

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.5290/Mum/2019
(Assessment Year : 2014-15)**

Mrs. Pratima Shailesh Sheth C-1713, Maple Leaf Raheja Vihar Chandivali Farm Road Powai, Mumbai – 400 076	Vs.	Asst. Commissioner of Income Tax Circle 26(2) Kautilya Bhavan Bandra Kurla Complex Bandra (E), Mumbai-400051
PAN/GIR No.AADPS9592C		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajesh Shah & Shri Gunal Bansal
Revenue by	Dr. Pallavi Darade & Shri Mehul Jain
Date of Hearing	21/12/2021
Date of Pronouncement	23/12/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.5290/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/ACIT-26(2)/IT-225/2016-17 dated 25/01/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 15/11/2016 by the Id. Asst. Commissioner of Income Tax-26(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the assessee is entitled for claiming deduction on account of cost of acquisition and cost of improvement in respect of (a) Car Parking Charges (b) Club Membership Fees (c) Society Maintenance Charges paid at the time of acquisition of property and immediately thereafter, while computing the long term capital gains on sale of flat.

3. We have heard rival submissions and perused the materials available on record. We find that the return of income for the A.Y.2014-15 was filed by the assessee on 31/03/2015 declaring total income of Rs.3,26,01,060/-. The assessee is an individual earning business income from propagating Fine Arts, Literature and Exhibitions as well as making printings. The assessee has also earned income from long term capital gains and income from other sources. During the year under consideration, the assessee sold two flats bearing No.1403A and 1403B at Heritage Building, Chandivali Farm Road, Powai, Mumbai – 400076 for Rs.5,50,00,000/- The assessee paid brokerage of Rs.5,75,000/-. Accordingly, net sale consideration worked out to Rs.5,44,25,000/-. There is absolutely no dispute that this adoption of sale consideration figure. The assessee bought these flats in Asst Year 2005-06 for Rs.95,94,600/-. The assessee further added a sum of Rs.8,29,211/- to the said cost in the following manner:-

a) Cost of car parking charges (Parking No.180)

paid to Crescendo Associates on 03/03/2005

for Flat No.1403A

Rs.2,75,000/-

b) Cost of car parking charges (Parking No.181)

paid to Crescendo Associates on 03/03/2005

for Flat No.1403B

Rs.2,75,000/-

c) Club Membership fees and society maintenance

charges paid on 06/12/2005 to Crescendo Associates

while taking possession of the flat

(Rs.178978.61 (paid on 03/01/2006

+ Rs.97145.38 paid on 05/01/2006)

Rs.2,76,123.99/-

3.1. The assessee enclosed bank statements evidencing the aforesaid payments together with the receipts issued by the concerned party. The aforesaid payments clearly go to prove that the payments were made only to Crescendo Associates (builder) at the time of acquisition of the two flats. The Id. AR also placed reliance on the provisions of Section 194IA of the Act which talks about tax to be deducted while making payment on transfer of certain immovable property other than agriculture land. The said section defines "*consideration for transfer of any immovable property*" to include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature which are incidental to transfer of immovable property". The Id. AR vehemently placed reliance on the said provision to drive home the point that the car parking charges together with club membership fees and despite maintenance charges paid by the assessee to the builder at the time of the acquisition of the property constitutes cost of acquisition and cost of improvement eligible for deduction with indexation benefit while computing long term capital gains, which was denied by the lower authorities. But we find that the documentary evidences in support of the said payments were filed by the assessee before the Id. AO on 15/11/2016 on which date the assessment was completed by the Id. AO. Hence, the Id. AO did not have an occasion to look into the evidences

submitted by the assessee. We find that the Id. CIT(A) also had simply ignored the evidences submitted by the assessee in this regard. Hence, with the consent of both the parties, in the interest of justice and fair play, we deem it fit and appropriate to remand this issue to the file of the Id. AO for verification of these evidences filed by the assessee and decide the eligibility to claim cost of acquisition and the cost of improvement while computing long terms capital gain, in accordance with law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 23/12 /2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/ 12/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai