

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

SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2114/MUM/2021  
(Assessment Year: 2009-10)

Neeta Nitin Bhoir,  
85, Indira Villa, Vatsalaya,  
L.N. Road, 3<sup>rd</sup> Lane, Hindu Colony,  
Dadar (East) - 400014  
[PAN: AMWPB4027E]

..... Appellant

ITO 20(2)(4), Mumbai,  
Piramal Chambers, Parel,  
Mumbai - 400012

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Subramanian  
For the Respondent/Department : Shri Rajiv Singh

Date of conclusion of hearing : 27.07.2022  
Date of pronouncement of order : 21.10.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant has challenged the order, dated 30.09.2021, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 28.12.2018 passed under Section 143(3) read with Section 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

The Appellant has raised the following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in*

*law the learned appellate commissioner erred in-*

*i) Not appreciating the directions of the Hon. Tribunal 'J' Bench as per order dated 4<sup>th</sup> August 2017.*

*ii) Ought to have directed the AO to grant reduction in computation of Capital Gain as per the records produced."*

2. This is a second round of appeal before the Tribunal pertaining to taxability and computation of capital gains income of capital gains income arising from sale of immovable property. In the first round the Tribunal had, vide order dated 04.09.2017, while deciding a batch of appeals pertaining to co-owners of the immovable property, remanded the case of the Appellant to the file of the Assessing Officer by way of common order, dated 04.09.2017. The relevant extract of the aforesaid decision of the Tribunal, whereby the appeal preferred by the Appellant [ITA No. 07/Mum/2016] was also disposed off read as under:

*"5. We have heard the counsels for both parties and we have also perused the material placed on record as well as orders passed by the revenue authorities.*

*As per the facts of the present case, the assessee during the year under consideration sold an immovable property in which it had 17.5% share. The sale consideration of the said property was shown at Rs. 4 crores as against the valuation of Rs. 19,40,58,400 as per Stamp Duty Authorities valuation. The matter was referred to the DVO, who has value the said property at Rs. 13,02,35,000/-. Accordingly in terms of provisions of section 50C the AO has adopted the sale consideration at Rs. 13,02,35,000 i.e. the value determined by DVO and consequently worked out the long terms capital gains in the hands of the assessee at Rs. 1,61,25,266/-. The said working of LTCG was also upheld by Ld. CIT(A).*

Now before us Ld. AR of the assessee submitted that there was a litigation pending between the assessee and the original buyer i.e. M/s RNA Builders. As per the assessee, the said litigation went up to Hon'ble Supreme Court. Subsequently, M/s RNA Builders filed a civil suit in the Thane Court and the said court disposed of the said petition filed by the original buyer and rewarded 28% of the land to the original buyer without any consideration. In this respect Ld. AR drawn our attention to a bunch of papers in the paper book containing page no. 1 to 216. It was also submitted that document at serial no. 4 (page no. 29 to 36) which is a report of approved valuer dated 02.11.12 was not placed before the lower authorities. The Ld. AR further submitted that the revenue authorities have not considered the affidavit filed by Mr. Hazare, the new buyer, having incurred certain expenses to take care of various claims and counter claims of interest in the property.

*On the contrary, Ld. DR support the orders passed by revenue authorities and submitted that the DVO has already dealt with the objections raised by the assessee. It was also submitted that the provisions of section 50C were brought in to deal with such type of transactions which are entered into with the intention of tax evasion. Ld. DR also submitted that the AO has correctly adopted the value determined by DVO by ignoring sale consideration shown by the assessee.*

Be that as it may, considering the submissions of both the parties and while taking into consideration the documents relied upon by Ld. AR and keeping in view the interest of justice, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to verify the documents including the court orders filed by the assessee including claim of assessee regarding handing over of 28% of land to the original buyer without any consideration and thereafter pass afresh order of assessment.

*It is needless here to mention that before passing the order of assessment, the AO shall provide sufficient opportunity of hearing to the assessee. Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall*

in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Assessing Officer independently in accordance with law. Resultantly, these grounds raised by the assessee stands allowed for statistical purposes.

xx xx

Now We take up following appeals for decision  
ITA No. 4702/Mum/20112.....ITA No. 7/Mum/2016 & ITA No. 3671/Mum/2015

8. Since we have already decided the merits of the orders passed by Ld.CIT(A) in the appeal filed by assessee in ITA No. 5344/Mum/12 for AY 2009-10. Therefore, following our own decision in the aforementioned appeal, we apply the same findings in the present appeals which are applicable mutatis mutandis in the case of the above assesses.” (Emphasis Supplied)

3. On perusal of the above it is clear that the Tribunal had remanded the issue back to the file of the Assessing Officer for fresh adjudication after taking into account the claim of the Appellant regarding handing over of 28% of land to the original buyer without any consideration. The Assessing Officer has, vide assessment order, dated 28.12.2018, rejected the claim of the Appellant and concluded that the benefit related to loss of 28% of land area cannot be granted to the Appellant. Accordingly, the income of the Appellant was again assessed at INR.35,76,244/-. The appeal preferred by the Appellant before CIT(A) was also dismissed leading to filing of the present appeal.
4. The Ld. Authorised Representative for the Appellant, after giving factual background, placed on record assessment orders passed in the case of the two co-owners. He submitted that the

Appellant was entitled to reduction in value determined by the DVO as claimed by the Appellant. Whereas, the Learned Departmental Representative resisted the claim and relied upon order passed by the Assessing Officer and CIT(A).

5. We have considered the rival submission and perused the material on record. In both the assessment orders placed on record by the Learned Authorised Representative for the Appellant, passed in the case of the two co-owners, the Assessing Officer has, taking into consideration the consent decree passed by the Court of Joint Civil Judge (Senior Division), Thane in Special Civil Suit No. 681 of 2008, concluded that as per the consent decree around 27.75% area was to be given to the Plaintiff in that case (i.e. M/s. RNA Builders) and therefore, the said co-owners were eligible for reduction in value of sale consideration adopted by the DVO at the rate of 27.75%. We note that the Assessing Officer in the case of the Appellant before us has accepted the fact that consent decree has been passed. However, the Assessing Officer has refused to grant benefit of the same on the reasoning that the sale deed was not cancelled and the Assessee was not required to refund any part of consideration received. Even if the contention of Assessing Officer is accepted, for the sake of arguments, the transfer of 27.75% of land to previous purchaser on account of wrongful termination of previous sale agreement with M/s RNA Builders would be a corresponding cost/liability which would have to be factored in. Be that as it may, we are not inclined to accept the reasoning put forth by the Assessing Officer more so when the assessing officers in the case of other co-owners have accepted the consent decree and reduced the value determined by the DVO proportionately. The observations made by the CIT(A) that

the Appellant may have received some consideration for parting with 27.75% from M/s RNA Builders has not factual basis and is rejected as being mere conjecture. Accordingly, we direct the Assessing Officer to compute the capital gains after reducing the sale consideration adopted by the DVO by 27.75%. In view of the aforesaid, directions Ground No. 1 raised by the Appellant is allowed.

In result, the present appeal is allowed.

Order pronounced on 21.10.2022.

*Sd/-*  
(M. Balaganesh)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.10.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai