

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

**BEFORE SHRI. NARENDRA KUMAR BILLAIYA (ACCOUNTANT MEMBER)  
 AND  
 SHRI ANIKESH BANERJEE (JUDICIAL MEMBER)**

**I.T.A. No.559/Mum/2023  
 (Assessment year 2016-17)**

<b>Shri Shivang Arjun Desai    (Legal representative of Late Shri    Arjun Balvantrai Desai)    601, 6<sup>th</sup> Floor    Shandeep Building, S.K. Barodawala    Road, Altamount Road, Mumbai    PAN:-AARPD9173C</b>	<b>vs</b>	<b>Dy. Commissioner of Income-tax,    Circle 3(1)(1), Mumbai    Aayakar Bhawan, M.K. Road,    Mumbai-400 020</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Ms Purvi Gupta
Department represented by	Shri Ram Krishna Kedia (SR AR)

Date of hearing	10-12-2024
Date of pronouncement	11-12-2024

**ORDER**

**PER :ANIKESH BANERJEE (JM):**

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC)[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 for Assessment Year 2016-17, date of order 02/02/2023. The impugned order was emanated from the order of the Learned

Assistant Commissioner of Income-tax, (for brevity the Ld. AO) Valsad Circle, Valsad, order passed under section 143(3), date of order 22/02/2018.

2. The assessee has taken the following ground of appeal:-

*“On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the decision of the Ld.AO in considering the sale consideration of the land as the purchase price of the land and computing the STCL at Nil instead of Rs. 12,57,500. Consequently, the Hon'ble CIT(A) erred in confirming the disallowance made by Ld. AO of the set-off of STCL claimed by the appellant amounting to Rs.12,57,500 u/s 70(2). The appellant prays that the sale consideration be taken at Rs. 3,65,000 and set-off of STCL disallowed may kindly be allowed.*

*The appellant craves, leave to add, amend, omit any of the grounds of appeal before or during the hearing of the appeal, if so advised.”*

3. After hearing the submissions of both parties and reviewing the documents on record, we proceed to dispose the appeal filed by the assessee. The assessee has purchased immovable property on 02/05/2014 for a consideration of Rs.28,80,000 jointly with Shri Mahindra V Desai. The property was sold to M/s Krishna Developers, where the assessee is one of the partners, for a consideration of Rs.3,65,000/- on 22/12/2016. Considering the 50% share of the firm, the assessee claimed short term capital loss (STCL) on account of transfer of immovable property amount to Rs.12,57,500/-. The stamp duty value of the property was amount to Rs.1,75,950/-, but the sale consideration of the said property was amount to Rs.3,65,000/-. The assessee adopted higher value during calculation of the STCL, i.e. amount to Rs. 3,65,000/-. The said loss was adjusted with the short-term capital gain during the impugned assessment year. The assessment was completed and the claim of STCL was rejected due to lack of

genuineness in transaction and lower sale value. The aggrieved assessee filed an appeal before the Ld. CIT(A) and the Ld.CIT (A) upheld the impugned assessment order. Being aggrieved the assessee filed appeal before us.

4. The Ld.AR filed a written submission, which is kept in the record. The Ld.AO has rejected the loss, occurred on transfer of immovable property on the ground that the assessee had purchased the property in the value of Rs.28.80 lakhs and sold in low price without considering the appreciation of the value of the property. The assessee incurred loss as the property was sold for Rs.3,65,000/-, though the Registrar had valued the property at Rs.1,75,950/-.

5. The assessment was also completed related to co-owner Shri Mahendra V Desai and Ld.CIT(A)Addl/JCIT(A)-1, Coimbatore had accepted the appeal petition of the assessee and allowed the appeal by order dated 22/12/2018 for A.Y. 2016-17. The relevant appeal order is placed in the record.

6. The loss is incurred by transaction through a registered deed duly executed by the assessee during the sale of the property and copy of the registered deed is annexed in Annexure 'C' and the translated version is annexed in Annexure 'D' in the assessee's paper book. So, the entire proceeding related registration of the property was accepted but only the consideration in lower value was duly rejected. The reliance was placed in the order of the co-ordinate bench of ITAT, Mumbai Bench "E" in case of **Mishapar Investments Ltd vs Income-tax Officer - 3(2)(2) (2006) 8 SOT 531 (Mumbai)** where it was held that nothing had been brought on record that sale consideration determined between the assessee and

the group concern was lower than the market price at relevant point of time, the transactions were genuine and the Assessing Officer was directed to allow the capital loss to the assessee. The same issue was re-affirmed by the order of the Hon'ble Bombay High Court in the case of **CIT vs PittyBros Pvt Ltd 120 ITR 709 (Bom)**.

7. The Ld.DR vehemently argued and fully relied on the order of the revenue authorities. The Ld.DR further argued that the entire loss is a colorable device and the loss was incurred to adjust the long term capital gain, so the entire loss should be rejected.

8. In our considered opinion, we find that the assessee incurred a loss through a transaction executed via a registered sale deed, duly executed before the Registration Authority of the State Government. The property was valued at Rs. 1,75,950/-, while the assessee adopted the higher transacted value of Rs. 3,65,000/-. Furthermore, it is noted that the sale was made under distress.

Although the transaction value for the sale of the property was significantly lower than the purchase value, the Ld. AO failed to provide any comparative material regarding the sale of the property. Moreover, the Ld. AO did not present evidence to demonstrate that the immovable property was sold at a value lower than comparable properties in the locality. We respectfully rely on the decision in the case of **Mishapar Investments Ltd.** (supra), and it is evident that the Ld. AO was unable to substantiate the addition with any supporting evidence. Consequently,

the rejection of the STCL amounting to Rs. 12,57,500/- is unjustified, and the impugned appellate order is accordingly set aside.

9. In the result, the appeal of the assessee bearing **ITA No.559/Mum/2023** is allowed.

**Order pronounced in the open court on 11/12/2024.**

Sd/-

sd/-

<b>(NARENDRA KUMAR BILLAIYA)</b>	<b>( ANIKESH BANERJEE)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Date: 11<sup>th</sup> December 2024

Pavanan

**प्रतिलिपिअग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

Asstt.Registrar / Senior Private Secretary  
**ITAT, Mumbai**