

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP &  
Ms. KAVITHA RAJAGOPAL, JM**

आयकरअपीलसं./ I.T.A. No. 7518/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2012-13)

<b>M/s Ashok Diamonds</b> 9, Pancharatna, M.P. Marg, Opera House, Mumbai-400 004.	<b>बनाम/ Vs.</b>	<b>DCIT Cen. Cir- 5(1),</b> Room No. 1908, 19 <sup>th</sup> floor, Air India Building, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAAFA-1438-Q		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant</b> by	:	Shri Kiran Mehta, Ld. AR
प्रत्यर्थीकीओरसे/ <b>Respondent</b> by	:	Ms. Shailja Rai, Ld. DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	09.02.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	06.05.2022

आदेश / ORDER

**Per Kavitha Rajagopal, Judicial Member:**

This appeal has been filed by the assessee as against the order passed by the Ld. CIT(A)-53, Mumbai dated 18.10.2018 under section 143(3) r.w.s 153A of the Income Tax Act, 1961 pertains to AY 2012-13. The grounds of appeal raised by the assessee are as follows:-

*1. The Ld. CIT(A) erred in confirming addition of Rs. 39,50,000/- made by the Ld. AO as short term capital gains by not allowing set off of Rs. 33,08,605 being the WDV of other assets comprising in the same block.*

*2. The Ld. CIT(A) erred in not holding that the assessment in appeal made u/s 153A was illegal and bad in law.*

*3. The Ld. CIT(A) erred in not allowing the cost of two properties sold during the year being TS. 395,355 and Rs. 374,220 respectively and stamp duty paid thereon Rs. 46,100 and Rs. 43,200 respectively while computing the short term capital gains from the sale of the said tow properties in reference.*

2. Briefly stated that the assessee firm is engaged in the business of export and manufacturing of diamonds. Pursuant to a search and seizure action u/s 132(1) conducted on Alkesh V. Patel & others group dated 03.10.2013, notice u/s 153A was issued to the assessee dated 04.03.2015. The assessee vide letter dated 16.04.2015 stated that the original return of income for AY 2012-13 declaring total loss at Rs. 1,74,562/- may be treated as compliance for the said notice u/s 153A. Therefore, assessment order dated 07.03.2016 was passed u/s 143(3) assessing the total income at Rs. 34,20,170/-. It is stated that the assessee sold two properties located at Nagpur for a consideration of Rs. 39,50,000/-. It was further stated that the property at Bandra Kurla Complex which is located at 1<sup>st</sup> Floor, Bharat Diamond Bourse was bought by the assessee in 1991 but was registered on 27.12.2010. The possession of the said property was handed over to the assessee in AY 2011-12. The AO has alleged that the assessee has reduced the cost of the property located at Bandra

Kurla Complex against the sale value of the two properties. During the assessment proceedings, the assessee submitted that the property at Nagpur was purchased in F.Y. 1995-96 and was treated as business assets for which depreciation was claimed and same was allowed. The Written Down Value (WDV) of the said property came down to NIL in AY 2011-12 and 2012-13. Subsequent to the said sale, the assessee purchased the property at Bandra Kurla Complex in 1991 and the possession of the property was handover in December 2010 after the sale registration. The assessee further contended that the property was not put to use in AY 2011-12, thereby not claiming depreciation during AY 2011-12. It was stated that the said property at Bandra Kurla Complex purchased at Rs. 33,08,605/- is in the same block of assets as the property in Nagpur and therefore, during the sale of Nagpur property in AY 2012-13, the cost of new office was reduced from the consideration as per the depreciation in the Block of assets in AY 2012-13. The AO failed to accept that the property at Bandra Kurla Complex formed block of assets and that the assessee has raised this in order to reduce the cost of acquisition from the sale proceeds of Nagpur properties. The AO denied the contention of the assessee that assessee did not claim depreciation of the said property in AY 2011-12 as possession was not given. The AO held that the alleged property did not become part of the block of assets in AY 2011-12, thereby the sale consideration received is taxable under the head 'Income from Capital Gains' as "Short Term Capital Gain" for AY 2012-

13 having WDV being NIL and that the particulars furnished by assessee are held to be inaccurate.

3. Aggrieved by the said order, the assessee was in appeal before the Ld. CIT(A) on the grounds of addition made as 'Short Term Capital Gain' by not allowing set off of WDV as same block of assets, that assessment u/s 153A was illegal and on ground of not allowing cost of two property sold and stamp duty charged for the same while calculating short term capital gain. The Ld. CIT(A) confirmed the said addition and disallowed the cost of assets and stamp duty charges as not reflected in balance sheet for earlier year and on lack of documentary evidence for the same.

4. The assessee is in appeal before us as against the order of Ld. CIT(A). The Ld. AR contended that both the properties are part of block assets. The Ld. AR stated that since the possession was given later, no business activity was carried on in AY 2011-12 and stated that business activity of assessee is carrying on till date at the Bandra Kurla Complex property. The Ld. DR on the other hand denied that it was part of block of assets and that there was no proof to sustain that whether the property purchased by the assessee was for carrying on business activity or was merely an investment.

5. We have heard the rival submissions and perused the materials placed on record. The only substantial issue that pertains to the adjudication of the said appeal is whether the

property situated at Bandra Kurla Complex was part of block of assets along with property sold at Nagpur. When confronted with, the Ld. AR acceded to submit papers in support of the possession taken by the assessee of the Bandra Kurla Complex property. It is evident that the 'Allotment of Equity Shares and Grant of Occupancy Right' dated 09.11.2010 submitted to us on 07.02.2022 was not made available before the AO as well as the Ld. CIT(A). In order to give fair opportunity of being heard to both sides, we are of the considered opinion that the appeal shall be remanded back to the AO for considering the additional evidence submitted before us. In view of the same, the appeal is directed to be set aside.

6. It is pertinent to point out that both the Ld. Representatives did not argue on the ground of illegality of assessment u/s 153A though it was one of the grounds raised by the assessee. Therefore, we are of the view that the said ground needs no adjudication and we proceed to set aside the appeal.

7. In the result, the appeal filed by the assessee is **allowed for statistical purposes.**

*Orders pronounced in the open court on 06.05.2022.*

*Sd/-*  
(Pranod Kumar)  
Vice President

*Sd/-*  
(Kavitha Rajagopal)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 06.05.2022  
*Sr.PS. Dhananjay*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**