

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

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.813/MUM/2020
(Assessment Year: 2011-12)**

ACIT -3(1)(1),
Room No. 607, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020

M/s Byramjee Jeejeebhoy Pvt.
Vs. Ltd., 86, Jolly Maker
Chambers –II, Nariman Point,
Mumbai – 400021

PAN No. AAACB6006E

(Revenue)

(Assessee)

Assessee by : Shri Vijay Mehta, A.R
Revenue by : Shri Tharian Oommen, D.R

Date of Hearing : 28/07/2021
Date of pronouncement : 05/08/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-8, Mumbai dated, 29.11.2019 which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 28.03.2014 for A.Y. 2011-12. The revenue has assailed the impugned order on the following grounds before us:

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the provisions of section 50C are not applicable in respect of transfer of reversionary rights in respect of the sale transaction with M/s Yash and Yashika Mercantile (P) Ltd.
2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding provision of 50C are not applicable on transfer of reversionary rights in the property?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to take 70% of the safe value of the property as the cost of acquisition without appreciating the fact that there is no provision in the Act to arrive at the cost of acquisition in this manner.
4. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.
5. The appellant craves leave to amend, alter, delete or add grounds which may be.”

2. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2011-12 on 29.11.2011, declaring a total income of Rs.2,02,57,520/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act. Original assessment was framed by the A.O u/s 143(3) of the Act, dated 28.03.2014 at an income of Rs.8,35,36,800/- after inter alia assessing the Long Term Capital Gain (LTCG) on sale of property under Sec. 50C at Rs. 7,71,09,287/- (as against LTCG shown by the assessee in its return of income at Rs. 1,38,30,005/-).

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was the claim of the assessee that the provisions of Sec. 50C were not applicable qua the transaction of transfer of reversionary rights of the leasehold land to M/s Yash & Yashika Mercantile (P) Ltd. Also, it was submitted by the assessee that the A.O had erred in not accepting its claim of adopting cost of acquisition of the property at 70% of the sale consideration. As the assessee in the course of the appellate proceedings had filed certain fresh evidence, therefore, the CIT(A) called for a ‘remand report’ from the A.O. However, as the A.O despite sufficient opportunities failed to furnish the remand report, therefore, the CIT(A) proceeded with the matter and disposed off the appeal on the basis of the material available on record.

4. Before the CIT(A), it was submitted that the sale transaction with Yash & Yashika Mercantile Pvt. Ltd. was a transaction of sale or transfer of reversionary rights that were held by the assessee. Elaborating on the nature of transaction

entered into with Yash & Yashika Mercantile Pvt. Ltd., it was submitted by the assessee that the property in question was originally leased way back on 06.05.1919 by Rustomji Bymmjee Jeejeebhoy & Others i.e the lessors to Cursetjee Dinshaw Bolton i.e the lessee. Thereafter, the lessee i.e Cursetjee Dinshaw Bolton constructed a building, viz. "New Bolton House" on the leasehold land. Subsequently, one person, viz. Sethna seized and possessed the property in question and the assessee company being vested with the reversionary rights as regards the said property therein recovered rent from Sethna. On 08.05.1986, Sethna's solicitor, viz. M/s Vachha & Co. sought the consent of the assessee company for assignment of the leasehold rights by their clients, viz. Sethna in favour of one Siraj alias Shiraj Mohamadali Calcuttawala. Backed by the aforesaid facts, the assessee company terminated the lease on the ground of breach of the terms and conditions of the lease and agreed to sell its reversionary rights in the aforesaid property for a lump sum price to Yash & Yashika Mercantile Pvt. Ltd. Accordingly, in the backdrop of the aforesaid facts, it was the claim of the assessee that as it had only transferred its reversionary rights qua the aforesaid property in question, thus, its market value could not be considered for the purpose of computing the income under the head capital gains. After necessary deliberations the CIT(A) accepted the assessee's claim that in a case of mere transfer of reversionary rights the market value could not be considered for the purpose of computing the income under the head capital gain. Accordingly, the CIT(A) after perusing the agreement, dated 08.07.2013 qua the aforesaid transfer transaction observed, that as the assessee had only transferred its reversionary rights in the property in question, therefore, the provisions of Sec.50C would not stand triggered. The CIT(A) while concluding as hereinabove relied on an order of the ITAT, Kolkata in the case of DCIT Vs. Tejinder Singh, ITA No. 1459/Kol/2011, dated 29.02.2012 and that of ITAT, Hyderabad in the case of ITO, Ward-10(2), Hyderabad Vs. Ms. D. Anitha, ITA No. 394/Hyd/2014, dated 24.12.2014. Accordingly, the CIT(A) directed the A.O to

take the sale consideration in respect of the transaction entered by the assessee with M/s Yash & Yashika Mercantile Pvt. Ltd. as was reflected by the assessee in its return of income. As regards the assessee's claim that 70% of the sale consideration be considered as the cost of acquisition of the properties that were sold during the year under consideration, it was observed by the CIT(A) that the issue had come up before his predecessor in the assessee's own case for A.Y. 2012-13 and the same was decided in favour of the assessee, vide order passed in Appeal No.CIT(A)-8/IT-167/2015-16,dated 18.12.2017. It was further observed by the CIT(A) that his predecessor while deciding the appeal in favour of the assessee had relied on the order passed by the Tribunal in the assessee's own case in ITA No. 3585/Mum/2014 for A.Y 2007-08 and ITA No. 4129/Mum/2014, ITA No. 7762/Mum/2011 and ITA No. 9043/Mum/2014 for A.Y 2007-08, 2008-09 and 2010-11, dated 14.09.2016. Observing, that the facts and circumstances qua the issue in question i.e adoption of 70% of the sale value of the property as the indexed cost of acquisition for the purpose of computing the LTCG on sale of properties in consideration remained the same as was there in the assessee's own case for the aforementioned preceding years, the CIT(A) directed the A.O to accept the said claim of the assessee. Backed by his aforesaid observations the CIT(A) partly allowed the appeal.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As observed by us hereinabove, the revenue is aggrieved with the observation of the CIT(A) that the provisions of Sec. 50C of the Act would not stand triggered in respect of the transaction of transfer of reversionary rights of the property in question by the assessee to M/s Yash & Yashika Mercantile (P) Ltd. Briefly

stated, the facts relevant for adjudication of the present issue are that the property in question was originally leased way back on 06.05.1919 by Rustomji Bymmjee Jeejeebhoy & Others i.e the lessors to Cursetjee Dinshaw Bolton i.e the lessee. Thereafter, the lessee i.e Cursetjee Dinshaw Bolton constructed a building, viz. "New Bolton House" on the leasehold land. Subsequently, one person, viz. Sethna seized and possessed the property in question and the assessee company being vested with the reversionary rights as regards the said property therein recovered rent from Sethna. On 08.05.1986, Sethna's solicitor, viz. M/s Vachha & Co. sought the consent of the assessee company for assignment of the leasehold rights by their clients, viz. Sethna in favour of one Siraj alias Shiraj Mohamadali Calcuttawala. Backed by the aforesaid facts, the assessee company terminated the lease on the ground of breach of the terms and conditions of the lease and agreed to sell its reversionary rights in the aforesaid property for a lump sum consideration of Rs. 6,00,016/- to Yash & Yashika Mercantile Pvt. Ltd. On the basis of the aforesaid facts, it has been the claim of the assessee company that what was transferred by it vide agreement dated 08.07.2013 to Yash & Yashika Mercantile Pvt. Ltd were the reversionary rights qua the property in question viz. New Bolton House. After deliberating on the claim of the assessee that the deeming provisions of Sec. 50C would not stand triggered in a case where an assessee had only transferred its reversionary rights in a property, we find, that the CIT(A) had found favour with the same and had observed as under:

"3.1.13 As the appellant has only transferred the tenancy rights, sec. 50C is not applicable in this case. I find that ITAT, Kolkata in the case of Dy. Commissioner of Income Tax Vs. Tejinder Singh Vide order ITA No. 1459/Kol/2011 dated 29.02.2012 has also held that Sec. 50C is not applicable wherein there is transfer of only reversionary rights. The relevant extract of the said order is reproduced here as follows:

"7. We have heard the rival contentions, perused the material on record and duly considered applicable legal position in the light of the facts of the case.

8. A plain look at the undisputed facts of this case clearly shows that the assessee was a lessee in the property which was sold by the KSCT; there is no dispute on this aspect of the matter. Yet, the Assessing Officer has treated the assessee a seller of property

apparently because the assessee was a party to the sale deed, and because, according to the Assessing Officer, "consideration is paid on sale of the property for giving up right of the owner of the property" and that "in the case of leasehold property, the right of owner is divided between lessor and lessee". We are unable to share this line of reasoning. It is not necessary that consideration paid by the buyer of a property, at the time of buying the property, must only relate to ownership rights. In the case of tenanted property, as is the case before us, while the buyer of property pays the owner of property for ownership rights, he may also have to pay, when he wants to have possession of the property and to remove the fetters of tenancy rights on the property so purchased, the tenants towards their surrendering the tenancy rights. Merely because he pays the tenants, for their surrendering the tenancy rights, at the time of purchase of property, will not alter the character of receipt in the hands of the tenant receiving such payment. What is paid for the tenancy rights cannot, merely because of the timing of the payment, cannot be treated as receipt for ownership rights in the hands of the assessee. This distinction between the receipt for ownership rights in respect of a property and receipt for tenancy rights in respect of a property, even though both these receipts are capital receipts leading to taxable capital gains, is very important for two reasons – first, that the cost of acquisition for tenancy rights, under section 55(2)(a), is, unless purchased from a previous owner – which is admittedly not the case here, treated as 'nil'; and, - second, since the provisions of Section 50 C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both", the provisions of Section 50 C will apply on receipt of consideration on transfer of a property, being land or building or both, these provisions will not come into play in a case where only tenancy rights are transferred or surrendered. It is, therefore, important to examine as to in what capacity the assessee received the payment. No doubt the assessee was a party to the registered tripartite deed dated 20th July 2007 whereby the property was sold by the KSCT, but, as a perusal of the sale deed unambiguously shows, the assessee has given up all the rights and interests in the said property, which he had acquired by the virtue of lease agreements with owner and which were, therefore, in the nature of lessee's rights; these rights could not have been, by any stretch of logic, could be treated as ownership rights. It has been specifically stated in the sale deed that the lessee, which included this assessee before us, had proceeded to, inter alia, "grant, convey, transfer and assign their leasehold rights, title and interest in the said premises". There is nothing on the record to even remotely suggest that the assessee was owner of the property in question. The monies received by the assessee, under the said agreement, were thus clearly in the nature of receipts for transfer of tenancy rights, and, accordingly, as the learned CIT(A) rightly holds, Section 50 C could not have been invoked on the facts of this case. Revenue's contention that the provisions of Section 50 C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statute. Section 50 C can come into play only in a situation "where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, (emphasis supplied by us by underlining) is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer". Clearly, therefore, it is sine qua non for application of Section 50 C that the transfer must be of a "capital asset, being land or building or both", but then a leasehold right in such a capital asset cannot be equated with the capital asset per se. We are, therefore, unable to see any merits in revenue's contention that even when a leasehold right in "land or building or both" is transferred, the provisions of Section 50C can be invoked. We, therefore, approve the conclusion arrived at by the CIT(A) on this aspect of the matter."

3.1.14 Further, in the case of D. Anitha in ITA No. 394/Hyd/2014 & 373/Hyd/2014 dated. 24.12.2014, it was held that assessee was also not the owner of the property and had only limited rights over the property. It was held that the provisions of Sec. 50C are not applicable. The relevant para (para 9) of the said order is as under:

“9. As regards the issue involved in the appeal of the relating to the applicability of the provisions of S.50C in the case of assessee, it is observed that the market value of the property for stamp duty purpose was determined by the concerned authority of Rs.3,99,55,000/- and accordingly the stamp duty thereon was also duly paid, while registering the relevant agreement. The value adopted for the purpose of payment of stamp duty thus was not disputed by the relevant parties, including the assessee. The learned CIT(A) however, held that the assessee was not the owner of the property and since she had only limited rights over the property, which was also encumbered, the market value of the property as taken for the purpose of payment of stamp duty could not be adopted as the sale consideration by applying the provisions of S.50C. We have already concurred with the learned CIT(A) while deciding the issue involved in the appeal of the assessee that the assessee was not the absolute owner of the property and what the assessee held was only certain limited rights over the said property, it, therefore, follows that the capital asset held by the assessee itself was neither the land nor the building as envisaged in sub-section (1) of S.50C, and while computing the capital gains arising from transfer of such asset, the value adopted by any authority of State Government for the purpose of payment of stamp duty cannot be taken as full value of consideration by applying the provisions of S.50C, as rightly held by the learned CIT(A). We therefore, uphold the impugned order of the learned CIT(A) on this as well, and dismiss the appeal filed by the Revenue.”

3.1.15 The above decisions of Hon'ble ITATs are squarely applicable on the instant issue of reversionary rights. Accordingly, the AO is directed to take the sale consideration in respect of transaction with Yash & Yashika Merchantile as claimed by the appellant. These ground of appeal are therefore partly allowed.”

As is discernible from the order of the CIT(A), we find, that he had after drawing support from the orders of the coordinate benches of the Tribunal observed, that a transaction of transfer of reversionary rights in a property by an assessee would not attract the provision of Sec. 50C of the Act. We, finding ourselves in agreement with the view taken by the coordinate benches of the Tribunal, viz. the order of the ITAT, Kolkata in the case of DCIT Vs. Tejinder Singh, ITA No. 1459/Kol/2011, dated 29.02.2012 and that of ITAT, Hyderabad in the case of ITO, Ward-10(2), Hyderabad Vs. Ms. D. Anitha, ITA No. 394/Hyd/2014, dated 24.12.2014, thus, find no infirmity in the view taken by the CIT(A) and uphold the same. The **Grounds of appeal Nos. 1 & 2** raised by the revenue are dismissed.

6. The revenue has further assailed before us the direction by the CIT(A) to the A.O to take 70% of the sale value of the properties sold as the cost of acquisition (without subjecting the same to any indexation) for computing the LTCG on transfer of the properties under consideration. Briefly stated, the facts

relevant to the issue under consideration lies in a narrow compass. As the properties sold by the assessee were claimed to have been acquired prior to 01.04.1981, therefore, the assessee had claimed that 70% of the sale consideration be considered as the cost of acquisition of the said properties. It was the claim of the assessee that the status of the properties during the year under consideration i.e the year 2010 remained the same as that was in the year 1981 and the lands remained encumbered, encroached, leased and under unauthorized occupation. In support of his claim for taking the cost of acquisition of the aforesaid properties on 01.04.1981 at 70% of the sale value, the assessee had relied on the order passed by the ITAT in the case of its group company, viz. M/s Heritage Pvt. Ltd. Apart from that, it was the claim of the assessee company that it had in the preceding years also taken the cost of acquisition of the properties at 70% of its sale value and the same was accepted by the department.

7. The CIT(A) after deliberating on the aforesaid claim of the assessee observed, that a similar issue had earlier come up before his predecessor in the assessee's own case for A.Y 2012-13, wherein he had vide his order dated 18.12.2017 decided the issue in favour of the assessee. It was further observed by him that his predecessor while deciding the aforementioned appeals in favour of the assessee had followed the view that was taken by the ITAT in the assessee's own case, viz. ITA No. 3585/Mum/2014 for A.Y 2007-08 in ITA No. and for A.Y 2007-08, 2008-09 and A.Y 2010-11 in ITA No. 4129/Mum/2014, ITA No.7762/Mum/2011 and ITA No.4043/Mum/2014, dated 14.09.2010. Accordingly, the CIT(A) relying upon the aforesaid order passed by his predecessor and that of the Tribunal in the assessee's own case for the preceding years directed the A.O to take 70% of the sale value of the property as the indexed cost of acquisition while computing its income under the head LTCG. The CIT(A) while concluding as hereinabove had observed as under:

“3.2.2 These grounds pertain to the claim of the appellant regarding the appellant’s claim of taking cost of acquisition at 70% of the sale value. The assessing Officer has discussed this issue at para 4 of the order. This issue had also come up before my Ld. Predecessor in the appellant’s appeal for A.Y. 2012-13 who vide order No. CIT(A)-8/IT-167/2015-16, dated 18.12.2017, has decided this issue in favour of the appellant. In the said order, my Ld. predecessor has decided the appeal while following the decision of Hon’ble ITAT in the appellant’s own appeal ITA NO.3585/MUM/2014 for A.Y. 2007-08, ITA NO.4129/MUM/2014, ITA NO.7762/MUM/2011 & ITA NO.4043/MUM/2014 for A.Ys. 2007-08, 2008-09 & 2010-11 dated 14.09.2016. The relevant extract of this order for Hon’ble ITAT is reproduced here as follows:-

"Under section 55(2)(b) of the Act, if the property is acquired prior to 01/04/1981 then the value as on 01/04/1981 can be substituted and thereafter indexed cost can be determined. The value as on 01/04/1981 is claimed to be determined as fair value on that date. There is no specific formula or method for determining the value as on 01/04/1981. The stand of assessee is that as properties sold are encumbered the value did not appreciate year after year. The value as on 01/09/1981 could be in the range of 12% to 15% of the sale value and then if indexed, the value will come to about 70% of the sale value. Though section 55(2)(b) of the Act does not prescribe 70% as the cost of acquisition, it was derived figure based on the facts of case and based on the ratio of the decision of Mumbai ITAT in case of Heritage Estates Pvt. Ltd. (supra). Even otherwise it is established that if value as per value as taken as on 01/04/1981 and indexation provisions applied then the indexed cost will be more than what is claimed by assessee. Assessee requested that the indexed cost of acquisition be accepted at 70% of the sale value. Assessee further submitted before CIT(A) that if the relief for grounds no. 1 to 3 is allowed, then the ground of Department will become infructuous, as the sale consideration will be accepted at Rs.50 lakhs and in the original assessment, the cost of acquisition is allowed @70%.

In the result, the appeal of revenue for the A.Y.2007-08 is dismissed.

As regards ground no. 10 and 11 of assessee’s appeal is concerned, assessee requested that the indexed cost of acquisition be allowed @ 70% of Rs.8,18,38,500/- being the value substituted by Assessing Officer in re-assessment proceedings, if the sale value is determined at Rs.8,18,38,600/- in place of Rs.2,00,00,000/- being the sale consideration offered by assessee. In this background, we find that the relief in ground nos. 4 to 8 has already been given by us. So the issue raised in grounds no.10 and 11 in assessee’s appeal goes infructuous.

3.2.3 Since the facts and circumstances are the same for this assessment year, except for the amount involved, following decision of the Hon’ble ITAT Mumbai and my Ld. Predecessor above, the A.O, is directed to take 70% of the sale value of the property as the indexed cost of acquisition while computing Long Term Capital Gain. Further, the sale consideration of the properties involved in the transactions are to be taken as adjudicated by me in the previous grounds. These grounds are allowed.”

As the facts and the issue involved in the present appeal of the assessee remains the same as were there before the coordinate benches of the Tribunal in the assessee’s own case for A.Y 2007-08, 2008-09 and 2009-10, therefore, finding no reason to take a different view, we herein respectfully follow the same

and on the same lines direct the A.O to follow the same. Accordingly, finding no infirmity in the view taken by the CIT(A) who had rightly directed the A.O to take 70% of the sale value of the property as the indexed cost of acquisition for computing LTCG in the hands of the assessee, we uphold the same. The **Ground of appeal No. 3** is dismissed.

8. The **Grounds of appeal Nos. 4 & 5** being general in nature are dismissed as not pressed.

9. The appeal filed by the revenue being devoid and bereft of any merit is accordingly dismissed.

Order pronounced in the open court on 05.08.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 05.08.2021
PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai