

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 2809/Mum/2023

(Assessment Year: 2018-19)

Shantilal Chimanlal Sheth
Office No.9,
3rd Floor, Chemox Hose Barrack
Road Bombay Hospital Lane,
Mumbai-400 020

Vs.

Dy. Commissioner of Income
Tax, Circle 6(4),
Room No.1925, 19th Floor,
Air India Building,
Nariman point,
Mumbai-400 021

(Appellant)

(Respondent)

PAN No. AAOPS0258E

Assessee by : Shri V. C. Shah, AR

Revenue by : Shri Prashant Mahajan, DR

Date of hearing: 13.12.2023

Date of pronouncement : 18.12.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the appellate order passed by Commissioner of Income-tax (Appeals)-54, Mumbai [the learned CIT (A)] for A.Y. 2018-19, dated 12th June, 2023, wherein the appeal filed by the assessee against the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 6th April, 2021, passed by the Dy. Commissioner of Income Tax, Central Circle, 6(4), Mumbai (the learned Assessing Officer), was dismissed.

02. Therefore, the assessee is aggrieved and has preferred this appeal raising following grounds:-

"1. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming indexed cost of Rs. 1,44,61,386/- as against indexed cost of acquisition of Rs. 1,74,34,605/- claimed by the appellant. The learned CIT (A) has ignored the submissions.

2. On the facts and circumstances of the case and in law the learned CIT (A) erred in confirming and not granting deduction for indexed cost of acquisition claimed by the appellant amounting to Rs. 29,73,219/- being indexed cost determined by indexation of amount of Rs. 18,72,105/- which was spent by the appellant prior to the premises bearing No. 406, 407, 408 and 409 were ready for sale.

3. On the facts and circumstances of the case and in law the learned CIT (A) erred in confirming the expenditure of Rs. 18,72,105/- as revenue expenditure however the appellant had submitted that the builder had claimed the maintenance charges from the appellant until the splitting up of the unit amounting to Rs. 18,72,105/- and same was capital expenditure having been incurred until the premises were ready for sale. The appellant capitalized the above charges paid to builder up to the date to obtaining occupation certificate of units sold. This was capital expenditure and becomes cost of acquisition.

4. *On the facts and circumstances of the case and in law the learned CIT (A) erred in passing the order u/s 250 of the IT Act without considering the submissions filed by the appellant during the appellate proceedings."*

03. The brief fact of the case shows that assessee is an individual engaged in the business of financing and also partner in a firm and a Limited Liability Partnership (LLP). He filed his return of income on 2nd November, 2018, at a total income of ₹3,61,82,310/-. The return of income was picked up for scrutiny for the reason of high income reported in the return of no entry in schedule of assets and liabilities of the return of income. The case was picked up for limited scrutiny. The notice under Section 143(2) of the Income-tax Act, 1961 (the Act), was issued on 22nd September, 2019.
04. It culminated into the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) determining the total income of the assessee at ₹3,91,55,530/-. Against this assessment, an appeal was preferred before the learned CIT (A), which was dismissed upholding the order of the assessment. Therefore, assessee is in appeal before us.
05. The only issue in this appeal is with respect to granting of index cost of acquisition / cost of improvement of ₹1,74,34,605/-, claimed by the appellant which was restricted to ₹1,44,61,386/- by the Revenue authorities. The assessee has claimed an expenditure of maintenance

charges paid to society of ₹18,72,105/-, which was incurred by the assessee until the premises were ready for use and same was indexed taking the approved cost of acquisition to ₹29,73,219/-, was denied by the lower authorities.

06. The fact shows that during the year the assessee has sold office premises no.407, 408, 406 and 409 on 18th July, 2017, at a total consideration of ₹2,75,00,000/-. These properties are stated to be acquired on 13th September, 2006. The cost of the acquisition of the above property is ₹52,23,177/-. There is no dispute with respect to the above sums. However, assessee has paid maintenance expenses of ₹18,72,105/- on the above assets from the year 2010 to 2017. This amount is claimed as the cost of improvement or cost of acquisition of the asset. The claim of the assessee is that assessee has purchased office no.402 admeasuring 1,612/- sq.ft. , above office should be split up into four office units. For this purpose an application to be made to the Mumbai Municipal Corporation. Till the permission is obtained, the assessee was not granted the occupation certificate. However, as the assessee has already purchased office and till the time assessee get permission to occupy the above premises, assessee paid maintenance charges to the builder of ₹18,72,105/-. The assessee considered such maintenance expenses paid to the builders till the date of the occupancy of the assets as the cost of the acquisition of the office premises. This also was indexed and claimed as deduction

as cost of acquisition or cost of improvement of the property.

07. The learned Assessing Officer asked the respective details about the conversion of the office into four splitting units, date of possession of the office and also the maintenance expenditure paid. After considering the explanation of the assessee, he held that the maintenance charges paid to the builder up to the date of obtaining occupation certificate cannot be considered as the cost of acquisition. Further, the assessee failed to furnish the copies of maintenance receipts. The assessee also could not bring on record when the assessee applied for splitting of the office and though the assessee submitted the occupation certificate dated 1st March, 2017. The learned Assessing Officer was also of the view that such maintenance charges are payable to the builder on monthly basis which is recurring in nature and not the capital cost, thus, on the maintenance expenses paid by the assessee to the builder amounting to ₹18,72,105/-, was neither considered as cost of acquisition nor as cost of improvement.
08. The assessee aggrieved, reiterated his submission before the learned CIT (A). The learned CIT (A) held that as the assessee has been unable to produce the basic documents like copies of the maintenance charges receipt, purchase agreement, sale agreement and also application filed before Municipal Corporation, seeking permission for splitting up of the unit either during the course of assessment proceedings or appellate proceedings, in the

absence of such basic documentary evidences, the claim of the assessee regarding the nature of maintenance charges remains unproved. The learned CIT (A) further observed that it is a common knowledge that maintenance charges are payable to the builder only after obtaining occupation certificate and possession. As the assessee was not able to bring on record any documentary evidences to prove as to when the assessee applied for splitting up of the office no.402, the claim of the assessee remains unverifiable and cannot be allowed. It was further held that assessee has not been able to discharge the onus cast on him in proving his claim of deduction. Accordingly, learned CIT (A) upheld the denial of deduction of such expenditure as cost of acquisition.

09. The learned Authorized Representative submitted a fact sheet before us that cost incurred during the construction or till the office is put to use, cost incurred till then are all capital expenditure, which shall form part of cost of acquisition of the asset. He submits that till the above office was allowed to be occupied, the assessee has paid maintenance expenditure to the builder, which is already recorded in the books of account of the assessee. All these payments are made by account payee cheque. It is not denied that office purchased by the assessee no. 402, was specially divided into four different units. This fact is also proved by the approval letter of the Mumbai Municipal Corporation. The assessee has also not claimed this maintenance expenses as deduction. Therefore, assessee should be granted the above sum as cost of acquisition of

the asset. He further referred to page no.70 of his paper book, where the details of maintenance expenses paid are shown. He therefore submitted that the claim of the deduction of the assessee is allowable.

010. The learned Departmental Representative vehemently supported the orders of the Lower Authorities. He further submitted that assessee failed to produce the basic evidences before the lower authorities and i.e. one of the reasons the claim of the assessee was denied.
011. We have carefully considered the rival contentions and perused the orders of the lower authorities.
012. The facts and the issue is clear that whether the expenditure incurred by the assessee of maintenance expenditure paid to the builder or society, amounting to ₹18,72,105/- paid by the assessee from the date of purchase of office no.402 till the occupation of the office after split up into four units approved by the Mumbai Municipal Corporation dated 1st July 2017, can be considered as the cost of the acquisition of the assets or cost of improvement of the assets which can be granted to the assessee at indexed value for computation of capital gain on sale of the assets.
013. According to Section 48 of the Act capital gain shall be computed by deducting from the full value of consideration, [1] expenditure incurred wholly and exclusively in connection with such transfer and [2] the cost of acquisition of the assets and the cost of any

improvement thereto. For determining the cost of acquisition, what is relevant is the date on which the capital asset is acquired by the assessee. In the present case, the maintenance charges are paid by the assessee which is not the cost of the acquisition of the asset.

014. However, whether the same can be considered as the cost of improvement of asset or not is the issue. In the present case, the assessee acquired one unit of the office which was splitting up into four units of the office and till the permission is received from the respective municipal corporation, the assessee incurred maintenance charges to the society. The onus to prove the cost of improvement is always on the assessee. In the present case, the assessee could not produce the relevant evidences before the lower authorities and for this reason, mainly this deduction was not allowed. Before us, also the assessee has merely produced the details of payment. Respective receipts of maintenance charges paid are not produced. In view of this, we set aside this issue back to the file of the learned Assessing Officer with a direction to the assessee to substantiate its claim before the learned Assessing Officer by producing the relevant receipt and also the certificate of the society along with other details mentioned by the LD CIT {A} and to show how the above expenditure can be considered as cost of improvement of the asset. The learned Assessing Officer may examine the claim of the assessee and decide the issue in accordance with law. Accordingly, Ground no 1 to 3 of the assessee is allowed for statistical purposes.



015. Ground no 4 is general in nature and hence dismissed.

016. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.12.2023.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 18.12.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai