

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 3711/Mum/2015 (A.Y.2009-10)

Jocky Camilo Fernandes

DD Thakur Wadi,
Near Chawl No.03,
Agar Bazar, Dadar (W)
Mumbai-400 028

PAN: AADPF5163G

..... Appellant

Vs.

ITO-18 (2) (4)

Mumbai-12

..... Respondent

Appellant by	:	Shri Bhupendra Shah
Respondent by	:	Smt. Vranda U Matkari, Sr. AR
Date of hearing	:	15/03/2023
Date of pronouncement	:	15/05/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. Commissioner of Income Tax Appeals-33, Mumbai (for short "Ld.CIT (A)") dated 24.03.2015 u/s. 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2009-10. The assessee has raised the following grounds of appeal:

1. In the facts and circumstances of the case and in law, the Assessing Officer erred in adding Rs 15.64,786/- under the head income from LTCG by adopting the Stamp Duty Valuation u/s 50C even though the Appellant was not the owner of the property and also disallowed exemption of Rs 13,00,000/- u/s 54/ 54F in respect of investment in new house made

2. In the facts and circumstances of the case and in law, the Assessing Officer erred in making additions of expenses even though the case was selected only under AIR Scrutiny

3. In the facts and circumstances of the case and in law, the Assessing Officer erred in disallowing expenses of Rs 77536/- being 20% of various expenses claimed under five heads on ad hoc basis

4. In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeal) erred in confirming all above additions.

5. In the facts and circumstances of the case and in law, the Assessing Officer erred wrongly charging interest u/s 234A, B, C & D in initiating penalty u/s 274 rws 271(1)(c).

The appellant therefore prays follows,

1. To delete the addition of Rs 15.64.786/- wrongly made under the head LTCG by wrongly adopting stamp duty valuation u/s 50C.

2 To delete the additions of expenses made in case of AIR Scrutiny.

3. To delete disallowance of expenses of Rs 77536/- being 20% of various claimed under five heads on ad hoc basis.

4. To delete interest charged u/s 234A, B & C and initiation of penalty u/s 271(1)(c).

2. Brief facts of the case are that assessee Individual filed its return of income on 29.09.2009 declaring total income at Rs. 1,44,352/-. Case of the assessee was selected for scrutiny u/s. 143(3) of the Act. During the year under consideration assessee had income from Business from M/s. Glocaf

Tours & Travels, commission on money transfer from western union money transfer, LIC commission and interest income.

3. AIR information in the case of the assessee was available related to sale of immovable property for the total consideration of Rs. 21,00,000/- (Value as per stamp duty authorities u/s. 50C was Rs.34,35,500/-)in respect of Room No. 9, D.D. Thakurwadi, Near Chawl No. 3, Opp. Vikram Apartments, Agar Bazar, Dadar West, Mumbai. This transaction of sale and further purchase of property amounting to Rs. 13,00,000/- vide dated: 29.10.2010. AO adopted value of Rs. 34,35,500/- u/s. 50C resulting into an addition of income under the head capital gains amounting to Rs. 15,64,786/- and also disallowed claim of section 54F as the same not claimed in the return of income and Net consideration was not deposited in the bank account under CGAS, 1988 before the due date as prescribed in section 54F. In addition to this AO further disallowed expenses claimed by the assessee in his proprietary business M/s. Glocaf Tours & Travels amounting to Rs. 77,536/-. Assessee being aggrieved with this order of AO, preferred an appeal before the Ld. CIT(A), Mumbai. In his order Ld. CIT(A) also confirmed the order of AO and there is no relief to the assessee.

4. Assessee being further with the order of Ld. CIT(A) passed u/s. 250 vide dated: 24.03.2015, preferred this appeal before us. We have thoroughly gone through the order of AO, order of Ld. CIT(A) and submissions of the assessee alongwith case laws relied upon. We have gone through the document executed between assessee and vendor Mr. John Motes D'Souza on 13.03.1991 for purchase of Room No. 9, D.D. Thakurwadi, Near Chawl No.

3, Opp. Vikram Apartments, Agar Bazar, Dadar West, Mumbai, Agreement for Re-Purchase from assessee by developers M/s. Bhoomi Developers, a partnership firm through its partners mentioned in the agreement **dated: 16.01.2009** and owners of the property namely; 1). Prathibha M. Sopankar, 2). Mahesh M. Sopankar, 3). Amul Choudhary, 4). Dr. (Mrs.) Varsha Pravin Bajul and 5). Vidya Chetan Panchal dated: **05.07.2001**. Agreement between assessee and vendor Mr. John Motes D'Souza on 13.03.1991 for purchase of Room No. 9, D.D. Thakurwadi, Near Chawl No. 3, Opp. Vikram Apartments, Agar Bazar, Dadar West, Mumbai was not clear in terms of the transaction, to this extent finding of AO and Ld. CIT (A) is correct, but agreement **dated: 16.01.2009** and agreement **dated: 05.07.2001**, clearly demonstrate about the ownership of the property were with 1). Prathibha M. Sopankar, 2). Mahesh M. Sopankar, 3). Amul Choudhary, 4). Dr. (Mrs.) Varsha Pravin Bajul and 5). Vidya Chetan Panchal and not with assessee. Assessee was merely a tenant for a room. This fact further strengthened with the letter of Asstt. Commissioner, G/North Ward vide his letter no. ACGN/29833/AETP(I), Dated: 17.12.2008, addressed to developer M/s. Bhoomi Developers, in which assessee has been identified as occupant and affected person as tenant on the property entitled to compensation for leaving his claim for re-development of the project.

5. We further observed that this amount of Rs. 21 Lacs received by assessee was mutually agreed upon between assessee and developer under the supervision and monitoring of State Authorities. There can't be any challenge to quantification of this amount as mutually agreed upon and

acknowledged by State Govt. Authorities. There was total 4 occupant tenants in the category of assessee and every body treated in same manner.

6. Now, coming to the question of applicability of section 50C in the case of assessee. Applicability of section 50C is not applicable in the case of assessee, this is also not under challenge as Ld. CIT(A) also agreed with this contention of the assessee vide para 14 and 15 of order. He relied on different facts, hence applied section 50C, otherwise there is no confusion on applicability of section in the case of assessee. As the facts are elaborately been established and discussed now through this order, and relying on various judicial precedents, it can be safely pronounced that section 50C is not applicable on the case of the assessee. AO is directed to delete the addition made considering the provisions of section 50C in the case of assessee. As far as benefit of section 54F is concerned, same is not allowable to the assessee as neither he shown the transaction of sale and purchase, nor claimed the same in return and had not deposited the same as per CGAS, 1988 before due date of filing the return. After so much of the violations assessee can't expect from appellate authority to condone all the defaults and take an extreme lenient view in favour of assessee. **In view of this Ground No. 1 raised by the assessee is partly allowed.**

7. Ground No. 2 and 3 raised by the assessee are interlinked and the same has already been disposed off in favour of assessee by the Ld. CIT(A) vide para 27 of appeal order. In view of this there is no grievance of assessee pending, hence no further adjudication from our side is warranted. **In view of**

this these 2 grounds become infructuous, hence dismissed without any adjudication.

8. Ground No. 4 is general in nature. Ground no. 5 pertains to interest u/s. 234A, 234B and 234C. In this regard it is directed that interest u/s. 234C is fastened to the figures of returned income and can't be changed, hence if there is any charging of interest u/s. 234C over and above the returned figure same directed to be deleted. Interest u/s. 234A and 234B is consequential in nature to be calculated accordingly. **In these terms Ground No. 5 is partly allowed.**

9. **In the result appeal of the assessee is partly allowed.**

Order pronounced in the open court on 15th day of May, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai, दिनांक/Dated: 15/05/2023

Sr. PS Dhananjay.

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai