

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 177/MUM/2023
(Assessment Year: 2011-12)**

Padmakar Matondkar

S/o Gopal Matondkar,

Flat No. 401, Kalpatru CHSL
106-Padmaraj CHS Shiv Mandir Road,
Dombivli (East), Thane - 401101
[PAN: AKLPM8941R]

..... **Appellant**

Commissioner of Income-tax

(Appeals)-2, Thane,

Asher IT Park, 6th Floor,

Wagle Industrial Estate

Thane (West),

Thane - 400604 (Near MIDC)

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Rajeshkumar Sirsalewala

For the Respondent/Department : Shri Sridhar Govind Menon

Date : 15.05.2023

Conclusion of hearing : 17.05.2023

Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 05/09/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 20/12/2018, passed under Section 143(3) read with Section 147 of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The grounds raised in the present appeal are directed against the order of CIT(A) confirming the order passed by the Assessing Officer whereby the Assessing Officer had adopted stamp duty value as full value of consideration by invoking provisions of Section 50C of the Act to arrive at Long Term Capital Gain of INR 1,53,86,348/- arising from sale of capital assets and brought to tax INR 12,60,141/-, being Appellant's share of 8.19% in the capital gains so determined, in the hands of the Appellant.
3. We have considered the rival submissions. The contention of the Appellant is that the ownership of the assets, being three separate plots of land, was disputed amongst the legal heirs/descendants of the original owner and their nominees. The disputes were settled in Lok Adalat in a suit for declaration and injunction filed before the Court of Civil Judge (Junior Division), Thane [Regular Civil Suit No. 289 of 2007/Spl. CS No. 260/08] registered on 14/03/2008 and decided on 03/04/2012. The Appellant had no control over the determination of the sale price of the capital assets as the same was determined by the Lok Adalat. The Appellant had, therefore, objected to adoption of the Stamp Duty Value as full value of consideration in terms of Section 50C of the Act by the Assessing Officer during the assessment proceedings. The Assessing Officer failed to appreciate that the capital assets in question were encumbered and therefore, their market value could not be determined at par with the market value of unencumbered capital asset. On the other hand, it was contended by the Revenue that there was no specific direction given by the Court in relation to the valuation of the capital assets sold, and the disputes were settled

by way of a consent decree passed on the basis of consent terms drawn up and agreed upon by the parties to the dispute themselves. Therefore, the Appellant's contention that the Appellant did not have any control over the determination of the market price/sale consideration was without any merit. Further, the sale value of the assets was admittedly below the stamp duty value and, therefore, the Assessing Officer was justified in invoking provisions of Section 50C of the Act to take stamp duty value as full value of consideration for determination of the capital gains arising from transfer of the capital assets.

4. On perusal of the record, we find that it is admitted position that the capital assets transferred were subject matter of a dispute. A suit for declaration and injunction was filed by 16 plaintiffs against 5 defendants seeking inter alia, a declaration that defendants had no right/title/interest in the suit properties; that plaintiffs No. 1 to 8 were absolute owners of the suit properties; and that plaintiffs No. 9 to 14 were entitled to develop specified suit property. The suit properties were originally owned by the Shri Sakharam Mahadev Gokhale who died intestate in 1954 leaving behind sons, daughters and mother as his legal heirs. On demise of the legal heirs, the suit properties devolved upon their respective legal heirs including the plaintiff who acquired 8.19% share in the suit properties. Some of the legal heirs entered into agreements for development of the suit properties with third parties. In the plaint it was also alleged that one of the Defendants, who was an influential person being office bearer in Mira Bhayandar Municipal Corporation, had prepared false documents and the Plaintiffs had also filed criminal complaint. The above said suit was instituted on 14/03/2008 and was contested by the Defendants who also filed written statement. After lapse of

nearly four years, a settlement was reached when the matter was referred to Lok Adalat and consent terms were agreed upon on 03/04/2012. According to the consent terms, the plaintiffs/defendants consented to sale of suit properties to M/s Span Developers and M/s Span Realtors and the suit was decreed in terms of the consent terms.

5. In view of the above facts, we find merit in the contention advanced by the Revenue that the sale consideration for transfer of the capital assets, being the suit property, was decided by the parties to the dispute. However, it cannot be denied that the capital assets, being three plots of land, were subject matter of suit wherein the ownership of the said capital assets and development rights therein was contested by the parties. Therefore, the sale made by the parties was, to that extent, a distress sale which cannot be compared with the sale of an unencumbered property by an owner having undisputed ownership over the property. Since the Appellant had objected to the adoption of stamp duty value in terms of Section 50C(1) of the Act as full value of consideration on the ground that the market value was less than the stamp duty value on account of the aforesaid dispute over right/title/interest of the capital assets, the Assessing Officer was, in our view, under obligation to refer matter to the valuation officer under Section 50C(2) of the Act. Our view is in line with the decision of the Mumbai Bench of the Tribunal in the case of A.T.E Enterprises P. Ltd. Vs. DCIT (2013) 55 SOT 175 (Mum.)(Trib.). Accordingly, we set aside the orders of the Assessing Officer and CIT(A) on this issue and remit the same to the record of the Assessing Officer for re-computation of the capital gain after making reference to the valuation officer and considering the report of valuation officer as

per law. The Assessing Officer shall confront the Appellant with the aforesaid valuation report and grant the Appellant reasonable opportunity of being heard before passing the assessment order. In terms of the aforesaid, Ground No. 3 raised by the Appellant is partly allowed, whereas Ground No. 1, 2 and 4 are dismissed as being infructuous.

6. In result, the present appeal preferred by the Appellant is partly allowed.

Order pronounced on 17.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 17.05.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.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