IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.54/Mum./2023
(Assessment Year : 2016–17)

Income Tax Officer
International Taxation
Ward–3(2)(1), Mumbai
……. Appellant

v/s

Rustom Fali Mehta
Ground Floor, Sea Side
Women Graduates Union Road
147, Middle Colaba, Mumbai 400 005
PAN – AROPM2280P
…….Respondent

C.O. no.24/Mum./2023
(Arising out of ITA no.54/Mum./2023)
(Assessment Year : 2016–17)

Rustom Fali Mehta
Ground Floor, Sea Side
Women Graduates Union Road
147, Middle Colaba, Mumbai 400 005
PAN – AROPM2280P
……. Cross Objector
(Original Respondent)

v/s

Income Tax Officer
International Taxation
Ward–3(2)(1), Mumbai
……. Respondent
(Original Appellant)

Assessee by : Shri Madhur Agarwal a/w
Shri Yazad D. Bajan
Revenue by : Shri Soumendu Kumar Dash

Date of Hearing – 13/04/2023	Date of Order – 18/04/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal by the Revenue and cross objection by the assessee have been filed challenging the impugned order dated 03/10/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–57, Mumbai, [*'learned CIT(A)'*], for the assessment year 2016-17.

2. In this appeal, the Revenue has raised the following grounds:-

> *"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the Indexation on the basis of Hon'ble Bombay High Court decision in the case of CIT vs. Manjula J. Shah (355 ITR 474), Wherein the department had filed SLP in that case which was dismissed without discussing the issue on merit as the tax effect involved in the said case was below Rs. 1 Crore.*
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> *2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the following expenses incurred by the assessee on transfer of his 15% share in the property on the ground that the assessee had incurred these expenses wholly and exclusively for the transfer of his property, whereas no documentary evidences has been provided by the assessee during the course of assessment proceedings.*
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> | | |
> |---|---|
> | *i) Brokerage* | *Rs. 42,36,500/-* |
> | *ii) Solicitor's fee* | *Rs. 50,00,000/-* |
> | *iii) Amounts paid to Occupier* | *Rs. 10,00,000/-* |
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> *3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing payment of Rs.20 lakhs made to the tenant, Shri Stefano Funari, for early termination of Leave and Licence, eventhough the assessee failed to furnish the Leave and Licence agreement and also failed prove that the payment made to Mr. Funari was wholly and exclusively for the purpose of transfer of immovable property during the course of assessment proceedings."*

3. With regard to the aforesaid grounds raised by the Revenue, the following facts are undisputed:-

(a) Mr. Kaikhoshru Byramji Mehta and his brother, Mr. Ardesir Byramji Mehta had a leasehold right by the Deed of Lease dated 30th July, 1910 for a period of 99 years commencing from 1 December, 1907 admeasuring 2170.58 sq. mtrs with two buildings standing thereon known as 'Beach House' and 'Sea Side' situate at Colaba Road, Mumbai along with the strip of land which was subject to the provisions and covenants contained in the Deed of Lease dated 27th July, 1940 co-terminus with the Deed of Lease dated 30th July, 1910 wherein Mr Kaikhoshru Byramji Mehta was having 2/3 share whereas Mr. Ardesir Byramji Mehta was having 1/3 share in the property.

(b) The share of the said Mr. Kaikhoshru Byramji Mehta was mortgaged by the Deed of Mortgage dated 30th March, 1922 to Mr Ardesir Byramji Mehta for a sum of Rs 50,000/- Out of the aforesaid amount a sum of Rs 30,000/- was outstanding, due and payable by Mr. Kaikhoshru Byramji Mehta to Mr Ardesir Byramji Mehta as on 22 September, 1931.

(c) Mr Kaikhoshru Byramji Mehta who was having 2/3rd share in the said property settled his share in the said property subject to the mortgage claim for the benefit of the children and widow of his deceased brother, Mr Cawasha Byramji Mehta.

(d) The said Mr. Kaikhoshru Byramji Mehta requested Mrs. Awanbai Cawasha Mehta, Mrs. Jehangir Edulji Spencer, Mr. Rustom Cawasha Mehta and Ms. Piroja Cawasha Mehta, the widow and children of the late Mr Cawasha Byramji Mehta, to act as trustees along with him in respect of the Trust created by him for their benefit by putting his 2/3rd share in the said property into the said Trust.

(e) By a registered Deed of Transfer dated 8th July, 2002, the trustees of the said Trust transferred the leasehold right in the said property to Dr. Fali S. Mehta and Dr Keiki R. Mehta being the only beneficiaries in their respective individual capacity whereby the said Dr. Fali S Mehta

received 30% undivided share and the said Dr. Keiki R. Mehta had received 70% undivided share in the said property.

(f) Dr. Fali S. Mehta died on 29th August, 2003 leaving behind his Last Will and Testament dated 19th May, 1997 and Codicil dated 12th April, 1999 where under he bequeathed his 30% undivided right, title and interest in the said property to his wife, Mrs. Joan Fali Mehta absolutely. The said Will and Codicil were probated by the High Court at Bombay under T & I. J. Petition No.96 of 2007, as a consequence of which the said Mrs. Joan Fali Mehta became entitled to the said 30% undivided right, title and interest of the said Dr. Fali S. Mehta in the said property subject to the occupation of interest of the said Dr. Fali S. Mehta in the said property subject to the occupation of the tenants.

(g) The said Mrs. Joan Fali Mehta died on 9th March, 2008 leaving behind her Last Will and Testament dated 31st August, 2007 where under she bequeathed her entire estate to her two sons, namely, Dr. Sorab (Sohrab) Fali Mehta and Dr. Rustom Fali Mehta. The Will of Mrs. Joan Fali Mehta contained a provision that the executor, namely, Mr. Cyrus Soli Nallaseth should sell the said 30% undivided right, title and interest in the said property and divide the sale proceeds equally between her two sons.

(h) In compliance of the aforesaid direction in the Will of Mrs. Joan Fali Mehta, Mr. Cyrus Soli Nallaseth executed the Deed of Release dated 30th December, 2015 wherein Mr. Cyrus Soli Nallaseth was referred to as the First Releasor and Dr. Sorab Fali Mehta and Dr. Rustom Falı Mehta were referred to as the Confirming Parties / the Second Releasors and Dr. Keiki R. Mehta was referred to as the Release. By the Deed of Release dated 30th December, 2015, the two sons of Mrs. Joan Fali Mehta who had received the bequest from their mother released their 30% undivided right, title and interest in the said property for a consideration of Rs.37 crores in favour of Dr. Keiki R. Mehta.

4. In the present case, the assessee is an individual and for the year under consideration filed his return of income on 25/05/2016, declaring a total income of Rs.14,95,25,550, which was later revised on 25/05/2016, declaring a total income of Rs.15,06,05,730. The revised return of income filed by the assessee was selected for limited scrutiny for the reason "*large long-term capital gain and receipt of large value of foreign remittance*" and accordingly statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. In the revised return of income, the assessee computed the long-term capital gains of Rs.14,89,00,351 from the sale of assessee's share in the immovable property as under:-

Sale of 15% share in property, i.e., Seaside Building at Colaba, Mumbai 400005		*18,50,00,000*
Sale value as per stamp duty u/s 50C		*19,65,78,500*
Less: Brokerage	*42,36,500*	
Solicitors Fees	*50,00,000*	
C.A's Fees	*1,00,000*	
Valuation Fees to Architect	*57,500*	*1,11,09,000*
Amount paid to servant and		*18,54,69,500*
Occupier for vacating occupied place	*17,15,000*	
Market value of 15% share in property as per Valuation Report as on 01/04/1981	*33,82,900*	
Index 100 in 1981 Index 1081 in 2015-16		*3,65,69,149*
Index cost as on 31/12/2015		
Long Term Capital Gain from Sale of Property		*14,89,00,351*

5. The Assessing Officer vide order dated 31/12/2018 passed under section 143(3) of the Act determined the total income of the assessee at Rs.18,78,56,990 after making an addition on account of long-term capital gains of Rs.18,62,41,630. The Assessing Officer vide assessment order

rejected the plea of the assessee and held that the benefit of indexation will be available only from the financial year 2007-08 instead of the financial year 1981-82 as claimed by the assessee. Further, the Assessing Officer granted the deduction of Rs.37,00,000 on an ad-hoc basis @2% towards all expenses incurred on transfer by the assessee. The learned CIT(A) vide impugned order granted partial relief to the assessee. Being aggrieved, the Revenue is in appeal before us, while the assessee has filed a cross objection on certain issues which are decided against him by the learned CIT(A).

6. With the assistance of both parties, we find that in the case of the brother of the assessee, i.e. Mr. Sohrab Fali Mehta, being the joint holder of the undivided right, title, and interest in 30% of the immovable property, exactly similar computation of long-term capital gains was offered and the Revenue also made similar additions/disallowances. We further find that on similar issues, as raised in the present appeal, the coordinate bench of the Tribunal in ITO vs Sohrab Fali Mehta, in ITA No. 55/Mum./2013, vide order dated 15/03/2023, for the assessment year 2016-17 partly allowed the appeal filed by the Revenue, by observing as under:-

> *"3.2. The cost of acquisition claimed by the assessee in the sum of Rs.33,82,900/- was supported by the valuation report obtained from a registered party as on 01/04/1981 which was placed on record before the Id. AO at the time of assessment proceedings.*
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> *3.3. During the assessment proceedings, the Id. AO raised a query as to whether the assessee was right in claiming the cost of his 15% undivided share in the said property as on 01/04/1981 and thereafter to apply for indexed cost of acquisition to ascertain the indexed cost of acquisition in December 2015, while computing capital gain for A.Y.2016-17, because the property was transferred to him vide agreement dated 08/07/2002 for nil consideration? The assessee replied to the said query vide letter dated dated 25/06/2018 alongwith all supporting documents before the Id. AO. The Id. AO agreed with the assessee that the cost of acquisition should be the cost in the hands of the previous owner which in the case of the assessee is cost of acquisition in the hands of Mr. Kaikhoshru Byramji Mehta as on 01/04/1981 i.e. Rs.33,82,900/-.The Id.AO however, did not agree with the plea of the assessee that assessee is entitled for indexation benefit from 01/04/1981. The main plea of the Id. AO is that the mother of*

the assessee died on 09/03/2008 and therefore, the assessee became entitled to share in the property through the will of the mother and hence, the assessee can be allowed indexation only from F.Y.2007-08 and not from F.Y.1981-82. The Id. AO relied on the Circular No.636 issued by CBDT in this regard. The Id. CIT(A) however, agreed that the plea of the assessee by following the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Manjula J. Shah reported in 355 ITR 474.

3.4. We find that the issue in dispute is squarely covered by the decision of the Hon'ble Jurisdictional High Court referred to supra wherein the Hon'ble Jurisdictional High Court after due consideration of CBDT Circular No.636 had held that while computing capital gains arising of transfer of capital asset acquired by the assessee under the will, the indexed cost of acquisition has to be computed with respect to the year in which the previous owner first held the asset and not in the year in which assessee became the owner of the asset.

3.5. Respectfully following the said decision, we hold that assessee would be entitled for indexed cost of acquisition benefit from F.Y.1981-82 on the cost of Rs.33,82,900/-. Accordingly, the ground No.1 raised by the Revenue is dismissed.

4. The next issue to be decided is with regard to eligibility of the assessee to claim deduction of brokerage, solicitor's fees and amounts paid to occupier while computing capital gains on transfer of above mentioned property. As reflected in the computation of long term capital gains supra, it could be seen that assessee had claimed the following expenses as expenses incurred wholly in connection with the transfer of property u/s.48 of the Act as deduction:-

(a) Brokerage Expenses	*–*	*Rs.42,36,500/–*
(b) Solicitor's fee	*–*	*Rs.50,00,000/–*
(c) Chartered Accountant fees	*–*	*Rs.1,00,000/–*
(d) Valuation fees paid to Architect	*–*	*Rs.57,500*
(e) Amount paid to servant towards Arrears of salary	*–*	*Rs.7,15,000/–*
(f) Amount paid to occupier for Vacating occupied place	*–*	*Rs.10,00,000/–*

4.1. The Id. AO observed in his assessment order that assessee has released his shares in the property to other co-owner of this property and there is no third party involvement in this transaction. Accordingly, the assessee's claim and brokerage expenses and solicitor's fees is not wholly and exclusively related to transfer of property. Similarly, there is no dispute in the property. Hence, the payment made to occupier for vacation of place is also not wholly and exclusively incurred for transfer of property. The Id. AO also observed that the claim for valuation fees to Architect and Chartered Accountant's fees is also not related wholly and exclusively for transfer of the property. Accordingly, the assessee was asked to furnish the justification for the aforesaid claim of expenses. The assessee vide letter dated 25/06/2018 submitted the receipts for brokerage, solicitor's fees, Chartered Accountant's fees, Architect's fees and receipts of the servants and occupier to whom the consideration was paid for vacating the premises. The Id. AO on verification of the same observed that assessee had paid brokerage of Rs.42,36,500/- to Mr. Hirji N Nagarwalla; amount paid to Mulla & Mulla Craigie Blunt and Caroe of Rs.50,00,000/- towards solicitor fees; Rs.1,00,000/- paid to Chartered Accountant S.S.Chokshi & Co.

4.2. The Id. AO observed that all the three parties were doing the same work for the assessee i.e. mainly arranging meeting with buyer and seller through Shri Markand Gandhi and negotiation of price. In addition to this, the Chartered Accountant was giving advice regarding tax deduction in respect of tax due to the assessee after the transfer of the property and Mulla & Mulla was attending some other work such as will and probate related work and leave and licence work, which are not exclusively incurred for the purpose of transfer of the property. Similarly, payments made to

servants amounting to Rs.7,15,000/- was only for the arrears of salary payable to the said servant of the assessee which is not connected to with the transfer of the property and there was a tenant occupying the said property and that the tenant was merely compensated for vacating the premises and assessee's share of such compensation was Rs.10,00,000/-. The Id. AO observed that the said sum is not for the purpose of transfer of the property. Further, the payment of Rs.57,500/- made to Architect Mr. Mandar M Rishud is for valuation of property and hence, not incurred for the purpose of transfer of the property.

4.3. However, the Id. AO observed that the normal prevailing brokerage, legal fees and other incidental expenses on transfer of the property prevailing in the market is 2% and accordingly, allowed expenses on transfer of Rs.37,00,000/- i.e 2% of assessee's share of sale consideration on adhoc basis (18,50,00,000 2%). The Id. AO categorically held that payment of Rs.1,00,000/- paid to Chartered Accountant; payment of Rs.57,500/- paid for valuation report and payment of Rs.7,15,000/- towards arrears of salary to servant could no way be connected as expenditure incurred wholly and exclusively for the purpose of transfer of the property and hence, disallowed these expenses in entirety. As against the total brokerage of Rs.42,36,500/-; Solicitor fees of Rs.50,00,000/- and amount paid to tenant for vacating premises of Rs.10,00,000/- claimed by the assessee as deduction while computing capital gains, the Id. AO restricted the allowability of expenses on transfer against these heads to Rs.37,00,000/- being 2% of assessee's share of sale consideration. The Id. CIT(A) observed that the Id. AO having accepted the genuineness of expenses could not merely restrict the allowability of the same on the basis of excessiveness and accordingly, held that assessee would be entitled for complete deduction on account of brokerage and solicitor fees. With regard to payment of Rs.10,00,000/- paid to the tenant Shri Stefano Funari for vacating the premises and consequently early termination of leave and licence agreement, the Id. CIT(A) held that unless the tenant is vacated and the property is free for occupation, it could not be sold and hence, the compensation paid to the tenant would be construed as an expenditure incurred wholly and exclusively for the purpose of transfer of property and accordingly, allowable as deduction.*

Aggrieved by these three reliefs granted by the Id. CIT(A), the Revenue is in appeal before us.

4.4. We find that the Id. AO had granted deduction of Rs.37,00,000/- on an adhoc basis @2% towards all expenses incurred on transfer. The dispute before us is only with regard to allowability of brokerage, solicitor fees and amount paid to tenant for vacating the premises. Hence, the deduction allowed by the Id. AO in the sum of Rs.37,00,000/- could be apportioned in the following manner:-

A	*Total expenses allowed by the ld. AO*	*37,00,000*	
	Actual expenses incurred by the assessee on account of aforesaid three items (Rs.42,36,500 + Rs.50,00,000 + Rs.10,00,000)		
B		*1,02,36,500*	
C	*Actual expenses of brokerage*	*42,36,500*	
D	*Actual expenses of solicitor fee*	*50,00,000*	
E	*Amount paid to tenant for vacating premises*	*10,00,000*	
	<u>Amounts allowed by the ld. AO:</u>		

	On Account of Brokerage *A ÷B x C* *37,00,000 ÷ 1,02,36,500 x 42,36,500*		*15,31,290*
	On Account of Solicitor Fees *A ÷B x D* *37,00,000 ÷ 1,02,36,500 x 50,00,000*		*18,07,258*
	On Account of amount paid to tenant for vacating premises *A ÷B x E* *37,00,000 ÷ 1,02,36,500 x 10,00,000*		*3,61,452*
	Total		*37,00,000*

4.4. With regard to claim of deduction on account of brokerage expenses of Rs.42,36,500/- we find that the same has been paid by the assessee to Mr. Hirji N Nagarwala. It is not in dispute that the said brokerage has been paid to Mr. Hirji N Nagarwala only in connection with the sale of this subject mentioned property. The assessee had submitted that Mr. Hirji N Nagarwala and other agents involved had arranged and coordinated the meetings with respective Attorneys of buyers and had also contributed effectively for negotiating final sale consideration of Rs.37,00,00,000/- for the subject mentioned property (out of this, assessee's share is 50% i.e. Rs.18.50 Crores). It is a fact on record that assessee is permanently residing in United States of America (USA) and had employed Mr. Hirji N Nagarwala as broker to negotiate on his behalf with the purchaser and to represent him in all the meetings with the Advocate, Chartered Accountant and all other persons for sale of subject mentioned property. Moreover, the subject mentioned property was released by assessee and his brother in favour of their relative Mr. Keiki R Mehta. It is not in dispute that assessee and his brother were at logger heads with Mr. Keiki R Mehta and certainly the assessee (having residing in USA) requires a representative in India to represent on his behalf before Mr. Keiki R Mehta. Similarly, the other co-owner Mr. Rustom Fali Mehta had also employed M/s. Noshil Estates for protecting his share of 15% of the property and had paid independent brokerage thereon. It is not in dispute that the brokerage amount of Rs.42,36,500/- has been paid by the assessee by cross account payee cheque to Mr. Hirji N Nagarwalla. The assessee has also submitted a confirmation from Mr. Hirji N Nagarwalla dated 21/05/2018 wherein he had confirmed the fact of rendering the following services to the assessee:-

(a) Arranging, coordinating and conducting several meetings with the respective borrowings of the buyer / sellers

(b) Negotiating the final price of Rs.37 Crores with the buyer on behalf of the sellers

(c) Arranging peaceful vacation of the licensees occupying the apartments belonging to the sellers

(d) Assisting with the removal of the occupant of the servant quarters staying in the premises.

4.5. The said confirmation also states that Mr. Hirji N Nagarwalla have attended over a dozen meetings on behalf of the sellers with the purchasers attorney Mr. Markand Gandhi and Mr. Hormaz Dyar Vakil (Attorney of the sellers) to fine tune the sale deed and other documents required to be executed by the sellers. In view of the above, we

have no hesitation to hold that the brokerage amount of Rs.42,36,500/- paid by the assessee to Mr. Hiraj N Nagarwalla would be allowable in full as the deduction while computing capital gains of the assessee as against the sum of Rs.15,31,290/- allowed by the Id. AO towards brokerage on transfer of the subject mentioned property.

4.6. With regard to payment of Rs.50,00,000/- paid to M/s. Mulla and Mulla Craigie Blunt and Caroe, Advocates and Solicitors, the Id.AR stated that the same was paid to look after the legal aspects of the transaction of transfer of the subject mentioned property. In support of this argument, the Id. AR placed reliance on the invoice raised by the said solicitor firm dated 31/12/2015 which are enclosed in pages 10-17 of the paper book filed before us. For the sake of convenience, the entire bill raised by the said solicitor firm is reproduced below:-

	Particulars	*Rs.*	*Rs.*
(a)	*To our professional charges.* *Perusing the copy of the Probate dated 7th October 2008 of the last Will and Testament of late Mrs. Joan Mehta and advising you on the legal implications thereof.*		
(b)	*Preparing the inter se Agreement between Mr. Sorab Mehta and Dr. Rustom Mehta inter alia to the effect that the 30% undivided share in the leasehold land situate at Plot No.147, Middle Colaba, Mumbai 400 005 which includes two houses known as "Sea Side" and "Beach House" with land appurtenant thereto which originally comprised of the K. B. Mehta Trust properties and also the owner occupied tenancy of the flats on the 2nd and 3rd floors and four garages, servant quarters and a dental clinic on the ground floor and property known as "Sea Side" at Colaba (the said Colaba Property) be excluded from the direction contained in Clause 5 of the last Will and Testament of Mrs. Joan Mehta to sell her entire estate and Instead to transfer the said Colaba property into the joint names of Mr. Sorab F Mehta and Dr. Rustom F Mehta after obtaining Probate*		
(c)	*Acting on your behalf in respect of the proposed sale of your undivided 30% share of the land and dwelling house of the property situate at 147 Middle Colaba Road, Mumbai 400 005 Perusing copies of the relevant. Trust Deeds and Title Deeds as well as the various agreements and correspondence pertaining to the said property and advising you thereon and in terms of the agreement dated 9th September 1994 between the late Dr. Fali Mehta and Dr. Keiki Mehta*		
(d)	*Addressing a friendly communication dated 4th June 2012 on your behalf to Dr. Keiki R. Mehta informing him that you were desirous of selling your 30% undivided share in the Colaba property alongwith the various portions in your occupation of which you*		

	were tenant owners and requesting a meeting at a mutually convenient date and time to discuss the same as required under the said Agreement dated 9th September 1994 and reporting to you thereafter		
(e)	*Attending the office of Mr. Markand Gandhi, Solicitor for Dr. Keiki Mehta on 26th June 2012 when Dr Keiki Mehta and his wife Mrs. Zenobia Mehta were also present alongwith Mr Cyrus*		
(f)	*Drafting and finalizing the Leave and License Agreement between Mr. Sorab Fali Mehta and Dr Rustom Fali Mehta as Licensors and Mr. Richard Robert McConkey as Licensee in respect of the flat on the 2nd Floor and for that purpose attending on your brokers from time to time till finalization*		
(g)	*Drafting and finalizing the Leave and License Agreement between Mr Sorab Fali Mehta and Dr. Rustom Fali Mehta as Licensors and Ms Anne Dubourg as Licensee in connection with the 3 floor premises at Sea Side and for that purpose attending on your brokers from time to time till finalization*		
(h)	*Our Mr. H.SR. Vakil attending the office of Mr. Markand Gandhi on 15th November 2012 to further negotiate and discuss further with Dr. Keiki Mehta and reporting to you thereafter*		
(i)	*Addressing a letter dated 29th November 2012 to M/s Markand Gandhi & Co. informing them that since we had not heard from them, it could now be reasonably presumed that his client was not interested in going ahead and that you would be free to deal with the premises and your share in the market.*		
(j)	*Perusing the letter dated 30th November 2012 from Mr. Markand Gandhi in reply thereto and reporting to you.*		
(k)	*Perusing two notices both dated 5th June 2013 from the District Collector of Mumbai wherein it was inter alia stated that the Lease dated 22nd July 1940 had expired on 21 July 2006 and as per the Government's recent Policy dated 12 December 2012, the Lessee had an option to apply for a fresh lease to become owners of the said property as stated therein.*		
(l)	*Obtaining the Government Resolution dated 12 December 2012 and getting the two notices translated and thereafter considering the legal and financial Implications thereof and reporting to you as well as discussing the same with Mr. Markand Gandhi and carrying on correspondence with M/s. Markand Gandhi & Co in connection with the*		

	options available under the said Government Policy dated 12th December 2012 and forwarding copies thereof and reporting to you.		
(m)	*Carrying on voluminous correspondence with M/s. Markand Gandhi in connection with the renewal option of the lease and reporting to you from time to time.*		
(n)	*Drafting and finalizing the Leave and License Agreement in respect of the premises on the ground floor between Dr. Rustom Fali Mehta as the Licensor and IB Hospitality Pvt. Ltd. as the Licensee and for that purpose attending on your brokers from time to time till finalization.*		
(o)	*Drafting and finalizing the Power of Attorney from Dr. Rustom Mehta to Mr. Subodh Choksi.*		
(p)	*Addressing letter dated 21st January 2014 to the office of the Collector of Mumbai in connection with the lease renewal/occupancy right option and putting them on notice that the application for exercising the option to convert Markand Gandhi to jointly discuss and negotiate the proposed sale of your share to Dr Keiki Mehta on your behalf and reporting to you thereafter and obtaining further Instructions from time to time.*		
(q)	*Drafting the Memorandum of Understanding and forwarding the same to you as well as M/s. Markand Gandhi & Co. and holding further discussions with them on your behalf.*		
(r)	*Perusing the files pertaining to the bills for the arrears of property taxes from 2010 to 2013 and advising you thereon.*		
(s)	*Drafting the Deed of Transfer from Mr Cyrus S Nallaseth as executor to Mr Sorab Fali Mehta and Dr. Rustom Fali Mehta as beneficiaries.*		
(t)	*Attending several meetings with Mr. Markand Gandhi of M/s Markand Gandhi & Co., Dr Keiki R Mehta, Mr Cyrus Nallaseth and Mr Hirji Nagarwalla and perusing and finalizing several drafts pertaining to the sale of your share and having the Public Notice, Release Deed, Power of Attorney and all other related documents for the transfer of your share*		
(u)	*Attending on your behalf with Mr Hirji Nagarwalla, carrying on correspondence with your Licensee Mr. Stefano Funari and taking the necessary steps for terminating the Leave and License Agreement prematurely and taking possession and charge of the Third Floor premises on your behalf on 8th December 2015.*		
(v)	*Attending to over 900 emails as well as telephone calls, conference calls on Sundays, holidays and outside office hours and*		

	attending on you and conferring with you from time to time.		
(w)	*And generally advising you in the matter from time to time to bring the matter to a successful close on 30th December 2015.*		*1,00,00,000*

4.7. From the perusal of the bill given by the Solicitor as reproduced supra, we find that items mentioned in (d), (e), (h), (i),(1), (p), (q), (t), (u) & (w) alone could be construed as expenses incurred in relation to the transfer of the subject mentioned property. Hence, the payment of Rs.50 lakhs paid by the assessee to the said solicitor is to be bifurcated towards items allowable in respect of the aforesaid items and items not connected with the transfer of the property. In this regard, we find that the Id. AO had already allowed a sum of Rs.18,07,258/- on account of Solicitor fees, which in our considered opinion, is very reasonable, considering the fact that invoice raised by the solicitor for professional services rendered from the years 2008 to 30/12/2015. Hence, we direct the Id. AO to allow only a sum of Rs.18,07,258/- on account of solicitor fees as deduction while computing capital gains. We hold that the other works carried out by the solicitor firm for which bill has been raised by them on the assessee, cannot be construed as expenditure incurred wholly and exclusively in relation to the transfer of the subject mentioned property.

4.8. With regard to payments made to tenant for vacating the property, we find that assessee and his brother had executed leave and license agreement on 13/04/2013 for premises on the third floor of building "Sea side" for a period of three years with a lock in period of 12 months. Since the subject mentioned property was decided to be sold to Mr. Keiki R Mehta to whom obviously the vacant position was to be given, the assessee and his brother through broker Mr. Hiraj N Nagarwalla negotiated with the licensee Mr. Stefano Funari for cancellation of the leave and license agreement before the lock in period of 12 months. Pursuant to the aforesaid negotiation, Mr. Hiraj N Nagarwalla on behalf of the assessee and his brother, agreed to pay lumpsum compensation of Rs.20,00,000/- (out of which assessee's share is Rs.10,00,000) to the licensee. The aforesaid compensation was paid so as to get the premises vacated by the licensee before the lock in period of 12 months and thus to comply with one of the conditions of the sale of the property. These facts are further confirmed by the solicitor letter dated 02/12/2015 addressed to Mr. Stefano Funari which is enclosed in pages 95-96 and 99-100 of the paper book filed before us. The leave and license agreement is enclosed in pages 52-94 of the paper book. In our considered opinion, this payment would certainly be construed as an expenditure incurred in relation to the transfer of the property and therefore, allowable as deduction. Hence, we direct the Id. AO to allow the compensation paid to the tenant for vacating premises in the sum of Rs.10,00,000/- as an allowable deduction while computing capital gains as against Rs.3,61,452/- allowed by the Id. AO.

4.9. To Sum-up the assessee would be entitled for deduction on account of expenses incurred in relation to transfer of the property as under:-

(i) On account of Brokerage – Rs.42,36,500/-

(ii) On account of Solicitor fees – Rs.18,07,258/-

(iii) On account of compensation – Rs.10,00,000/-
Paid to tenant

5. The ground No.2 & 3 raised by the Revenue are partly allowed."

7. Since similar issues arising out of a similar factual matrix in the case of the brother of the assessee have already been decided by the coordinate bench of the Tribunal, therefore, respectfully following the aforesaid decision, ground No. 1 raised in Revenue's appeal is dismissed. While ground No. 2 and 3 raised in Revenue's appeal are partly allowed with similar directions as rendered in the aforesaid decision.

8. In the result, the present appeal by the Revenue is partly allowed.

C.O. No. 24/Mum./2023
Assessee's Cross Objection-A.Y. 2016-17

9. In his cross objection, the assessee has raised the following grounds:-

> *"The CIT(A) erred in upholding the disallowance of Chartered Accountant's Fees of Rs.1,00,000/- on the ground that the said expenditure cannot be treated as wholly and exclusively for the purpose of transfer of property.*
>
> *2. The CIT(A) erred in upholding the disallowance of fees for valuation of property amounting to Rs.57,500/- on the ground that the said expenditure cannot be treated as wholly and exclusively for the purpose of transfer of property.*
>
> *3. The CIT(A) erred in upholding the disallowance of payment made to servant and occupier amounting to Rs.7,15,000/- on the ground that the said expenditure cannot be treated as wholly and exclusively for the purpose of transfer of property.*
>
> *4. The CIT(A) erred in dismissing the additional ground of computing capital gain on actual sale consideration and not on stamp duty value as per section 50C of the Income Tax Act, 1961.*
>
> *5. The Appellant craves leave to add, alter and/or amend all/any foregoing Grounds of Appeal."*

10. Grounds No. 1 to 3, raised in assessee's cross objection, were not pressed during the course of the hearing due to the smallness of the amount. Therefore, grounds No. 1 to 3 are dismissed as not pressed.

11. As regards ground No. 4, it is the plea of the assessee that while computing the long-term capital gains as per provisions of section 50C of the Act, the benefit of the 3rd proviso to section 50C be provided to the assessee. In this regard, the learned AR placed reliance upon the decision of the coordinate bench of the Tribunal in Maria Fernandes Cheryl vs ITO, (2021) 187 ITD 738 (Mumbai-Trib.). We find that in the aforesaid decision coordinate bench of the Tribunal held that amendment made in the scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 percent to 10 percent are effective from the date on which section 50C, itself was introduced, i.e 1-4-2003. Therefore, respectfully following the aforesaid decision of the coordinate bench of the Tribunal, we direct the Assessing Officer to compute the capital gains after granting the benefit of the 3rd proviso to section 50C of the Act to the assessee. As a result, ground No. 4 is allowed for statistical purposes.

12. In the result, the cross objection filed by the assessee is partly allowed for statistical purposes.

13. To sum up, the appeal by the Revenue is partly allowed, while cross objection filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 18/04/2023

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 18/04/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai