

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

**ITA No. 2012/Mum/2023
(A.Y. 2011-12)**

Pradeep Mahavir Sharma B-501, Vasant Marvel Grace CHSL Off Western Expressway Highway, Borivali East, Mumbai-400066	Vs.	ITO 32(2)(5) Kautilya Bhawan, Avenue 3, Near Videsh Bhavan, G Block BKC, Bandra East, Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AVZPS8060Q		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri. Prakash Kishinchandani

Date of Hearing	07.09.2023
Date of Pronouncement	25.09.2023

आदेश / O R D E R

PER AMARJIT SINGH :-

1. The present appeal filed by the assessee is directed against the order passed u/s 250 of the Income Tax Act, 1961 ([hereinafter “the Act”] by the Learned Commissioner of Income Tax (Appeals)-44 [hereinafter ‘the CIT(A)'] dated 10.05.2023 for A.Y. 2011-12.
2. The grounds of appeal of the assessee are as under:
 1. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) has erred in reopening the assessment completed u/s 143 (3) r.ws. 117 of the IT Act, 1961 u/s 250 of the Income Tax Act, 1961*

2. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in invoking the provisions of Sec 50C of the IT Act, 1961 and considering the sale consideration of Rs. 35,58,000/- (as stamp duty value) instead of Actual consideration received of Rs 24,00,000/-.*
 3. *In the facts and circumstances of the case and in law, the Commissioner of Income (Appeals) erred in not allowing the Transfer Charges of Rs. 78,556/- as claimed in income tax return while computing the taxable income.*
 4. *In facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not considering the valuation report of the Assistant Valuation Officer, Income Tax Department dated 19-06-2019 where the FMV of property as on 09-02-2021 has been determined at Rs. 30,42,550/- (50% - appellant's share)*
 5. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not considering the fact that the appellant has sold the property under distress sale in the open market.*
 6. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not giving reasonable opportunity to the appellant and passed the order u/s 250 of the Income Tax Act, 1961*
3. Fact in brief is that return of income declaring total income of ₹ 11,09,410/- was filed on 29.09.2011. The return was processed u/s 143(1) of the Act. Subsequently, the AO has received specific information from ITO-32(3)(4), Mumbai that assessee along with Smt. Shobha Gawade have sold an immovable property on 05.02.2011 for total consideration of Rs. 48 lacs whereas stamp

duty value of the said property was ₹ 71,16,000/-. Accordingly, after recording reasons the AO has reopened the assessment u/s 147 of the Act by issuing of notice u/s 148 of the Act on 28.03.2018. The main reasons for reopening was invoking the provision of section 50C of the Act as the assessee had not disclosed the income from long term capital gain as per the stamp duty value of the property sold.

4. During the course of assessment the assessee explained that they have purchased shop located at V Mall Kandivali East, Mumbai jointly with Smt. Vidhyavati V. Jadhav vide agreement dated 05.04.2005 and said property was sold during the year for total consideration for Rs 48 lacs vide sale agreement dated 05.02.2011. The assessee also explained that due to dispute between the parties and in the real estate market buyer of the property was not readily available and also because of acute financial problem they sold proper at the price negotiated with the buyer.
5. During the course of assessment proceedings the assessee has requested the AO to refer the matter to the departmental valuation officer to ascertain correct fair market value of the property because the stamp value adopted by the registration authority was higher then the rates prevailing at that time in the

market. Therefore, the AO has referred the matter to the district valuation officer, Mumbai on 24.12.2018. The AO has not received the valuation report till the passing of the assessment order. Therefore, the AO has computed the long term capital gain at Rs 12,97,215/- after taking into consideration the value of the sold property as determined by the stamp valuation authority.

6. The assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee.
7. Heard the Ld. DR and perused the materials available on record. The assessee along with one Smt. Vidyavati V. Jadhav were the co-owner of the sold property. The said property was sold for Rs. 48 lacs vide the sale agreement dated 05.02.2011. The AO mentioned that value of the property sold as per stamp duty valuation was Rs. 71,16,000/-. Therefore, the capital gain for the purpose of section 50C of the Act was determined at Rs 12,97,215/- after reducing capital gain of Rs. 1,60,659/- already offered by the assessee in the return of income and the AO added the difference of capital gain amount of Rs. 11,36,556/- to the total income of the assessee.
8. Since, the AO had referred the case of the assessee to the DVO for determining the fair market value of the property sold, however, the AO had finalized the assessment u/s 143(3) of the

Act on 24.12.2018 without taking into consideration the report of the district valuation officer which was not available at the time of passing assessment order. In this regard in the ground of appeal the assessee submitted that the district valuation officer vide report dated 19.06.2019 has determined the value at Rs. 30,42,550/- [50% being assessee's share] and the AO has not considered the valuation report.

9. In view of the above facts, I restore this case to the file of the AO for adjudicating the issue in the appeal denovo in accordance with law after taking into consideration the fair market value as determined by the DVO. The AO is also directed to allow the claim of transfer expenses of Rs. 78,556/- incurred by the assessee after verification.
10. Therefore, the ground of appeal filed by the assessee is partly allowed for statistical purpose.
11. In the result the appeal filed by the assessee is partly allowed.

Order Pronounced in Open Court on 25.09.2023

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Place: Mumbai
Date 25.09.2023
ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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