

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 3400/MUM/2024 : **A.Y : 2013-14**

Amar Ramkrishna Gharat,
Ramkrishna Niwas, At Kavesar,
Ghodbunder Road, Waghbil,
Thane (W), Mumbai 400 607.
PAN : AHPPG7248A (Appellant)

Vs. Income Tax Officer, Ward 1(1),
Thane. (Respondent)

ITA NO. 3401/MUM/2024 : **A.Y : 2013-14**

Ravi Ramkrishna Gharat,
Ramkrishna Niwas, At Kavesar,
Ghodbunder Road, Waghbil,
Thane (W), Mumbai 400 607.
PAN : AIJPG7732L (Appellant)

Vs. Income Tax Officer, Ward 3(2),
Thane. (Respondent)

Appellant by : **Shri Nilesh Kariya**
Respondent by : **Shri Manoj Kumar Sinha**

Date of Hearing : **20/08/2024**
Date of Pronouncement : **20/08/2024**

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

Both these appeals involve a common question and as such they are being disposed of by this common order. The appeals relate to Asst. Year 2013-14. The

appellants are real brothers. The appellants/assesseees alongwith three others had executed two registered Conveyance Deeds in respect of a landed property at Mauje Kolshet, District Thane in which the assesseees and the other co-owners had equal share. The details of the Conveyance Deeds are as under :-

<i>Details of land sold</i>	<i>Market value as per Stamp Valuation Authority as on the date of registration</i>	<i>Assessee's 1/5 share out of the same</i>
<i>Survey no. 171, 171/5, 175/6, 188/1, 189/6, 191/4, 280/3, Mauje Kolshet, Thane land admeasuring 10260 sq. mtrs</i>	<i>Rs.12,53,83,500</i>	<i>Rs.25076700</i>
<i>Survey no. 216, 216/2, Mauje Kolshet, Thane land admeasuring 4080 sq. mtrs</i>	<i>Rs.3,36,57,600</i>	<i>Rs.6731520</i>
	<i>Total</i>	<i>Rs.31808220</i>

2. The assessee, Shri Amar Gharat had filed his Return of Income (RoI) for Asst. Year 2013-14 on 08.07.2013 declaring a total income of Rs.9,11,320/- while the other assessee, Shri Ravi Gharat had filed his RoI for Asst. Year 2013-14 on 25.10.2013 declaring a total income of Rs.13,93,871/-. The Assessing Officer, on the basis of information contained in AIR and Index II, discovered about the transaction of sale of land vide Document Nos. 6448 & 6449/2012 dated 06.07.2012. The Assessing Officer found that the government valuation of the land was in excess of the consideration shown in the Conveyance Deeds, as a result of which the Assessing Officer by orders dated 17.12.2018 and 20.12.2018 made an addition of 1/5th share of the assesseees, each totalling to Rs.3,18,08,220/- under Section 50C of the Income Tax Act, 1961 ('Act' for short) with consequential order of interest, etc.

3. Before the Commissioner of Income Tax (Appeals) ('CIT(A)' for short), the appellants contended that the Assessing Officer was in error in applying provisions of Section 50C of the Act to the transaction of relinquishment of occupancy rights. In short, it was contended that mere relinquishing of occupancy rights cannot invite provisions of Section 50C of the Act. It was also contended that the Assessing Officer could not have adopted the full value of consideration without allowing the benefit of cost of acquisition while calculating the Long Term Capital Gain. There were certain other grounds raised *inter alia* about non calling of report of the Departmental Valuation Officer (DVO).

4. The CIT(A) by orders dated 31.10.2023 and 29.01.2024 refused to accept either of the contentions raised by the assessee. However, the CIT(A) has found that it was incumbent upon the Assessing Officer to determine the indexed cost of acquisition of the capital asset from the concerned Revenue authorities by obtaining comparable transactions/registration rates in same area. Thus, while confirming the invocation of provisions of Section 50C of the Act, the CIT(A) has directed the Assessing Officer to allow deduction on account of indexed cost of acquisition of the capital asset under consideration. A perusal of the impugned orders show that the appellants had not submitted any written submission during the course of appellate proceedings and the appeals came to be decided *ex parte*.

5. We have heard the learned AR for the appellants and the learned DR. Perused record.

6. In this case there is a delay of 184 days in filing appeal by Shri Amar Gharat and 94 days in respect of Shri Ravi Gharat. It is submitted by the learned AR that the notices issued by the CIT(A) went to the spam folder and were not noticed by the assesseees or their representatives. It is submitted that the delay is not on account of any deliberate inaction or negligence. The same ground is also pressed into service to contend that the *ex parte* orders passed by the CIT(A) need to be set aside.

7. The learned DR has submitted that sufficient opportunities were granted to the appellants both before the Assessing Officer as well as the CIT(A) and the appellants did not file reply before the Assessing Officer nor produced any relevant material before the CIT(A). It is submitted that the Assessing Officer was justified in invoking the provisions of Section 50C of the Act, which orders have been confirmed by the CIT(A) while granting the limited relief of indexed cost of acquisition.

8. We have considered the submissions made. It is necessary to note that normally the court/tribunal would prefer disposal of the matter on merits rather than on technicality. The issue would depend upon the facts and circumstances of each case. In the present case, the Assessing Officer has found that no reply was filed and even before the CIT(A), the appellants did not file any submissions on the ground that intimation/emails were not noticed as being lodged in the spam folder. Considering the overall circumstances, and in the interest of justice and fair disposal of the matter, we find that the appeals can be remitted back to the file of CIT(A).

9. In the result, the delay in filing the appeals is hereby condoned. The impugned orders passed by the CIT(A) are hereby set aside. The appeals filed by the appellants are restored to the file of the CIT(A) for disposal according to law. The appellants/assesseees shall diligently prosecute and co-operate for disposal of the appeals.

Order pronounced in the open court on 20.08.2024.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 20.08.2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai