contentions and objections of the assessee are that the Industrial Galas were constructed 50 years ago and there are 53 tenants occupying the place and all the occupants are protected tenants under rent control Act and the assessee was not in a position to remove the tenants and details of the tenants were furnished with the A.O.

2.2 Whereas, the A.O found that the DVO has specifically mentioned that, notice dt 12-11-2017 was issued to the assessee in respect of determining the fair market value(FMV) and the assessee was provided opportunity to state its objections in writing on or before 20.11.2017, but no objections were received. Therefore, the DVO has

passed the order determining the market value of Rs. 5,19,27,500/-.The A.O. has observed that the opportunity was provided to the assessee to make the objections, the assessee has not placed any objections and now in the assessment proceedings the objections cannot be considered. Therefore, the A.O. applying the provisions of Sec. 50C of the Act considered the fair market value of the property as determined by the DVO of Rs. 5,19,27,500/- and deducted proportionate cost of properties and assessed the total income of Rs. 5,67,31,580/- and passed order u/s 143(3) of the Act on 12.12.2017.

3. Aggrieved by the order of the A.O, the assessee has filed an appeal before the CIT(A). The Ld. CIT(A) considered the grounds of appeal, findings of the A.O, and the submissions of the assessee referred at para 3.1 of the CIT(A) order on the issue of adopting the fair market value as per DVO of Rs. 5,16,56,333/-.The CIT(A) has observed that the assessee for the first time mentioned that the property ownership is between the three co-owners whose shares are determined. The CIT(A) relied on the submissions and the judicial decisions at para 3.1, page 5 to 11 of the order and observed that the submissions of the assessee are reasonable as there is a mistake in the disclosing of income as per the return of

income and also other facts were overlooked by the A.O. The CIT(A) findings on the submissions are categorically dealt at para 4.1 to 4.7 of the order and allowed the ground of appeal of the assessee as under;

“4.1 The first Ground of appeal is against assessing the total income in the hands of A.O.P at Rs. 5,67,31,580/- incorrectly as against the assessable total income in the hands of AOP at NIL.

4.2. The A.O. in his assessment order held that total income assessed in the hands of A.O.P is Rs. 5,67,31,580/- made up of income from property at Rs. 50,75,250/- and long term capital gains on sale of galas at Rs. 5,16,56,333/-.

4.3. During the appellate proceedings, it was contended by the A.R. of the appellant that the assessee contended that the appellant is an AOP collectively owning a property which is let out having three members having defined share in income and ownership of property. The details of three members and their share are as follows:

<i>Sr.no</i>	<i>Name of the Member</i>	<i>Share</i>	<i>PAN</i>
<i>1</i>	<i>Shri Dinesh Bhuva</i>	<i>30%</i>	<i>AAAPB8897N</i>
<i>2</i>	<i>Shri Rajesh Bhuva</i>	<i>30%</i>	<i>AAAPB8898D</i>
<i>3.</i>	<i>Smt. Rasila Bhuva</i>	<i>40%</i>	<i>AGBPB4818</i>

4.5. The return of income was originally filed by the appellant declaring total income of Rs. 50,75,250/- as income from house property. This rental income is from the industrial galas let out to the tenants since several years. The appellant has no business activity or business income. Only income earned is income from property. The co-owners decided to convert the industrial estate by granting ownership right to protected tenant occupants. During the year, your appellant got offers and money and they

granted willing 18 tenants the ownership rights.

4.6. The appellant while filing the original return of income had incorrectly included this amount of sale proceeds of galas as advance rent received which was included in total income as income from house property and claimed a deduction on the same @ 30%. Such sale proceeds ought to have been treated as sales proceeds for computation of capital gains. However, time limit to revise the return had lapsed and thus he could not file the revised return online. Therefore, during the course of assessment proceedings, a revised computation of income was filed with the A.O. vide letter dated 12th July, 2017. The revised computation of total Income includes income from property amounting to Rs. 96,139/- and long term capital loss of Rs. 5,32,37,693/- and no income is offered as business income as there is no business activity. This gains on the part property co-owned by members and hence income is allocable amongst co-owners. The appellant has regularly been offering only rental income for taxation for earlier years.

Further, I would like to draw your attention to the following write-up at page No. 2754 of Income Tax Law, Fifth Edition, Volume 2 by Chaturvedi & Pithisaria's.

"Where property owned by more than one person is transferred, each co owner is to be separately assessed in respect of that portion of capital gain arising from transfer" which pertains to his share in the transferred property /C.G.Ghanshamdas v. CIT(1979) 116 ITR 212 (Mad.)). The entire capital cannot be taxed in the hands of an association of persons or body of individuals constituted of the co-owners"

4.7. It is evident from the records of the assessee that it only earns income derived from properties and does not carry any business activity. In this instance, Section 26 becomes operative. The shares of the co-owners are defined and ascertainable, as per the provision of Sec.26, Income from such property is to be allocated in the hands of Co-owners in their respective shares. In respect of any income under the head of Capital gains, when a

property is owned by 2 or more persons, entire sale consideration is apportioned in accordance with the share of each of the co-owners of the property. As decided in the case referred in C.G. Ghanshamadas v. CIT,(1979) 116 ITR 212(Mad) each one of the co-owners is liable to be assessed separately in respect of their share of capital gains arising on the sale of property. In the very case, the assessee does not hold any ownership to such property and therefore, any income arising from such sale cannot be taxed in the hands of assessee. Therefore, I conclude that income arising from house property and capital gains relating to such property shall be allocated and computed in the hands of co-owners. The A.O is directed to allocate the total income determined amongst co-owner members and not to assess any taxable income in the hands of appellant. Thus, this ground of appeal is allowed.

3.1 The ground of appeal No.2 is with respect to allocation and claim of deduction income from house property. the CIT(A) has observed that the assessee's claim on the revised computation of income has to be considered and assessee cannot be taxed twice and dealt at para 5.4 of the order. Similarly, on the other grounds of appeal, the CIT(A) is of the opinion that the adoption of the DVO value is not correct and direct the sale consideration realized has to be considered referred at para 6.6 of the order. The CIT(A) on the issue of indexed cost of acquisition has made the specific calculations as referred at para 7.2 of the order and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in observing that the income derived from the sale of the properties is assessable in the hands of the co-owners. Further, the assessee has not filed the revised return of income in respect of the income in the hands of the co-owners. In respect of non application of fair market value(FMV) determined by the DVO who is specialized in valuation of property and further the assessee has not filed objections before the DVO while determining the fair market value. There is violation of the provisions of rule 46A of IT Rules as the CIT(A) himself has valued the property as on 1-4-1981 without referring to the DVO and the Ld.DR relied on the order of the Assessing officer and prayed for allowing the revenue appeal.

5. Contra, he Ld. AR relied on the order of the CIT(A). The contentions of the Ld.AR that the sale of the properties is held by the co-owners and has to be taxed in their hands and not in the status of the AOP. The fair market value determined by the DVO is not applicable considering the legal hurdles with the tenants and prayed for dismissal of the revenue appeal.

6. We heard the rival submissions and perused the material on record. Prima-facie the revenue has filed the

appeal on the three disputed issues. (i) whether the income on sale of property is assessable in the hands of co-owners, whereas the agreement has been renewed by AOP.(ii) Adoption of Fair market Value(FMV) determined by the DVO and the assessee was provided opportunity to file objections.(iii) Whether the CIT(A) has power to value the property as on 1-4-198. We have considered the facts in respect of co-ownership beneficiaries submitted in the appellate proceedings.On perusal of the assessment order, these aspects were never dealt before the A.O. whereas the A.O. has only considered the sale consideration and applied the DVO value. The Ld.CIT(A) has observed that the income from the property and capital gains related to the property has to be allocated and computed in the hands of the Co-owners and not in the hands of the assessee. We find that the assessee has raised the contentions that it is an A.O.P and the three co owners shares are determined and there is a mistake occurred in the hands of the assessee in offering the income instead of in the hands of three co owners of the property. The assessee can not rectify the claim by filling a revised computation of income, but as per the observations of the Honble Supreme court in the case of Goetze (india) Ltd Vs CIT (2006) 284 ITR 323 (SC), the assessee has to file the revised return of income for such

claims before the A.O. But the assessee chooses to file revised computation of income and not revised return of income. Further, we find that the CIT(A) has considered the claim of the assessee and observed that the gains on sale of property shall be allocated among the co-owners. But the point to be considered that the three co-owners have not filed their return of income offering the gains on sale of the property. Further the CIT(A) is not an appellate authority for the three co-owners and therefore the CIT(A) findings are not accepted. The assessee should file the revised return of income as per the ratio of the supreme court decision and then the Assessing officer has to determine/assessee the total Income.

7. We considering the facts and circumstances, set aside the findings of the CIT(A) in this ground of appeal and restore entire disputed issue to the file of the Assessing officer to adjudicate a fresh and the assessee shall file the revised return of income. The A.O. shall not be influenced by the observations in the CIT(A) order. The A.O. should independently also verify that the income is offered in the hands of the Three Co-owners. The assessee should be provided adequate opportunity of Hearing and shall cooperate in submitting the information and we allow the grounds of appeal for statistical purpose.

In respect of other two disputed issues of fair Market Value(FMV) to be adopted and the valuation of property as 1-4-1981, we are of the substantive opinion that the assessee can make claims before the Assessing officer. Since we have restored the disputed issues to the file of the Assessing officer as discussed above, we are of view that these two issues are also restored to the file of the assessing officer to consider and adjudicate on merits and allow the grounds of appeal of the revenue for statistical purpose.

8. In the result, the appeal filed by the revenue is allowed for statistical purposes..

Order pronounced in the open court on 31.05.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 31.05.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai