

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1038 & 1039/MUM/2020**

**(Assessment Year: 2015-16)**

1. Shri Kumar Rasiklal Mehta, 4 <sup>th</sup> Floor, Sankalp 18 Walkeshwar Road, Mumbai-400 006 Mumbai. PAN AAOPM3805D	<b>Vs.</b>	Dy. Commissioner of Income Tax, Central Circle 2(1), Mumbai.
2. Shri Shairul Shailes Mehta, 101, EL CID CHS, 13-A, Ridge Road, Malabar Hill, Mumbai. PAN AAYPM1974F		
<b>Appellant</b>		<b>Respondent</b>

Revenue by : Shri Harsh Kapadia.  
Assessee by : Shri Ajay Kumar (D.R)

Date of Hearing : 29.06.2022.  
Date of pronouncement : 13.07.2022.

**O R D E R**

**PER AMARJIT SINGH, A.M. :**

Both these appeals filed by the assesses against the different orders of Commissioner of Income Tax (Appeals), Mumbai-48 both dt.29.11.2019 for the Assessment Year 2015-16.

2. The facts in issue in these two appeals of different assesses are based on identical issues on similar facts on the issue of Long Term Capital Gains (LTCG) arise on sale of jointly held piece of land. Therefore for the sake of convenience and brevity, we take up ITA 1038/Mum/2020 as lead case and finding of the same applicable to ITA No.1039/Mum/2020.

### **ITA No.1038/Mum/2020**

3. The assessee has raised the following grounds of appeal :

1. On the facts and circumstances of the case and in law, Hon`ble CIT(A) erred in upholding the addition made by the Assessing Officer ("the AO") by ignoring the fact that no incriminating material was found during the course of search and hence no addition can be made in the order passed u/s. 153A rws 143(3) of the Act.
2. The Appellant humbly prays that order of Hon`ble CIT(A) upholding the additions made by the AO is liable to be quashed as void ab initio.

#### **GROUND NO. II: ADDITION MADE U/S. 50C OF THE ACT:**

1. On the facts and circumstances of the case and in law, Hon`ble CIT(A) erred in upholding the action of the AO by holding that capital gains is accrued in the year of registration of sale deed as compared to capital gains offered in A.Y. 2012-13 i.e. the year in which agreement of sale was entered.

2. On the facts and circumstances of the case and in law, Hon`ble CIT(A) further erred in upholding the action of the AO by disregarding the factual documents and also the valuation arrived by the Appellant.
3. The Appellant humbly prays that the addition made is liable to be deleted.

**GROUND NO. III: GENERAL:**

The Appellant craves leave to add, alter, amend or vary all or any of the above grounds of appeal either before or at the time of hearing.

**3.1 The assessee has also raised additional ground as follows :**

The learned assessing officer erred in adopting, and the leaned CIT(A) erred in confirming, the stamp duty value of the subject piece of land of the year in which the Conveyance Deed was registered (i.e. AY 2015-16) for the purpose of section 50C of the Act, instead of the date when the 'Agreement for Sale', which fixed the amount of sale consideration, was entered into by the Appellant with the buyer of the said land.

4. The facts in brief are that the assessee has filed Return of Income declaring total income of Rs.1,86,38,330 on 28.5.2015. The assessee was covered as a part of search and seizure action u/s.132 of the Act carried out in the case of Shairu Gems group on 29.6.2016. Therefore, notice u/s.153A of the Act was issued on 24.06.2017. In response to notice u/s.153A of the Act, the assessee filed Return of Income on 1.6.2017 declaring total income at Rs.1,51,32,590. Thereafter during the course of assessment proceedings, the Assessing Officer noticed that in the original Return of Income filed by the assessee on 28.08.2015, the assessee had sold land as held jointly with Shri Shairul Shailesh Mehta for a sale consideration of Rs.1,41,10,000

located at Lavale, Pune. In the original assessment, the assessee had shown total sale consideration of Rs.70,55,000 being 50% of his share holding and also offered Long Term Capital Gains (LTCG) of Rs.35,36,107. However, in the Return of Income filed in response to notice issued u/s.153A of the Act, the assessee had not shown any LTCG and instead had shown in the Assessment Year 0212-13. On query, the assessee explained that since the consideration was received in Assessment Year 2012-13 therefore he had offered the capital gains in Assessment Year 2012-13 while filing return u/s.153A of the Act. The assessee also referred the proviso to section 50C of the Act. The relevant part of the proviso produced at page No.6 of the assessment order is as under :

*“ Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are at the same, the value and assessable by the stamp valuation authority on the date of agreement may be taken for the purpose of computing full value of consideration for such transfer.*

*Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.”*

However, the Assessing Officer was of the view that proviso to section 50C(1) of the Act is effective from 1.4.2017 and same is not applicable to the case on hand. Therefore, the Assessing Officer had computed the LTCG at Rs.1,16,96,262 and added to the total income of the assessee.

5. Aggrieved the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) had dismissed the appeal of the assessee stating that the assessee

had not filed any document like agreement to sale, which could substantiate assessee's claim and also stated that no agreement to sale or any document entered with purchasing party showing transfer of property in Assessment Year 2011-12 has been filed.

6. Heard both the parties and perused the material available on record. Without reiterating the facts in this order, the Id. CIT(A) stated that copy of assessee's bank account showing credit of Rs.70,50,000 on 24.10.2011 did not match with the registered document. However during the course of appellate proceedings before us, the assessee filed a letter dt.25.6.2021 from Mahesh Sahakari Bank Limited, Pune to clarify the nature of consideration received by the assessee on transfer of the said property. In order to decide this case on merits, we have admitted this additional evidences and the Id. CIT(A) is required to examine / verify the genuineness of the aforesaid document which was not available at the time of appellate proceedings before the Id. CIT(A). It is also observed that the Id. CIT(A) has not given specific finding on the material aspect relating to the additional grounds filed by the assessee that whether the assessee fulfilled all the conditions laid down in the proviso to section 50C of the Act in respect of his claim of fixing the amount of consideration as per the date of agreement. It is also observed that the Id. CIT(A) has also not elaborated the fact whether the nature of land i.e. agriculture or non-agriculture at the

time of agreement to sale dt.2.4.2012 and at the time of conveyance deed dt.22.12.2014. In the light of above facts and circumstances, we restore the issue of additional grounds of appeal filed by the assessee for adjudicating afresh after examination / verification of relevant material as referred in this order to the file of ld. CIT(A). Therefore both the grounds of appeal of assessee are allowed for statistical purposes.

**ITA 1039/Mum/2020**

7. Applying the finding of ITA No.1038/Mum/2020 to ITA No.1038/Mum/2020, both the grounds of appeal and additional ground are sent back to ld. CIT(A) for adjudication afresh as directed above.

8. In the result, both the appeals filed by the assesses are allowed for statistical purpose.

**Order pronounced in the open Court on 13th July, 2022.**

Sd/-

**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

Sd/-

**(AMARJIT SINGH)**  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 13.07.2022.

\* Reddy gp

**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.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**