

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.316/Kol/2023  
Assessment Year: 2007-08**

Gujarat Composite Ltd. 14, Netaji Subhas Road, Kolkata- 700001. (PAN: AABCG 0950 D)	Vs.	Deputy Commissioner of Income Tax, Circle-6(1), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri B. B. Payra, Advocate

Respondent by : Shri Sailendra Kumar Pandey, Addl. CIT, Sr.DR.

Date of Hearing : 12.06.2023

Date of Pronouncement : 09.08.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2022-23/1049616496(1) dated 10.02.2023 passed against the assessment order by DCIT, Circle-6, Kolkata u/s. 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 29.12.2009 for AY 2007-08.

2. Assessee has raised following grounds of appeal:

*"1. That on the facts and circumstances of the case the Ld. C.I.T (A) erred in treating the Land belonging to the Appellant as Depreciable Assets and directing to treat the Gain/ Loss arising out of sale proceed of the said Land as Short Term Capital Gain / Loss.*

*2 That the Ld. C.I.T (A) has failed to establish the facts that no Depreciation was claimed and allowed on the Land belonging to the Appellant which could be verified from the Audited Accounts as well as Income Tax records.*

3 *That the order passed by the Ld. CI.T. (A) relying on the judgments which are not applicable in the case of the Applicant, is bad in law.*

4 *That the computation of Long-Term Capital Gain as made by the Assessing Officer by way of deducting Book Value of the Land from sales proceeds of the Land was erroneous and not in accordance with the Income Tax Act, 1961."*

3. Issue involved in the present appeal is in respect of sale of land for a total consideration of Rs.5.50 Cr. against which assessee had reported long term capital loss of Rs.6,19,381/- which was recomputed by the Ld. AO at Rs.1,98,48,920/- as long term capital gain (LTCG).

4. Brief facts based on the written submission made by the Ld. Counsel in the course of hearing are extracted as under:

*"The Appellant's assessments for the Assessment Years 2004-05 & 2007-08 were reopened u/s. 147 of the Act.*

*During the period relevant to the Assessment Year 2004-05, the Appellant entered into Agreement for sale of land admeasuring 79,698 sq. yards equivalent to 66635.16 sqm. situated at Ahmedabad to Raj Corporation for a total consideration of Rs.5,29,92,240/- against which Rs.53,05,404/- was received during the F.Y. 2003-04. Balance amount was received in the subsequent years and Deed of Sale was executed during the F.Y.2006-07 relevant to the Assessment Year 2007-08. In the Audited Accounts for the year ended on 31.03.2004 the Auditor credited the net amount of sale proceeds of the entire land and other Fixed Assets aggregating to Rs.5,30,53,601/- to the Profit & Loss Account under the head, "Profit on Fixed Assets sold and/or discarded [Net]". On the basis of the Audited Accounts for the year ended 31.03.2004 the Appellant had computed Long-Term Capital Loss of Rs.56,26,708/- on sale of the said land for the Assessment Year 2004-05 after deducting Index Cost of Acquisition from sales consideration. But on the basis of remarks passed by the Auditor in his Notes on Accounts, the A.O. had disallowed the Appellant's claim of Long-Term Capital Loss in the Assessment Year 2004-05 and he had considered the same in the Assessment Year 2007-08 treating the part of the sales proceeds received as Advance against sale of the land. In the Appeal the action of the A.O. was confirmed. As there was no monetary loss and the claim of LTCL of the Appellant would be considered in the Assessment Year 2007-08, no second Appeal for the Assessment Year 2004-05 was preferred.*

*During the F.Y. 2004-05 another Agreement for sale of land at Ahmedabad was also entered into between the Appellant and Shri Ram Truth House Management Pvt. Ltd. for sale of land admeasuring about 65,000 Sq. yards*

equivalent to 54,348.28 sqm. for a total sales consideration of Rs.5,50,00,000/-. As the Deed of Sale of the said Land was executed during the F.Y. 2006-07, the same was considered by the A.O. in the assessment for the Assessment Year 2007-08. Thus in the assessment for the Assessment Year 2007-08 the effects of both the aforesaid sales of the Lands were considered by the A.O.

The A.O. while computing the LTCG of Rs.6,07,611/- on sale of Land to Raj Corporation, Index Cost of Acquisition had been considered at Rs.5,86,18,948/- (As per return) which related to Assessment Year 2004-05. In his Assessment Order dated 29.12.2009 passed u/s. 147/143(3) he had arbitrarily computed the sales proceeds of the land at Rs.5,92,26,559/- as against the actual sales proceeds of Rs.5,29,92,240/- The A.O. had to consider the Index Cost of Acquisition for the Assessment Year 2007-08 which worked out to Rs.6,57,08,929/- [Rs.1,26,60,680/- x 519/100] in place of Rs.5,86,18,948/- i.e. Index Cost for the Assessment Year 2004-05 considered by the A.O.

After taking into consideration the correct Index Cost of Acquisition as stated above, Long-Term Capital Loss worked out to Rs.64,82,370/ only [Rs.5,92,26,559/- as computed by the A.O. less Rs.6,57,08,929/-] as against LTCG of Rs.6,07,611/- computed by the A.O. The Fair Market Value of Land as on 01.04.1981 at Rs.1,26,60,680/- was based on Approved Valuer's Report which was submitted before the A.O. during the course of assessment proceedings.

The A.O. while computing the LTCG on sale of land to Shri Ram Truth House Management Pvt. Ltd had straight way deducted the figure of Rs.3,51,51,080/- being the amount of Deductions as appearing under the Head "Land" in the FIXED ASSETS SCHEDULE "G" from the sales proceeds of Rs.5,50,00,000/- to arrive at the LTCG figure of Rs.1,98,48,920/- which is contrary to law. While adopting the said figure the A.O. had made the following remarks:

*"The assessee has claimed fair market value of land as on 1.4.81 as Rs.1,06,96,050. But assessee valuation report filed could not be reconciled with the sale agreement. Hence the fair market value claimed by the assessee is ignored. Value of land deducted in the fixed asset of balance sheet in AY 2007-08 of Rs.3,51,51,080 is considered. The remarks passed by the A.O. are not acceptable in the eye of law. When the Fair Market Value of Land can be ascertained on the basis of Approved Valuer's Report, the same has to be ascertained and adopted by the A.O. Long-Term Capital Loss was computed at Rs.65,21,210/- on the basis of Approved Valuer's Report and the same was submitted before the A.O. as well as before the Ld. CIT(A)' as per annexure attached herewith. Marked "A".*

On perusal of the Assessment Order it is not understood how the Net Loss had been worked out by the A.O. at Rs.55,32,535/- and how the Long Term Capital Gain had been worked out to Rs.1,39,74,161 by adding Rs.6,07,611/- with Rs.1,98,48,920/- apparently which should had been Rs.2,04,56,531/-

*only and Net Capital Gain should had been at Rs.9,49,835/- on the basis of his own calculation. All these prove that the Assessment was completed hurriedly without application of mind and going through all the relevant records in the possession of the A.O.”*

5. Being aggrieved by the assessment, particularly the method adopted by the Ld. A.O. in computation of LTCG, an appeal was preferred before the ld. CIT (A)-20, Kolkata. Ld. CIT(A) dismissed the appeal with a direction to the Ld. A.O. to treat the Capital Gain worked out by him as Short Term Capital Gain by applying the provision of Section 50 of the Act.

6. Before us, Ld. Counsel has referred to the audited financial statement of AY 2004-05 as well as for the year under consideration to demonstrate how the disclosure was made therein by the statutory auditors. He referred to Note No. 12(d) contained in Schedule 'K' on Significant Accounting Policies and Notes on Account, forming part of the audited Balance Sheet and Profit & Loss Statement, which read as under:

*“(d) The Company has entered into an agreement with a party for sale of land measuring 79,698 Sq. yards at Ahmedabad for a consideration of Rs.529.92 lacs and accordingly profit of Rs.526.87 Lacs on such sale has been credited to the Profit & Loss Account during the year. However, as per the terms of the said agreement the possession of said plot of land shall be given only after the full payment is received, hence the execution of conveyance deed thereof is pending.”*

7. Ld. Counsel also referred to the assessment order passed u/s. 143(3) read with 147 for AY 2004-05 dated 29.12.2009, wherein Ld. AO has given his finding after verification of the documents and evidence that there was no transfer of land as per provisions of sec. 2(47) of the Act in AY 2004-05 and thus, there was no question of computing income under the head capital gain in this respect in AY 2004-05. Ld. AO in assessment for AY 2004-05 has treated the amount received as advance against proposed sale of land.

8. Contrary to the above findings of the Ld. AO in the impugned assessment, ld. CIT(A) has given a direction to the Ld. AO to treat the capital gain as short term capital gain by applying the provisions of sec. 50 of the Act. While giving this direction, Ld. CIT(A) has concluded that the land owned by the assessee was a depreciable asset and the capital gain computed by the Ld. AO should be treated as short term capital gain in terms of sec. 50 of the Act.

8.1. Ld. Counsel has also furnished a computation of long term capital loss on sale of land by taking into consideration the correct set of facts corroborated by documentary evidence placed on record. The computation so furnished in this respect is reproduced as under:

Measurement of Land sold : 65000 sq. yards equivalent to 54348.28 sq. meters.

Out of the total Land sold, 47538 sq. meters relate to Colony Land and the remaining 6810.28 sq. meters relate to Open Land. Value of the Colony Land and Open Land as on 01.04.1981 had been worked out by the Approved Valuer vide his Valuation Report dated 04.01.2006 at Rs.225 & Rs.170 per sq. meter respectively. As per said Valuation Report the value of both the aforesaid Land as on 01.04.1981 is worked out as under:

Rs.225 x 47538 sq. meter	= Rs. 10696050.00
Rs.170 x 6810.28 sq. meter	= Rs. <u>1157747.60</u>
	Rs. <u>11853797.60</u>

Applying the Index Cost for the Financial Year 2006-07, Index Cost of Acquisition of the Land has been worked out as under:

Rs. 11853797.60 x 519/100 = Rs. 61521209.54 Rounded off to Rs. 61521210

After taking into consideration of the above Index Cost, Long-term Capital Gain/Loss on sale of the aforesaid Land has been worked out as under:

Sale proceeds of the Land	Rs. 5,50,00,000
Less: Index Cost of Acquisition as above	Rs. <u>6,15,21,210</u>
Long-term Capital Loss on sale of Land	Rs. <u>65,21,210</u>

9. We fail to understand on the conclusion drawn by Ld. CIT(A) of treating land as depreciable assets and subjecting it to capital gain u/s. 50 of the Act on the premise that land was traded by the assessee as a business asset as reflected in the Balance Sheet of the assessee. The issue contested by the assessee was that Ld. AO was not correct in computing the long term capital gain on sale of land as against the long term capital loss reported by the assessee by taking indexation benefit on the cost of acquisition. Ld. CIT(A) has altogether digressed from the issue and taken a stand unwarranted on the facts of the case.

9.1. To address the issue raised and dealt with by the ld. CIT(A), we first refer to Sec. 50 of the Act which contemplates that capital gain in respect of depreciable asset referred to in section 32(1)(ii) of the Act is to be computed on the basis of block of assets for which depreciation has been allowed u/s. 32(1)(ii) and (iia) of the Act. Ld. Counsel vehemently submitted that land is not a depreciable asset and that assessee has never considered land in its books of account as a depreciable asset. Assessee has never claimed any depreciation nor it has been allowed in the books of account for which reference was made to the audited financial statement forming part of the paper book. Ld. Counsel referred to Schedule 'G' of fixed assets forming part of the audited financial statement wherein land is one of the items reported in the Schedule. It was pointed out that in the gross block and net block, the amount which appeared against land are gross amounts at which the lands were acquired by the assessee. In the same schedule, in the column for depreciation, the amounts are NIL thus, no depreciation whatsoever has been charged by the assessee on land owned by it. Ld. CIT(A) has placed reliance on certain judicial

precedents which are in reference to sec. 50 dealt with the depreciable assets and treatment of capital gain thereon.

9.2. Thus, considering the submissions made by the Ld. Counsel, the factual matrix and the material on record, we set aside the order of Ld. CIT(A) since he has altogether digressed from the issue raised by the assessee before him and had taken a stand unwarranted on the facts of the case.

9.3. The issue contested by the assessee before the ld. CIT(A) was that ld. AO was not correct in computing the long term capital gain on sale of land as against the long term capital loss reported by the assessee by taking indexation benefit on the cost of acquisition. In this respect, ld. Counsel of the assessee has furnished all the relevant details duly corroborated by documentary evidence, placed on record. A computation of long term capital loss on sale of land by taking into consideration the correct set of facts is reproduced above. According to the same, long term capital loss is computed at Rs. 65,21,210.

9.4. Considering the above stated facts duly corroborated by documentary evidence, we find the computation of long term capital loss on sale of land to be proper and allow the claim of the assessee. Accordingly, grounds taken by the assessee are allowed.

10. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 9<sup>th</sup> August, 2023

Sd/-(Sanjay Garg)  
Judicial Member

Sd/-(Girish Agrawal)  
Accountant Member

***Dated: 9<sup>th</sup> August, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata