

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 6187/MUM/2019
Assessment Year: 2011-12**

Satish Yogesh Acharya, Sai Laxmi Bungalow, Shankar Sheth Road, Near Corporation Bank, Dombivali (E), Mumbai - 421201 PAN: AAYPA2580R	Vs.	ITO-3(3), Rani Mansion, Murbad Road, Kalyan (West) - 421301
(Appellant)		(Respondent)

Assessee by : Shri Ajay Singh (AR)

Revenue by : Shri Vijay Kumar Menon (DR)

Date of Hearing: 28/06/2021

Date of Pronouncement: 20/07/2021

O R D E R

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against the order dated 08.07.2019 of the learned Commissioner of Income Tax (Appeals)-2, Nashik for the assessment year 2011-12.

2. The dispute in the present appeal is primarily related to denial of indexation benefit on the cost of acquisition while computing long term capital gain.

3. Briefly the facts are, the assessee is an individual. For the assessment year under dispute, assessee filed its return of income on 31.07.2011 declaring total income of Rs. 7,72,800/-. In course of assessment proceedings, the Assessing Officer (AO) noticed that as per information available on record, in the year under consideration, the assessee had sold a land for a declared sale consideration of Rs. 66 lacs vide sale-cum-development agreement dated

02.08.2010. However, in the return of income filed for the impugned assessment year, the assessee had not offered capital gain arising from such transaction. He further noticed that the market value of the property sold is Rs. 2,35,32,550/-. Therefore, called upon the assessee to explain as to why long term capital gain should not be computed by applying the provisions of section 50C of the Income Tax Act, 1961. In response to the show cause notice issued by the AO, assessee furnished a detailed reply contesting the determination of market value of the property at Rs. 2,35,32,550/- and applicability of section 50C of the Act. It was submitted by the assessee that the declared sale consideration of Rs. 66 lacs is the actual value of the property, as, the assessee had to dispose of the property as distress sale. In support of such submission, the assessee also furnished a valuation report of a Government approved valuer determining the value of the property at Rs. 65,95,000/-. Taking note of assessee's objections in respect of the market value adopted by the AO, a reference was made to the Departmental Valuation Officer (DVO) to determine the fair market value (FMV) of the property as on 01.04.1981. As observed by the AO, since, there was delay in receiving the valuation report from the DVO and the assessment had to be completed before 31.03.2014, he proceeded to compute long term capital gain by adopting the market value at Rs. 2,35,32,250/- as deemed sale consideration under section 50C of the Act. After allowing indexation benefit on cost of acquisition, the AO added back net long term capital gain of Rs. 22,88,310/-. Against the assessment order so passed, assessee preferred appeal before learned Commissioner (Appeals). In course of proceeding before the First Appellate Authority, the assessee raised various objections against adoption of the market value of the property at Rs. 2,35,32,550/-. Based on submissions made by the assessee, learned Commissioner (Appeals) called for a report from the AO and also requested him to furnish the report of the DVO, if available. In pursuance to the directions of learned Commissioner (Appeals), the AO furnished remand report enclosing the valuation report of the DVO. On perusal of DVO's report, learned Commissioner (Appeals) found that he has determined the FMV of the property

at Rs. 30,48,000/- as on 01.04.1981 and Rs. 90,78,000/- as on 09.08.2010, the date of sale of the property. Thus, based on the valuation report of the DVO, learned Commissioner (Appeals) adopted the amount of Rs. 90,78,000/- as the deemed sale consideration and after reducing the amount of Rs. 30,48,000/- being the FMV of the property as on 01.04.1981, as determined by the DVO, computed the net long term capital gain at Rs. 60,30,000/-.

4. The learned Counsel for the assessee submitted, while computing long term capital gain, learned Commissioner (Appeals) has not allowed indexation benefit on the FMV of the property determined by the DVO as on 01.04.1981. He submitted, though, the assessee had filed an application under section 154 of the Act seeking rectification of mistake in the computation of long term capital gain, however, learned Commissioner (Appeals) has rejected it by saying that the FMV determined by the DVO as on 01.04.1981 is inclusive of the cost inflation index. Drawing our attention to the DVO's report, a copy of which is at page 98 of the paper book, learned Counsel for the assessee submitted, the FMV of the property determined by the DVO at Rs. 30,48,000/-, as on 01.04.1981, does not include indexation benefit. Thus, he submitted, the assessee should be allowed indexation benefit.

5. Learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

6. We have considered rival submissions and perused the material on record. As far as the factual aspect relating to disputed issue is concerned, it is a fact on record that the DVO has determined the FMV of the property, both, on the date of sale and as on 01.04.1981. On a perusal of DVO's report placed in the paper book, it is very much clear that he has determined the FMV of the property as on 01.04.1981 at Rs. 30,48,000/- and as on date of sale at Rs. 90,78,000/-. In fact, both the assessee and revenue have accepted these figures. The specific grievance of the assessee is, while computing long term capital gain learned Commissioner (Appeals) has not provided indexation benefit on the cost of acquisition of Rs. 30,48,000/- being the FMV of the property determined by the DVO as on 01.04.1981. A careful reading of section

48 of the Act would make it clear that while computing long term capital gain the indexed cost of acquisition and indexed cost of any improvement have to be reduced from full value of the consideration received as a result of transfer of a capital asset. Thus, as per the aforesaid statutory provision, the indexed cost of acquisition has to be reduced from the deemed sale consideration. Therefore, going by the mandate of the aforesaid provision the assessee is eligible for indexation benefit on the FMV determined by DVO as on 01.04.1981. Learned Commissioner (Appeals) has negated assessee's claim of indexation benefit by observing that the FMV determined by DVO as on 01.04.1981 is inclusive of indexation benefit. However, on perusal of DVO's report, we do not find any observation to that effect. In fact, the DVO has very clearly stated that FMV of the property as on 01.04.1981 is estimated at Rs. 30,48,000/-. There is no mention of any indexation benefit in the value determined. Thus, we are unable to accept the reasoning of learned Commissioner (Appeals). Therefore, we direct the AO to compute long term capital gain by adopting the amount of Rs. 90,78,000/- as deemed sale consideration and after allowing indexation benefit on the cost of acquisition of Rs. 30,48,000/- as on 01.04.1981, determine the net long term capital gain. Ground no. 1 and 2 are allowed as indicated above. Additional grounds, being not pressed, are dismissed.

7. In the result, appeal is allowed to the extent indicated above.

Order pronounced in the open court on 20th July, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2021

Alindra, PS

आदेश 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 (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**