

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &  
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 4927/MUM/2018 (A.Y.2012-13)

Gupta Synthetics Ltd 326, Sardar Gruh Building, 198 Lokmanya Tilak Road, Mumbai-400 002 <b>PAN : AAACG8559P</b>	vs	DCIT – 4(1)(2), Mumbai Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	None
Department represented by	Shri Hoshang B Irani – (DR)

Date of hearing	30/05/2022
Date of pronouncement	22/08/2022

**ORDER**

**Per Kavitha Rajagopal (JM):**

This appeal has been filed by the assessee as against the order of the Ld. Commissioner of Income-tax (Appeals)-9, Mumbai dated 13/07/2018 under section 250 pertaining to assessment year 2012-13.

2. The grounds of appeal raised by the assessee are as follows:-

- "1. The Learned CIT(A) erred in confirming the addition of Rs. 46,01,084/- to the total income under the head 'Long term Capital Gains.*
- 2. The Learned CIT(A) failed to appreciate that, though the agreement for sale of land for Rs. 70 Lac was executed on sub Registrar office in March 2012, it is not a case of transfer u/s. 2(47)(v) of the income Tax Act read with sec 53A of the Transfer of Property Act, since neither the cheques were presented to the bank for encashment nor the possession of the land handed over to the buyer till date."*

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing partially oriented yarn, fully drawn yarn, polyester texturised yarn, polyester draw-twisted yarn and polyester twisted yarn. The assessee filed its income on 29/12/2012 declaring total income at Nil and the case was selected for scrutiny and order was passed under section 143(3) on 30/01/2015 making addition of Rs.46,01,084/- as long term capital gain on sale of land for a consideration of Rs.70 lakhs by the Assessing Officer. Aggrieved by this, the assessee was in appeal before the Ld.CIT(A), who confirmed the said addition.

4. During the appellate proceedings, there was no representation on behalf of the assessee. Therefore, we proceed to decide the appeal by hearing the Ld. Departmental representative and perusing the materials on record.

5. It was observed that the assessee had entered into a sale deed dated 13/03/2012 with Numech Synthetics P Ltd for sale of land at Dadra in UT Dadra and Nagar Haveli for a sale consideration of Rs.70 lakhs. A registered agreement dated 13/03/2012 was executed. The assessee contends that two cheques (dated 23/08/2011 and 26/08/2011 for Rs.60 lakhs and Rs.10 lakhs, respectively drawn on OBC Bank) issued for the sale consideration of Rs.70 lakhs were not presented to the bank for encashment and also the possession of the said land was also not handed over to the buyer. The assessee further stated that the said transaction was cancelled for want of NOC from bank. The assessee further stated that the said transaction was not disclosed in the return of income and relied on the provisions of section 2(47)(v) of the Income-tax Act, 1961 r.w.s. 53A of the Transfer of Property Act, 1882. The assessee relied on various decisions in lieu of the same. It was noticed that during the assessment proceedings, the assessee was asked to furnish the copy

of cancellation of sale deed with number of registration of the same and a copy of change mutation register from land revenue authorities showing that the mutation was not done in the name of buyer and copy of letter written to the bank for NOC and letter of bank denying NOC with acknowledgement and also proof of expenses incurred for land improvement and transfer for calculating capital gains. It was observed that the assessee had only submitted two letters dated 24/03/2012 and 29/03/2012, one on the letter head of the assessee company and the other from the buyer of land for cancellation of sale deed. The Assessing Officer had further stated that the AIR information evidencing that the assessee company had entered into the said transaction of sale of land was received and that the assessee has failed to produce the required documentary evidence to prove it otherwise. The cost of acquisition was worked out after excluding land development charges of Rs.3 lakhs and thereby long term capital gain of Rs.46,01,084/- was assessed in the absence of necessary documentary evidence. The Ld.CIT(A) during the appellate proceedings has discussed elaborately in his orders stating that the sale deed has recital that the entire sale consideration of Rs.70 lakhs has been received towards full and final consideration. Further to this, it has been stated that the assessee has not proved even before the Ld.CIT(A) either by submitting the cancelled cheques or by furnishing copies of bank statement of the assessee as well as that of the purchaser to prove that the said cheques were not encashed. The assessee has also not provided with correspondence with bank for non receipt of NOC as claimed by the assessee. The assessee has failed to produce the cancellation deed of sale which is a mandatory requirement as per provisions of law. Unless the required documentary evidence is furnished by the assessee, the adverse inference can be drawn as against the assessee's

claim that the sale has not been materialised. The fact that the assessee has not delivered possession to the purchaser has also not been proved by the assessee by any supporting evidence. Even before us, it is observed that the assessee has not furnished any details pertaining to its claim. The assessee has failed to substantiate the fact that sale has been cancelled. From the above observations, we hold that the assessee's case is covered under clause (i) of section 2(47) of the I.T. Act , 1961 and section 53A of Transfer of Property Act, 1883 does not apply in assessee's case. Presumption can be drawn on a registered sale deed that sale has been executed upon receiving the consideration. The assessee's claim that it had offered long term capital gain on sale of the land in A.Y. 2015-16 since it received the consideration of Rs.70 lakhs in F.Y. 2014-15 by way of fresh cheques is not acceptable on the pretext that there is no cancellation of registered sale deed. From this, we hold that there is no fallacy in the decision of the Ld.CIT(A) and we therefore, uphold the orders of the lower authorities .

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 22<sup>nd</sup> August, 2022.

Sd/-

sd/-

<b>(PRASHANT MAHARSHI)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 22/08/2022

Pavanan

**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./Asstt. Registrar)  
**ITAT, Mumbai**