

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.6012/Mum/2014  
(Assessment Year :2010-11)**

Shri Devendra K Chedda 502, Nippon-1, 37 Juhu Tara Road Juhu, Mumbai – 400 049	Vs.	Income Tax Officer- 21(1)(1), Mumbai-400 051
<b>PAN/GIR No.AAAPC5200C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Dr. K. Shivram & Shri Rahul Hakani
Revenue by	Shri Mahita Nair
<b>Date of Hearing</b>	<b>16/08/2022</b>
<b>Date of Pronouncement</b>	<b>14/10/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.6012/Mum/2014 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-32, Mumbai in appeal No.CIT(A)-32/ITO-21(1)(1)/IT-198/13-14 dated 26/08/2014 (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 28/03/2013 by the Id. Income Tax Officer – 21(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds of appeal:-

*"1. The learned CIT(A) erred in confirming order of Assessing officer assessing long term capital gains of Rs. 6,66,44,262/- as against returned long term capital loss of Rs. 4,47,826/- by invoking provision of S. 50C to sale of undetermined beneficial rights in the land at Chembur without appreciating that provisions of S. 50C are applicable only to sale of land and building and it does not apply to sale of rights in land and building.*

*2.The learned CIT(A) erred in confirming order of Assessing officer assessing long term capital gains of Rs. 6,66,44,262/- as against returned long term capital loss of Rs. 4,47,826/- by invoking provision of S. 50C to sale of undetermined beneficial rights in the land at Chembur without appreciating that Sale Agreement dated 28/7/2007 was not registered and hence provisions of S. 50C had no application to such sale transaction prior to 1/10/2009.*

*3. The learned CIT(A) failed to appreciate that if the argument of learned CIT(A) that provisions of S. 50C as existing post 1/10/2009 are applicable to the facts of the present case, then there can be no long term capital gains that could be said to have been accrued during the year especially when no possession has been given to the Assignee."*

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and partner in M/s. Europack and M/s. Euro Kraft. The assessee has shown business income, remuneration and interest received from M/s. Europack, income from house property, capital gains, interest income and dividend income. In the first round of proceedings this Tribunal vide its order dated 19/10/2016 had held that Section 50C of the Act is not applicable as the agreement to sell rights in land was unregistered and accordingly, decided one ground of appeal. The revenue carried the matter before the Hon'ble Jurisdictional High Court. The Hon'ble High Court in Income Tax Appeal No.1466 of 2017 dated 23/11/2021 quashed the Tribunal order and remanded the appeal back to the Tribunal for denovo consideration of all the four grounds.

3.1. On 28/07/2007, the assessee vide unregistered agreement sold his right to acquire / own 5000 sq.yards of land situated at Chhedda Nagar, Ghatkopar for a consideration of Rs.23,53,000/-on as is where is basis to M/s. Chhedda Reality Pvt. Ltd., The said land is part of large parcel of land of 140 acres. In the return, the assessee offered long term capital loss of Rs.4,47,826/-. The following list of dates and events would explain the flow of title to the property and the related litigation thereon:-

**Shri Devendra K. Chhedda**  
**Assessment year : 2010-11**

**History of Right of Devendra Kantilal Chhedda in Undivided and Undemarcated piece and parcel of land admeasuring 5000 Sq. yards at Chhedda Nagar, Ghatkopar being part of the larger Property admeasuring 140 Acres and 12.5 Gunthas (less 7 Acres and 36 Gunthas covered by Eastern Express Highway) bearing Old Survey No. 316 and New Survey No. 320.**

Sr No	Document Date	Particulars	Area
1	04.03.1964	Mr. Shamji Khimji Chhedda and Mr. Ravji Khimji Chhedda bought the above referred Land bearing Survey No. 320(Old No. 316) from Trustees of will of Framji Pestonji Vakil vide Agreement	140 Acres and 12½ Gunthas (less 7 Acres and 36 Gunthas)
2	26.08.1964	Joint owners Mr. Shamji Khimji Chhedda and Mr. Ravji Khimji Chhedda sold a small part of the above referred Land bearing Survey No. 320(Old No. 316) to <b>Mr. Premji Devji Shah</b>	5,000 Sq. Yrds.
3	24.08.1964	Joint owners Mr. Shamji Khimji Chhedda and Mr. Ravji Khimji Chhedda sold a small part of the above referred Land bearing Survey No. 320(Old No. 316) to <b>Mr. Shamji Khimji Chhedda</b>	20,000 Sq. Yrds.
4	16.10.1969	Mr Khimji Velji Chhedda formed a Family Trust in the name of "K.V.Chhedda Family Trust" vide Trust Deed specifying Mr. Devendra Kantilal Chhedda to be one of the beneficiary of the Trust.	-
5		<b><u>Mr. Premji Devji Shah :</u></b>	
5a	19.11.1971	Out of 5000 Sq. Yrds. stated in Point No.2 above Premji Devji Shah sold the <u>right to purchase land</u> to K.V.Chhedda Family Trust (who conducted business in the name of Pursons Udyog)	3000 Sq. Yrds.
5b	19.12.1986	Vide Deed of Settlement of K.V Chhedda Family Trust one of its Beneficiary Devendra Kantilal Chhedda received the <u>right to purchase</u> 3000 sq. yards of land in the larger Undivided and Undemarcated Land at Chhedda Nagar	3000 Sq. Yrds.
6	07.11.1973	Mr Shamji Khimji Chhedda formed a Family Trust in the name of "Matushri Purbai Family Trust" vide Trust Deed specifying Mr. Devendra Kantilal Chhedda to be one of the beneficiary of the Trust.	-
7		<b><u>Mr. Shamji Khimji Chhedda</u></b>	
7a	08.11.1974	Out of 20000 Sq. Yrds. stated in Point No.3 above Shamji Khimji Chhedda gifted the <u>right to purchase land</u> upto 2000 sq. yards to Matushri Purbai Family Trust (who conducted business in the name of Panchsheel Associates)	2000 Sq. Yrds.
7b	01.10.1991	Vide Deed of Transfer, Matushri Purbai Family Trust devolved its <u>right to purchase land</u> to one of its Beneficiary Devendra Kantilal Chhedda out of the larger Undivided and Undemarcated Land at Chhedda Nagar	2000 Sq. Yrds.

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**Summary of Right of Devandra Kantilal Chhedda in Undivided and Undemarcated Land at Chhedda Nagar :**

Sr No	Particulars	Area
1	As per point No 5b of the above table	3000 Sq. Yrds
2	As per point No 7b of the above table	2000 Sq. Yrds
TOTAL AREA		5000 Sq. Yrds

3.2. The assessee submitted that from perusal of para 2(i) to 2(iii) of the agreement, it is clear that as per the Revenue records as on date the owner of the said property is Government of India pursuant to the order dated 31/10/1976 passed by the Sub-Divisional Officer, Mumbai Sub urban District and the ownership of Government of India is still in dispute. Further land was encumbered and undivided. The assessee did not even have the possession of the land. Hence, the assessee had sold his right in the land on as is where is basis. It was reiterated by the assessee that assessee had not become the owner of the land in place of Government of India as per the Revenue records and the possession of the land is never given to assessee or to M/s. Chhedda Reality Pvt. Ltd. It was also submitted that the land is in litigation and the matter is pending before the Hon'ble Bombay High Court. In view of these pending disputes, the assessee had to assign his rights in the land on as such on as is where is basis to M/s. Chhedda Reality Pvt. Ltd., The assessee however offered long term capital loss in respect of sale of rights in the said land while filing the return of income. The Id. AO held that provisions of Section 50C of the Act would come into play and adopted the stamp duty ready reckoner rate at Rs.17,300/- per sq. mtr. as applicable for the year under consideration and arrived at the full value of consideration at Rs.7,23,24,899/- (4180.63 sq.mtrs x Rs.17,300/- per sq.mtr) and after

deducting the indexed cost of acquisition, the Id. AO computed the long term capital gains at Rs.6,60,44,262/- in the assessment.

3.3. Before the Id. CIT(A), it was pleaded by the assessee that the agreement which gave the right to the assessee was not even registered and hence, the provisions of Section 50C of the Act would not come into operation at all. It was submitted by the assessee before the Id. CIT(A) that the provisions of Section 50C of the Act introduced the word "assessable" only w.e.f. 01/10/2009 and therefore, applicable only in respect of transactions of transfer carried out on or after 01/10/2009. In the instant case, the entire sale consideration was received by the assessee prior to 01/10/2009 as under:-

<u>Date</u>	<u>Amount (Rs.)</u>
07/08/2007	50,000/-
27/08/2007	8,44,600/-
16/08/2009	9,12,600/-
26/09/2009	5,95,800/-
	=====
<b>Total</b>	<b>24,03,000/-</b>
	=====

3.4. It was submitted that the word "assessable" inserted in Section 50C of the Act is only prospective in application and hence, cannot be used for the transactions carried out prior to that date. The Id. CIT(A) did not heed to these contentions of the assessee and upheld the action of the Id. AO. However, with regard to applicability of amended provisions of Section 50C of the Act w.e.f. 01/10/2009, the Id. CIT(A) held that the said amendment would only be prospective in application, but the said

provision is nonetheless would be applicable to the facts of the assessee case herein in view of the fact that the execution of the documents which would have effect of transferring the properties to the assignees was not executed before 01/10/2009.

3.5. We find that the Id. CIT(A) had placed heavy reliance on the sub-clause 6 of clause xxiii on page 12 of the agreement which mentions as under:-

*"It is agreed that in the event of the aforesaid litigations and/or any one or more of them remain pending for a period of 25 (Twenty Five) months from the date hereof then in such event the Assignees shall pay to the Assignor the entire balance amount within one month thereafter against which the Assignor shall execute the necessary document to enable the Assignees to deal with and dispose of the said balance plot in the manner they may deem fit."*

3.6. Pursuant to the above clause, the Id. CIT(A) concluded that assessee had fulfilled its entire obligations as an assignor in favour of assignee despite the fact that the litigation with regard to the title of the property was not completed within a period of 25 months from the date of agreement. The Id. CIT(A) concluded that assessee in true spirit of the agreement entered into, had discharged its obligation in favour of the assignee. The Id. CIT(A) also concluded that assignee had also discharged its obligation by paying the agreed consideration to the assessee in the sum of Rs.24,53,000/- and final payment thereon was made on 26/09/2009. With these observations, the Id. CIT(A) upheld the action of the Id. AO.

3.7. At the outset, we find that what is transferred by the assessee is only rights in the land and not the land *per se*. This fact is very much evident from the fact that possession of the land was never handed over

to the assessee. It is not in dispute that as per the Revenue records, the Government of India's name is mentioned thereon vide order dated 31/10/1976 by Sub-Divisional Officer. It is also not in dispute that several litigations are pending with regard to the title of the land. Assessee had entered into an unregistered agreement of sale on 28/07/2007 knowing fully well about these litigations and the aforesaid facts. We hold that assessee had only rights in acquiring the land and never had the land in his possession and never owned the land. No doubt the right to acquire the land is a capital asset. When such capital asset is transferred, the assessee is bound to offer capital gains. In the instant case, the assessee had offered capital gains in the return of income for sale of such rights even though it has been erroneously mentioned as sale of land. We find that the Id. CIT(A) also had categorically stated that the disputes with regard to the ownership of the land was pending in the Hon'ble High Courts and the same were not completed and accordingly, the assessee (assignor) had discharged his obligation in favour of the assignee as agreed in sub-clause 6 of clause xxiii of the agreement. Substance of the transaction need to be seen than its form. Hence, we have no hesitation to conclude that assessee had transferred only the right in the land subject to pending litigations in favour of the assignee prior to 01/10/2009.

3.8. The provisions of Section 50C of the Act were amended w.e.f. 01/10/2009 including the word "assessable" thereon. This was introduced in the statute to plug the loophole that assessee's were conveniently entering into unregistered agreements, receiving consideration, handing over the possession and not presenting the said agreement for registration before the stamp duty authorities in order to get out of the rigours of provisions of Section 50C of the Act and payment of stamp duty

by the buyer. However, this amendment w.e.f. 01/10/2009 has been held to be prospective in operation by CBDT Circular No.5 of 2010 dated 03/06/2010 which is Explanatory Notes to Provisions of Finance(No. 2) Act, 2009. The relevant operative portion of the said Circular is reproduced hereunder:-

***“23. Provisions for deemed valuation in certain cases of transfer.***

*23.1 The existing provisions of section 50C provide that where the consideration received or accruing as a result of the transfer of a capital asset, being land or building or both, is less than the value adopted or assessed by an authority of a State Government (stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gain. However, the present scope of the provisions does not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney.*

*23.2 With a view to preventing the leakage of revenue, section 50C is amended, so as to provide that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both is less than the value adopted or assessed or assessable by an authority of state Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gain.*

*23.3 Further, Explanation 2 has been inserted in the subsection (2) of the section 50C, so as to clarify the meaning of the term “assessable”.*

***23.4 Applicability- These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to transactions undertaken on or after such date.”***

*(emphasis supplied by us)*

3.9. Moreover, we find that the Hon'ble Madras High Court in the case of CIT vs. R Sugantha Ravindran reported in 352 ITR 488 had held that the amendment brought in Section 50C of the Act from 01/10/2009 cannot be made applicable for transactions carried out prior to 01/10/2009. The Hon'ble Madras High Court had also placed

reliance on the CBDT Circular No.5/2010 dated 03/06/2010 while holding the aforesaid view. Hence, it could be safely concluded that the amendment in Section 50C of the Act by including the expression "assessable" could be made applicable only in respect of transfer of capital assets made on or after 01/10/2009. In the instant case, the transfer according to the Revenue had been completed prior to 01/10/2009. Hence, the amended provisions of Section 50C of the Act could not be applied at all by the Revenue, as admittedly the transfer of rights in land had happened pursuant to an unregistered agreement. Prior to 01/10/2009, we hold that provisions of section 50C of the Act cannot be applied for unregistered documents. Hence, there cannot be any substitution of stamp duty value as the full value consideration in terms of Section 50C of the Act in the instant case. This fact is also strengthened by the fact that assessee has also offered capital gains in the return of income as sale of rights in land has been transferred. As stated supra, the dispute between the Revenue and the assessee is only with regard to two issues (1) what is transferred is sale of land according to Revenue but what is transferred is sale of rights in land according to assessee (2) Revenue substituting stamp duty value in terms of Section 50C of the Act treating it as sale of land as against the actual consideration received in the sum of Rs.24.03 lakhs towards sale of rights in land. Both these issues have already been duly addressed by us hereinabove and hence, we direct the Id. AO to delete the full value of consideration substituted by him by adopting stamp duty value in terms of Section 50C of the Act and accept the sale consideration reported by the assessee herein. Since we have already deleted the addition made u/s.50C of the Act on the ground that the amended provisions of Section 50C of the Act could not be made applicable for transfers

made prior to 01/10/2009, the adjudication of other grounds raised by the assessee with regard to reference to Departmental Valuation Officer (DVO), becomes infructuous and academic in nature. Hence, they are not adjudicated herein. In our considered opinion, the adjudication of grounds in the manner hereinabove would be in due compliance to the directions of Hon'ble High Court vide its order dated 23/11/2021. Accordingly, the grounds raised by the assessee are allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 14/10/2022 by way of proper mentioning in the notice board.

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Sd/-  
(M.BALAGANESH)  
ACCOUNTANT MEMBER**

Mumbai; Dated 14/10/2022  
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

