

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.6057/Mum/2018
(Assessment Year :2011-12)**

Tanveer Ahmed Ansari Room No.2, 1 st Floor National Manzil 85, Pipe Road Kurla (W) Mumbai – 400 070	Vs.	ITO 26(3)(5) Pratyaksh Kar Bhavan C/11, 5 th Floor Bandra Kurla Complex Bandra East Mumbai – 400 051
PAN/GIR No.AHUPA1201A		
(Appellant)	..	(Respondent)

Assessee by	Shri Jayant Bhatt
Revenue by	Shri Rajendra Chandekar
Date of Hearing	11/07/2022
Date of Pronouncement	14/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6057/Mum/2018 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/ITO-26(3)(5)/IT.557/2015-16 dated 18/05/2018 (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 23/02/2018 by the Id. Income Tax Officer – 26(3)(5), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition of 1/4th value of the capital gains of Rs.13,68,312/- as against 1/8th of such gains in the facts and circumstances of the instant case. The interconnected issue involved therein is as to whether the Id. CIT(A) was justified in confirming the rejection of the assessee claim of exemption u/s.54 of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee had sold house property vide sale deed dated 26/08/2010 for consideration of Rs.25,00,000/-. The assessee had not disclosed the capital gains arising on the said house property in the return of income filed for A.Y.2011-12. Later notice u/s.148 of the Act dated 23/02/2015 was issued to the assessee. The assessee filed the return in response to the said notice on 18/06/2015 declaring total income of Rs. 1,81,625/-, however, no capital gain was offered in the said return. The assessee had submitted that there were four groups of co-owners of the property having 25% share each and assessee being one of the group co-owner had declared Rs.10,00,000/- in the return of income filed on 18/06/2015 as consideration amount received on behalf of the entire family comprising of his mother, brothers and sisters. The assessee also claimed exemption u/s.54 of the Act amounting to Rs.15,00,000/- in respect of investment made in new house and accordingly no capital gain was offered in the said return. The Id. AO sought to adopt the stamp duty value of Rs.1,27,61,000/- in respect of subject mentioned property by applying the provisions of Section 50C of the Act. In response, the

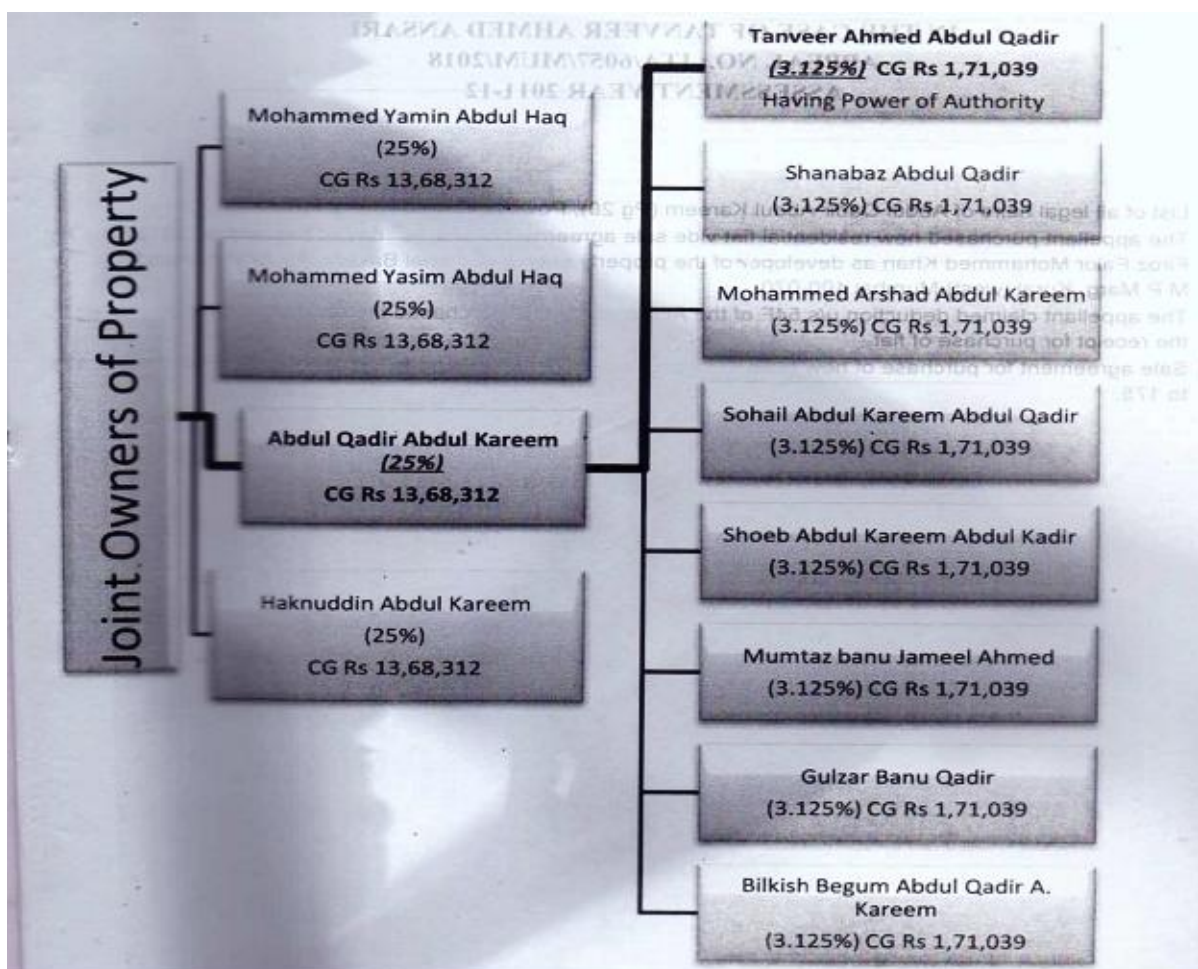
assessee vide letter dated 14/12/2015 filed the revised computation of capital gains by adopting the stamp duty consideration of Rs.1,27,61,000/- as sale consideration and by adopting fair market value as on 01/04/1981 at Rs.10,25,000/- as cost based on the valuation report of M/s. P.N. & Associates, a Government approved registered valuer. The assessee also vide letter dated 21/12/2015 claimed that he is entitled to only 1/8th of the sale consideration of Rs.10,00,000/- received by him as he has received the said amount for all the eight members of his family and therefore, he is liable only for the portion of Rs.1,25,000 being 1/8th share of Rs.10,00,000/- has been credited in his savings bank account in the month of August 2010. The Id. AO however, observed that any fresh claim could be made only by way of valid return and since the same was not claimed in the return filed by the assessee, applying the decision of the Hon'ble Supreme Court in the case of Goetze India reported in 284 ITR 323, denied the contentions of the assessee. The Id. AO observed that assessee had not submitted any proof as to whether he had transferred the share of consideration to other siblings. Accordingly, the Id. AO ignored the contentions of the assessee and brought 1/4th value of long term capital gain of Rs.13,68,312/- to tax.

3.1. The assessee filed the sale deed dated 26/08/2010 before the Id. CIT(A) wherein it was seen that assessee had signed against the name of all the family siblings including his own with his photo affixed therein except in the case of Mr. Hakimuddin Abdul Karim. The Id. CIT(A) observed that assessee had not furnished any document such as authorisation certificate / letter of authority, evidences that he has been entrusted to execute the sale deed on behalf of the so called family members and received the sale proceeds on their behalf. It was also observed by the Id. CIT(A) that assessee had not furnished any evidence

to prove that the various parties stated to be siblings were in fact siblings of assessee or not, even this fact was not proved by the assessee with evidences. The assessee had not submitted any confirmation from the alleged family members that each of them has received each one's share of sale consideration. Accordingly, 1/8th share claim made by the assessee was rejected by the Id. CIT(A) and the Id. CIT(A) confirmed the addition made in the hands of the assessee towards long term capital gain.

3.2. With regard to yet another issue of claim of exemption u/s.54 of the Act that assessee had purchased a new property at Room No.2, First Floor, National Manzil, 85, Pipe Road, Kurla (W), Mumbai – 400 070 for Rs.15,00,000/-, the Id. CIT(A) observed that assessee is not the owner of the new house and that the assessee had entered into a sale agreement with a person who himself was not given any possession of the property as on the date of execution of the sale agreement dated 16/09/2010. Accordingly, the Id. CIT(A) treated the said sale agreement as "defective". The Id. CIT(A) observed that the various inconsistencies in the facts as narrated by him in para 9.1. – 9.3 of his order were not explained by the assessee, accordingly, dismissed the claim of exemption u/s.54 of the Act.

3.3. At the outset, we find that assessee had indeed furnished the family tree as under:-



3.4. The assessee furnished copy of sale deed dated 26/08/2010 wherein it is seen that he had signed the sale deed on behalf of seven other persons pursuant to registered power of attorney executed in his favour by his siblings. The copy of the said power of attorney registered is enclosed in page 115 of the paper book filed. From the aforesaid facts, it is evidently clear that assessee would be entitled only for 1/8th share of long term capital gain to be assessed in his hands. However, since there was no adequate discussion by the lower authorities with regard to family tree of the assessee and the aforesaid facts, we deem it fit and appropriate in the interest of justice and fair play, that this issue requires

to be factually verified by the Id. AO and accordingly, the entire appeal is restored to the file of the Id. AO for denovo adjudication to bring to tax the correct share of long term capital gains, if any, in assessee's hands as per law; to examine the claim of exemption u/s.54 of the Act afresh in accordance with law by considering the eligibility thereon; and if need be, also take suitable action in the hands of the other co-owners to bring to tax their respective share of long term capital gains in accordance with law. This direction, in our considered opinion, would meet the ends of justice for both the parties. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced on 14/07/2022 by way of proper mentioning
in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 14/07/2022
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,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai