

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.1294/Del/2020  
(Assessment Year: 2011-12)  
Dabur India Ltd, Vs. ACIT,  
8/3, Asaf Ali Road, Circle-7(1),  
New Delhi New Delhi  
(Appellant) (Respondent)  
**PAN:AAACD0474C**

Assessee by : Shri Rohit Jain, Adv  
Ms. Deepashree Rao, CA  
Shri Shaurya Jain, CA  
Revenue by: Shri Vivek Kumar Upadhyay, Sr. DR  
Date of Hearing 15/02/2024  
Date of pronouncement 24/04/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1294/Del/2020 for AY 2011-12, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-3, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 1/10175/18-19 dated 25.02.2020 against the order of assessment passed u/s 143(3)/147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.12.2018 by the Assessing Officer, ACIT, Circle-7(1), New Delhi (hereinafter referred to as 'Id. AO').
2. The assessee has raised the following grounds before us:-

*"1. That the both Ld. CIT(A) and Ld. AO erred in passing order u/s 147/143(3) which was beyond the expiry period of 4 years from the original assessment year AY 2011-12 and accordingly under law is time barred and hence the jurisdiction for re-assessment u/s 148 is bad in law. It is stated that the provisions of section 151 are not applicable as the transaction in question has not occurred during the AY 2011-12.*

*2. Without prejudice to the aforesaid ground, the both Ld. CIT(A) and Ld. AO based on same set of facts, has erred in applying provisions of section 50C/43CA to enhance the sale consideration of the Immovable Assets at Rs 93,50,000/-by adopting the value on the date of registration of sale deed and erred in not taking the year of sale consideration received and possession given. The addition made of Rs 69,50,400/- is bad in law and is required to be deleted.*

*3. For the year under consideration, the both Ld. CIT(A) and Ld. AO has erred in holding that capital gain is required to be determined in the year of registry of sale deed and not in the year in which sale consideration received and possession given under law per the proviso 1 and 2 of section 50C.*

*4. That the both Ld. CIT(A) and Ld AO has erred in understanding the fact, that the stamp duty was already paid in the AY 2007-08 by the purchaser as per the prevailing stamp valuation, however the said property was re-registered in AY 2011-12 due to some technical objection raised by the registrar and the same have been registered after removal in the financial year 2010-11.*

*5. That the both Ld. CIT(A) and Ld AO has erred in enhancing the book profit u/s 115 JB with the capital gain computed as per section under section 50C of the Income Tax Act and the same requires to be deleted.*

*6. The both Ld. CIT(A) and Ld Asstt. Commissioner of Income Tax has erred*

*and ignored to set off the Long term capital gain with the carried over loss of earlier year which include Rs 92,49,929/ for the assessment year 2002-03 as the same was not been carried over due to the expiry of 8 years.*

*7. That the both Ld. CIT(A) and Ld AO. has wrongly charged the interest u/s 234A and 234B under the IT Act and the same requires to be deleted."*

3. We have heard the rival submissions and perused the material available on record. The assessee, M/s Dabur India Limited, is engaged in the business of manufacturing and trading of herbal products of health, personal care, cosmetics and FMCG products etc. Return of income for assessment year 2011-12 was filed declaring income of Rs.253,24,04,903/-. Regular assessment was completed vide order dated

19.03.2015 passed u/s 143(3) of the Act assessing total income at Rs.296,28,03,260/- after making certain disallowances/additions. This assessment was sought to be reopened by the Id AO vide issuance of notice u/s 148 of the Act on 31.03.2018 for the AY 2011-12. The assessee vide letter dated 16.04.2018 and 10.07.2018 submitted that the original return filed by the assessee may be treated as a return filed in response to notice u/s 148 of the Act. The assessee sought for furnishing of reasons recorded for reopening the assessment from the Id AO, which were duly furnished by the Id AO. In the reasons recorded, it is stated that certain information was purportedly received from DDIT (I&CI), Ranchi vide letter dated 20.03.2018 (without any supporting/corroborative documents) regarding sale of immovable property by the assessee vide sale deed No.3162/2735, dated 20.09.2010, wherein the sale value of the property was recorded at Rs.23,99,600/-, whereas stamp duty value of the same was Rs.93,50,000/-. Accordingly, it was alleged that the difference between the stamp value and consideration being Rs.69,50,400/- (Rs.93,50,000 - Rs.23,99,600) is taxable under section 50C of the Act.

4. For better appreciation of the issue in dispute before us, the following facts would be relevant for our consideration:

(i) On 26.02.2004, an agreement to sale was entered by the assessee with Shri Mahesh Kumar Lath and Shri Naveen Anand (both being residents of Jharkhand state) for sale of the following assets for total credit consideration of ₹4,53,00,000/-:-

a) Factory premises, G.M. Bungalow, Nepali ( Quarters and open land situated at Plot No. 423, 424, 425, 440, 442 and Settlement Plot No.69, Thana, Jasidih, Sub Registry and Subdivision- Deogarh, Dist Deogarh (Santhal Parganas) having area of 12 Bighas 3 Kottahs, 4 Duris;

(b) Directors Bungalow situated at Settlement No.85 and 98, Town Plot No.422, Dhawni, having an area of 0 B, 13 K0Db. A.D. Corresponding to 0.76 acre (property under consideration);

(c) Hill Range measuring 1.27 Acres, Plot No.20, Jama Bandi No.90, Mauza Dhawni, Thana & P.S.Deograh - owned by Mr. Ashok Burman.

(ii) The aforesaid consideration was received by the assessee and possession of the properties were handed over by the assessee to the buyer in July 2006.

(iii) The gain arising on sale of aforementioned properties were duly reflected in the audited financial statements of the assessee company as on 31.03.2007.

(iv) Return of income for AY 2007–08 declaring capital gains arising in respect of aforementioned transaction was filed on 26.10.2007.

(v) Sale deed was executed clearly mentioning the agreed consideration of ₹4,26,99,600/- in respect of factory premises and Directors bungalow on 13.11.2007.

(vi) The sale deed was presented for registration on 03.11.2008. However, the Sub-Registrar refused the registration and in this regard, the Hon'ble High Court of Jharkhand has passed an order on 12.03.2013 in WP(c ) No. 5222 of 2012.

(vii) On 20.09.2010, on account of certain objections, local registration authority, inter alia, in respect of property mentioned above i.e. Director's Bungalow contending that the impugned property could not have been transferred to a third party and required the buyer to re-register the impugned property for the second time, the same was done vide sale dated 20.09.2010, vide document No. 3162/2735 . In these facts and circumstances, the buyer once again had to pay the stamp duty as per the circle rate prevailing in the year 2010. Based on this

registration of the sale deed, assessment for the AY 2011-12 was sought to be reopened by the Id AO.

(viii) As stated earlier, assessee had declared capital gain on account of sale of the above mentioned property for AY 2007-08 in the return of income itself and assessment for AY 2007-08 stood completed u/s 143(3) of the Act on 14.02.2011 accepting the offer of capital gains made by the assessee in the return of income.

5. Hence, the aforesaid facts containing the chronological list of dates and events clearly goes to prove that:-

i. consideration of sale of the property had been duly received by the assessee in AY 2007-08 itself;

ii. possession of the property was duly handed over by the assessee way back in AY 2007-08 itself;

6. Hence, the transaction of sale actually got concluded in AY 2007-08 itself and assessment u/s 143(3) of the Act was also framed accepting the stand of the assessee. While this is so, for the very same property, how can there be capital gains in AY 2011-12. Admittedly, there was no reopening made for AY 2007-08 or revision proceeding made u/s 263 of the Act for AY 2007-08 disturbing the findings recorded by the Id AO with regard to capital gains in the scrutiny assessment proceedings for AY 2007-08 vide order dated 14.02.2011. In our considered opinion, mere execution of the sale deed dated 20.09.2010, which was effectively a registration deed on account of certain objections raised by the local authorities could not fasten any capital gains tax liability on the assessee for AY 2011-12 when the capital gains for the very same property had already offered by the assessee and assessed by the Id AO in scrutiny assessment proceedings in AY 2007-08. This view of ours is further fortified by the decision of the

Hon'ble Supreme Court in the case of Poddar Cements reported in 226 ITR 625 (SC). Hence, there cannot be any application of provisions of section 50C of the Act for the subject mentioned property in AY 2011-12 when there cannot be any assessment of capital gains per se on the subject mentioned property in AY 2011-12. Infact, similar issue came up for the consideration before the Hon'ble Gujarat High Court in the case of PCIT Vs. Dipak Govind Bhai Dalwadi reported in 147 taxmann.com 393 (Guj HC) dated 12.12.2022, wherein it was held as under:-

*"8. We could not see any error in the Tribunals findings because undisputedly the issue relating to transfer of land to M/s. Aanya Developers in A.Y.2009-10 had attained finality and against the additions made no appeal has been preferred by the assessee and, therefore, the Tribunal is right in observing that the issue has been examined and taxed in A.Y.2009-10 on the basis of Banakhat (agreement to sale) dated 24-7-2008. The department has also considered the same as transfer in the Assessment order in A.Y.2009-10. Charging capital gain tax on the very same land on the basis of final execution of sale deed amounts to taxing the same twice over, which is not permissible."*

7. In view of the above observations, we hold that very assumption of the jurisdiction by the Id AO u/s 147 of the Act is illegal and in any case, there cannot be any assessment of capital gains on merits and on law for AY 2011-12. Accordingly, the grounds raised by the assessee are allowed.

8. In the result, the appeal of the assessee s allowed.

Order pronounced in the open court on 24/04/2024.

-Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

-Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 24/04/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi