

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**I.T.A No.670/Mum/2024
(Assessment Year 2015-16)**

M/s Rubinsha Exports Pvt Ltd A-191, TTC MIDC Area, Thane – Belapur Road, Khairne Village, New Mumbai-400 705 PAN: AAACR2125G	vs	DCIT, Circle-8(1)(1), Mumbai 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Ms. Sailee Gujarthi a/w Naziya
Sayed
Respondent by : Shri Sunny Kachhwaha, Sr.DR
Date of hearing : 07/10/2024
Date of pronouncement : 21/10/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16, date of order 19.12.2023. The impugned order was emanated from the order of the Learned Deputy Commissioner of Income-tax, Circle-8(1)(1), Mumbai, order passed under section 143(3) of the Act, date of order 09/11/2017.

2. The assessee has taken the following grounds: -

“1. On the facts and in the circumstances of the case and in law, the honourable CIT(A) has erred in confirming an addition made by the Ld. AD of Rs. 85,17,081/- u/s 50C of the Income Tax Act, 1961 without appreciating the facts of the case in proper perspective. Hence, the appellant requests your honour to delete the addition of Rs. 85,17,081/- made under section 50C of the Income Tax Act, 1961.

2. The learned CIT(A) is not justified in upholding the assessment of the long-term capital gains on the alleged transfer of property during the AY 2015-16, by invoking the provisions of section 50C of the Income Tax Act, 1961 under the facts and in the circumstances of the appellant's case. The learned CIT(A) failed to appreciate that there was no transfer of the property during the year under appeal and hence, the computation of the capital gains for the year under appeal is opposed to law and facts of the appellant's case and therefore, the capital gains assessed ought to have been deleted.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the addition u/s 50C of the Income Tax Act, 1961 of Rs. 85,17,081/- merely based on registration of property in AY 2015-16 without appreciating the evidentiary documents furnished by the appellant.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the addition u/s 50C of the Income Tax Act, 1961 of Rs. 85,17,081/- merely based on registration of property in AY 2015-16 without appreciating that the transfer was undertaken in the AY 2001-02 as per section 2(47) of the Income Tax Act, 1961.

5. Without prejudice to the Ground of Appeal no. 1, 2 3 and 4, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that section 50C is not applicable in the case of appellant as the transfer was affected prior to introduction of section 50C in statute

6. The Assessing Officer has transgressed his authority in requiring the appellant to submit documentary evidence of a 17 years old transaction without any empowering provision in the Act or an order or consent or approval from the higher authorities to call for such evidences pertaining to a 17 years old transaction.

7. On the facts and in the circumstances of the case and in law, that during the FY 2014-15 the appellant sold shares which resulted in Short Term Capital Loss of Rs. 2,07,463/-. The Ld. AO erred in calculation of Long Term Capital Gain Income for FY 2014-15 without setting off the said Short Term Capital Loss of Rs. 2,07,463/-. Therefore, your honour is requested to consider the provisions of Section 70 of the Income Tax Act, 1961 which allows the appellant to carry forward the Short-Term Capital Loss and/or to set off the said Short Term Capital Loss with Long Term Capital Gains of the year under consideration.

8. In Addition to ground of appeal no. 1, 2, 3, 4, 5, 6 and 7 the appellant hereby reserves the right to add, alter, amend or delete any grounds of appeal.”

3. The brief facts of the case are that the assessment was framed under section 143(3) with addition amount to Rs.85,17,081/- for contravening section 50C of the Act. The assessee sold a property at Lower Parel to M/s Hallmark Industries in the month of September 2020 amount to Rs.31,82,500/-. As per the assessee, the execution of registration of the said property was the duty of the purchaser. The assessee was pursuing for the registration; and finally, the registration was executed on dated 20/09/2014 of the said property, Unit No.450 admeasuring 950 sq.ft. in the building “A-1”, Shah & Nahar Industrial Estate, Dhanraj Mills Compound, Lower Parel, Mumbai-400013. The Id.AO found that the stamp duty value of the property was amount to Rs.1,09,06,500/-. The Id. AO calculated the capital gain in pursuance of section 50C of the Act and added back amount to Rs.85,17,081/- with the total income of the assessee. Being aggrieved, the assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) rejected the assessee’s claim and upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Id.AR vehemently argued and filed a written submission with additional evidence before the bench related to its appeal. The Id.AR argued that the

property was sold during September 2020. The possession of property was handed over, but the execution of registration was the duty of the purchaser as per the agreement, enclosed in **APB pages 47 to 49**. Finally, the property was registered and copy of the registration certificate is attached with APB. The Ld.AR further stated that the assessee has not taken any amount from the purchaser during this impugned assessment year. The entire amount of transaction was completed during the F.Y. 2020-21. But it is accepted that the assessee was not able to submit any transaction details before any of the revenue authorities. For submitting the additional evidence, the Ld.AR submitted the following documents as a proof of transactions of the property, as additional evidence. The assessee filed the following documents, which are as follows: -

Sr.No.	Particulars	Page Numbers
1	<i>Letter from society confirming possession and operation of Hallmark Industries (buyer) from the immovable property from 12 September, 2000.</i>	1
2	<i>Letter dated 15 December 2004 written to Central Bank of India by Hallmark Industries by submitting sale deed dated 12 September 2000 in connection with sanction letter Letter</i>	2
3	<i>Letter dated 26 April 2005 written by Hallmark Industries to Shah and Nahar Industrial Estate for payment of maintenance charges of the immovable property</i>	3
4	<i>Correspondence exchanged with bank for obtaining bank statements for earlier years.</i>	4-8
5	<i>General Ledger of Shah & Nahar Industrial Premises reflecting payments towards Immovable Property (Unit No. 450) in FY 2012-13</i>	10
6	<i>Extract of bank Statements of Hallmark Industries corresponding to 6 payment of maintenance charges for Unit No. 450 as matching with the General Ledger at point 5 above</i>	11

5. The Ld.AR further argued that the purchaser had proceeded to the Central Bank for mortgaging the said property. The bank had accepted the property as

collateral security of the borrowing of the assessee. Therefore, here it is clear that the property is possessed by the purchaser. The said letter dated 01/12/2020 issued by Central Bank of India is annexed in **APB page 80**. Further, the letter of confirmation of possession issued by the Shah & Nahar Industrial Premises (A-1) Co-operative Society Ltd, vide letter dated 29/05/2024 is annexed in **APB page 82** as proof of possession of the said property. But it is accepted fact that the additional evidence was not filed before any of the authorities below.

6. The Id.DR vehemently argued and relied on the orders of the revenue authorities, but related to additional evidence, the Id.DR had not made any objection for acceptance of the additional evidence.

7. We heard the rival submission and considered the documents available in the record. On factual aspect, the assessee was not able to show any transactions related to the payment received for transferring the property in 2020 and also the date of agreement was beyond 14 years which is not registered. The revenue has invoked the section 50C, but the arguments of the Id.AR is that the section 50C is implemented from the year 2012 but not for the impugned F.Y. 2000-01. Considering the factual matrix, it is found that the revenue calculated the capital gain by pursuing Section 50C in the year of registration of the said property. But assessee took the plea that transfer, and possession were completed in the year 2020 and the execution of registration is the duty of purchaser. In the favour of the argument the Id. AR relied on additional evidence which are filed before the bench. In our considered view we accept the additional evidence of the assessee. We find that the said additional evidence are never filed before any of the revenue authorities, which are fresh before the Bench.

Accordingly, we find that the further opportunity should be allowed to the assessee for verification of the said additional evidence of the assessee. Accordingly, the appeal of the assessee is remanded to the file of the Id.AO for verification of the additional evidence and accept the same. The Id.AO is also directed to consider the observation of the ITAT while passing the order. The issue is entirely factual in nature, so the judgments relied by the Id. AR are only for academic purposes. Needless to say, that the Id. AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence /explanation submitted by assessee in its defense shall be admitted by the Id.AO and adjudicate in accordance with law. We order accordingly.

8. In the result, the appeal of the assessee bearing **ITA No.670/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 21st day of October 2024.

Sd/-

(OMKARESHWAR CHIDARA)

ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 21/10/2024

Pavanan

sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,
(Asstt. Registrar), **ITAT, Mumbai**