

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 5391/Mum/2019
(निर्धारण वर्ष / Assessment Year 2014-15)

Bhupatrai Gordhandas Sayani Flat No.403, 7 th Floor, Praful Co- Op.HSG. Soc. Opp. Paramgold Jewellers, Mathuradas Road, Kandivali(W), Mumbai-400 067	Vs.	The Income Tax Officer- 18(1)(2) Room No.204, 2 nd Floor Earnest House, Nariman Point Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं. / PAN No. AAFPS1225G		

अपीलार्थी की ओर से / Appellant by	:	Shri Jitendra Singh, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Vivek Perampurna, DR

सुनवाई की तारीख / Date of hearing:	27.10.2021
घोषणा की तारीख / Date of pronouncement :	27.10.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)]-53, Mumbai [in short CIT(A)], in appeal No. CIT(A)-53/IT-287/ITO-18(1)(2)/2018-19 vide dated 13.06.2019. The Assessment was framed by the Income Tax Officer, Ward-18(1)(2) Mumbai (in short ITO/ AO) for the A.Y. 2014-15 vide order dated 18.10.2016 under section 143(3)(ii) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of Ld.CIT(A) in invoking the provision of section 50C of the Act. For this, assessee has raised following ground No.2

**Addition invoking the provisions of section 50C of the Act unjustified -
Rs.4,30,368/-**



i. The Ld. CIT(A) erred in upholding the action of Ld. A.O. in making an addition of Rs.4,30,368/- invoking the provisions of section 50C of the Act without appreciating the fact and circumstances of the case. Hence, the addition of Rs.4,30,368/- made under section 50C of the Act is unjustified and the same may be deleted.

ii. The Ld. CIT(A) failed to appreciate that the provisions of section 50C of the Act is not applicable to the Appellant's case. Hence, the addition of Rs.4,30,368/- under section 50C of the Act is unjustified and the same may be deleted.

3. At the outset, Ld. Counsel for the assessee stated that assessee has sold a property jointly held with his wife Smt. Laxmiben Bhupatrai Sayani situated at C-303, Sakhi Apartment, Kandivali(W), Mumbai on 11.07.2013 for a total consideration of Rs. 65,00,000/- and the stamp duty valuation of the same was at Rs. 81,50,044/-. The assessee has 50% share in this property. The assessee disclosed capital gain from the sale of this property at Rs. 7,68,860/- as the sale consideration of the said property. For his share, the consideration was taken at Rs.39,53,800/-. When this fact was confronted to Ld. Counsel for the assessee, the assessee filed revised working of capital gain before the AO vide letter dated 04.10.2016 and the revised working is reads as under:-

"Capital Gain Working

<i>Total Sale Price</i>		<i>8150044</i>
<i>Purchase cost</i>	<i>3375000</i>	
<i>Less: Cost Index</i>	<i>3375000x939/551</i>	<i>= 5751588</i>
<i>Total Long Term Capital Gain</i>		<i>2398456</i>
<i>Assessee's share 50%</i>	<i>2398456/2</i>	<i>11,99,228"</i>



4. Accordingly, the AO computed the capital gain at Rs. 11,99,228/- and thereby made addition of differential amount at Rs. 4,30,368/- under the head long term capital gains. Aggrieved assessee preferred an appeal before the CIT(A). The Ld.CIT(A) dismissed the ground of assessee. Aggrieved now assessee is in appeal before us.

5. I have heard rival contentions and gone through facts and circumstances of the case. Now before me, assessee's only plea was that the Rs. 10 lac paid by the builder is to be considered for the purpose of consideration of property. Accordingly to Ld. Counsel this Rs. 10 Lac received from the builder as payment is to be included in the total consideration i.e Rs.65 Lacs plus this Rs.10 Lacs. According to Ld. Counsel, this Rs.75 Lacs will be total consideration. Ld. Counsel took us through par 6.3 of the order of Ld.CIT(A) and this fact is noted as under:-

"It is in respect of this flat that payment of Rs. 10 lakhs is received from the builder. It is also noted that out of Rs. 65 lakhs Rs. 24 lakhs was paid by the builder."

6. I have gone through this sale deed and the sale consideration is mentioned at Rs. 65 Lacs and stamp duty valuation is at Rs. 81,50,044/-. In my view whatever payment given by the builder of Rs. 10 Lacs cannot be considered as sale consideration, because it is not recorded in the registered document and this cannot be considered as sale consideration



while computed long term capital gains. Even before the AO the assessee has given complete computation and revised working and admitted there is long term capital gain of Rs. 11,99,228/-. According to me, the AO as well as Ld.CIT(A) has rightly accepted the revised computation fo assessee and I find no reason to interfere with the orders of the lower authorities. This issue of assessee's appeal is dismissed.

7. The next issue in this appeal of assessee is against the order of Ld.CIT(A) upholding the action of the AO in making addition of Rs. 4,45,500/- by invoking the provision of section 56(2)(vii)(b)(ii) of the Act. For this assessee has raised following ground No.3.

3. Addition under section 56(2)(vii)(b)(ii) of the Act unjustified - Rs.4,45,500/-

i. The Ld. CJT(A) erred in upholding the action of Ld. A.O. in making an addition of Rs.4,45,500/- invoking the provisions of section 56(2)(vii)(b)(ii) of the Act without appreciating the fact and circumstances of the case. Hence, the addition of Rs.4,45,500/- made under section 56(2)(vii)(b)(ii) of the Act is unjustified and the same may be deleted.

ii. The Ld. A. O. failed to appreciate that the provisions of section 56(2)(vii)(b)(ii) of the Act is not applicable to the Appellant's case. Hence, the addition of Rs.4,45,00/- under section 56(2)(vii)(b)(ii) of the Act is unjustified and the same may be deleted.

8. I have heard rival contentions and gone through facts and circumstances of the case. I noted that the assessee has purchased an office unit No. 714 at Dattani prims-I, IT Park, Vasai, Thane, jointly with his wife on 13.06.2013 from M/s. Dattani Constructions. The agreement value of the property was at Rs. 47,87,500/-, whereas stamp duty value of property of Rs. 56,78,500/-, there was difference in the property to the tune of



Rs. 8,91,000. The AO invoking the provision of section 56(2)(vii)(b)(ii) of the Act added 50% of his share to the extent of Rs. 4,45,500/- to the return income of the assessee. Aggrieved assessee preferred appeal before the CIT(A). The Ld.CIT(A) also confirmed the action of the AO. Aggrieved now assessee is in appeal before Tribunal.

9. Now before me, Ld. Counsel for the assessee made a point that the property has not been referred to valuation despite a request made at the appellant stage i.e before the Ld.CIT(A). Ld. Counsel for the assessee drew my attention to para 5.2 at page No.6 of the order of Ld.CIT(A), wherein it is requested that it was further stated that the value determined by the Stamp Valuation Authorities was not justified and that the AO should have referred the valuation to the Departmental Valuation Officer. In view of the above Ld. Counsel for the assessee only made request that the matter may be restored back to the file of the AO with a direction that the property be referred to the DVO for valuation so as to determining the fare market value. To this proposition, Ld. Sr.DR agreed.

10. I have heard rival contentions and gone through facts and circumstances of the case. I am of the view that this matter needs be referred to DVO for valuing the property to determining the fare market value for making addition u/s. 56(2)(vii)(b)(ii) of the Act. Hence, I set aside the orders of the lower authorities and remand the issue back to the file of AO for referring to DVO to ascertain the fare market value.

11. In the Result, the appeal of assessee is partly allowed for statistical purpose.



ITA No. 5391/Mum/2019
Bhupatrai Gordhandas Sayani AY 14-15

Order pronounced in the open court on 27.10.2021.

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27 .10.2021
Kasarla Thirumalesh, Sr.PS

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 (Asth. Registrar)/ व. निजी सचिव
(Sr.PS)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai