

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2183/M/2023
Assessment Year: 2011-12**

M/s. D.K. Brothers, 108-Regal Diamond Centre, Opera House, Opp Roxy Cinema, Mumbai – 400 004 PAN: AAAFD1314J	Vs.	Income Tax Officer, Ward 19(1)(1), Piramal Chamber, Mumbai – 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Harsh Soni, A.R.
Revenue by : Shri Ajay Singh, D.R.

Date of Hearing : 11 . 10 . 2023
Date of Pronouncement : 10 . 11 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. D.K. Brothers (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 18.04.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2011-12 on the grounds inter-alia that :-

“1. The Ld. Assessing Officer (hereinafter referred to as 'Ld. A.O.')] erred in passing the Assessment Order dated 13/03/2014 under section 143 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] determining the total income of the Appellant at Rs. 45,49,200/- vide order dated 13/03/2014 passed under Section 143 of the Act, 1961 as

against returned Loss of Rs. 90,514/- under the head Long term capital gain, without appreciating the facts and circumstances of the case. The Ld. AO has disregarded the board circular as well as high court judgement in calculating the holding period of the Assets sold and instead of treating long term capital assets consider it as a short-term capital assets & treat the capital gain aroused on it as short-term capital gains instead of long capital gains. The Appellant strongly objects to the action of the Ld. AO in making following additions and disallowances:

Sr. No.	Particulars	Amount (Rs.)
A	Treating the transaction of sale consideration received on sale of office premises No. DC 3112 at G block Bharat Diamond bourse, Bandra Kurla Complex, Bandra east, Mumbai - 400051 as short-term capital gain instead of long-term capital gain & levied tax on the same	45,49,200

2. The Appellant denies any liability to pay interest under Section 234A, 234B, 234C and 234D of the Act. Hence, the same are not leviable. The appellant also prays for the deletion of penalty proceedings U/S 271(1)(c) of the IT Act, 1961 as there is no question of misrepresentation & inaccurate information as well as there is no concealment of income.

3. The appellant prays to add, amend and alter above mentioned grounds of appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : during the scrutiny proceedings it was noticed from AIR information that the assessee has sold immovable property on 08.02.2011 for a sale consideration of Rs.84,33,000/- being the office premises bearing office No.DC3112, built up area 562 sq. ft. in D tower, central wing, third floor along with car parking space situated at Bandra Kurla Complex, Mumbai. Necessary details were called and submitted by the assessee. The Assessing Officer (AO) declining the contentions raised by the assessee taken the date for transfer of the property in question as 15.09.2010 instead of 1991 when the

assessee has got booked the plot for the purpose of computing the capital gain. The AO treated the capital gain as Short Term Capital Gains (STCG) only as the assessee has held the assets for less than 36 months and thereby made the addition of Rs.45,49,200/- on account of STCG and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee has sold the immovable property in question on 08.02.2011. It is also not in dispute that the assessee has got allotment of office premises in question from Bharat Diamond Bourse in Bandra Kurla Complex vide allotment letter dated 28.01.1992. It is also not in dispute that the assessee has made payment of the property in question in installments up to 15.09.2010 on which date the premises was registered in the name of the assessee. It is also not in dispute that the assessee has sold the property in question on 16.10.2010 for a sale consideration of Rs.84,33,000/-. It is also not in dispute that the assessee has computed the Long Term Capital Loss (LTCL) on the sale of the

property in question by taking the allotment date from 1991 to 1992 detailed as under:

F.Y.	Payment made	Index cost
1991-92	1,87,500/-	6,69,912/-
1992-93	8,31,500/-	26,51,105/-
1993-94	3,36,000/-	9,79,082/-
1994-95	4,66,000/-	12,79,251/-
1995-96	3,88,000/-	9,81,736/-
1996-97	2,16,000/-	5,03,528/-
1997-98	1,44,000/-	3,09,006/-
2000-01	82,800/-	1,45,002/-
2005-06	2,16,000/-	3,09,006/-
2006-07	2,16,000/-	2,95,908/-
2009-10	8,00,000/-	9,00,000/-
	Total	90,23,847/-

6. In the backdrop of the aforesaid undisputed facts discussed in the preceding para the AO has proceeded to compute the capital gain as STCG by taking the period of calculation of capital gains as 15.09.2010, the date of registration of the purchase deed/possession taken by the assessee and thereby made the addition of Rs.45,49,200/- on account of STCG. The Ld. CIT(A) upheld the findings returned by the AO.

7. Challenging the impugned order passed by the Ld. CIT(A) the Ld. A.R. for the assessee contended that since he has got the property in question allotted in F.Y. 1991-92 by making payment of Rs.1,87,500/- and the remaining payment has been made in installments up to 2009-10 and sale was registered in favour of the assessee on 15.09.2010, the date of ownership is the date of allotment letter dated 28.01.1992 available at page 5 of the paper book. It is further contended that by taking the date of ownership as 28.01.1992 the assessee has rightly computed the LTCL at Rs.90,541/- and relied upon the order passed by the co-ordinate Bench of the Tribunal in case of Anita D Kanjani vs. ACIT in ITA

No.2291/M/2015 and also relied upon the decision rendered by the Hon'ble Bombay High Court in case of Pr. Commissioner of Income Tax vs. Vembu Vaidyanathan in Income Tax Appeal No.1459 of 2016 order dated January 22, 2019. Further, the Ld. A.R. for the assessee also relied upon the CBDT circular No.471 dated 15.10.1986.

8. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A) and prayed for the dismissal of the appeal of the assessee.

9. By now it is settled principle of law that date of allotment letter of the property of which possession is to be delivered and sale deed is to be registered on subsequent date after making payment of entire sale consideration, is to be taken as a date of acquisition of the property for the purpose of computing the capital gain. Hon'ble Bombay High Court in case of Vembu Vaidyanathan (supra) held that the date of allotment of the property is the date of acquisition unless allotment is not cancelled or the allottee has withdrawn from the scheme. In the instant case the assessee has got the property allotted on 28.01.1992 by making initial payment of Rs.1,87,500/- and thereafter continued to make the payment up to F.Y. 2009-10 and paid the entire sale consideration of Rs.80,00,000/- and ultimately on 15.09.2010 sale deed was registered in his favour. The assessee sold the property in question on 08.02.2011 for a consideration of Rs.84,33,000/-.

10. In the face of the undisputed facts discussed in the preceding paras we are of the considered view that the date of allotment in this case i.e. 28.01.1992 is the date of acquisition which is to be

taken for computing the capital gain. The AO as well as the Ld. CIT(A) have erred in taking 15.09.2010 the date of registration of the agreement in favour of the assessee as date of acquisition to compute the capital gain. So in view of the matter the impugned order passed by the Ld. CIT(A) is hereby set aside and the addition made by the AO and confirmed by the Ld. CIT(A) is deleted. The AO is directed to compute the capital gain by taking the date of acquisition of the property by the assessee as 28.01.1992.

11. Resultantly, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 10.11.2023.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 10.11.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.