

**IN THE INCOME-TAX APPELLATE TRIBUNAL "B" BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 3162/MUM/2024
(A.Y. 2011-12)**

ITO Room No.618, MTNL Building, Cumbala Hill, Peddar Road, Maharashtra-400026	v/s. बनाम	Nanikram Menghraj Trust 113, 114 Navjivan, Commercial Building No.3, Lamington Road, Mumbai Central, Maharashtra-400008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATN2215N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

**CO. No. 136/MUM/2024
(Arising out of ITA No. 3162/Mum/2024)
(A.Y. 2011-12)**

Nanikram Menghraj Trust 113, 114 Navjivan, Commercial Building No.3, Lamington Road, Mumbai Central, Maharashtra-400008	v/s. बनाम	ITO Room No.618, MTNL Building, Cumbala Hill, Peddar Road, Maharashtra-400026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATN2215N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Ms. Vasanti Patel & Shri M. A. Gohel
Revenue by :	Shri Anurag Tripathi

Date of Hearing	14.10.2024
Date of Pronouncement	29.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

The appeal is filed by the assessee and the cross objection is filed by the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-1/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 17.04.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2011-12.

2. The revenue has raised following grounds of appeal:

“1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in applying the provisions of section 11(1A) of the Income-tax Act when the case of the assessee covered under provisions of section 11(1)(a) in the absence of purchase of new asset?

2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in applying the provisions of section 11(1A) of the Income-tax Act and allowing the computation of capital gains with benefits of indexation in the absence of any new asset purchased by the assessee for being so eligible? (Tax effect already covered at sr. no. 1)

3. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in allowing the assessee to claim exemption of capital gains applying the provisions of section 11(1A) of the Income-tax Act when there is no new asset purchased and the assessee is supposed to utilise the capital gain to the extent of 85% as required by section 11(1)a) to claim benefit of exemption? (Tax effect already covered at sr. no. 1)

4. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in considering the amount invested in Fixed deposit as part utilisation of capital gains to allow the benefit of section 11(1A) of the Income-tax Act to the assessee, when the nature of asset is important for considering eligibility and not the period of length/time frame of fixed deposit and when the section 11(1A) does not specify the time limit for investment in new asset and the same was not made even beyond the period of 6 months? (Tax effect already covered at sr. no. 1)

5 Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right to allow benefits of exemption for utilisation of capital gains when the assessee neither purchased a new asset as required by section 11(1A) nor fully utilised the capital gains to the extent of 85% as required by section 11(1)a) to be eligible to claim benefit of exemption? (Tax effect already covered at sr. no. 1)”

3. The assessee has raised following grounds of cross objection:

1. VALIDITY OF THE RE-OPENING OF THE ASSESSMENT UNDER SECTION 147 OF THE ACT:



1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT(Appeals)] erred not considering and deciding the Grounds of appeal whereby the Assessee has challenged the validity of reopening of the assessment under Section 147 of the Act.

1.2 The learned CIT(Appeals) failed to appreciate the objections raised by the appellant as to the validity of the re-assessment / re-opening of the assessment. The learned CIT(Appeals) failed to appreciate the rule of law laid down by various Courts including the jurisdictional Bombay High Court with reference to the re-opening of the assessment.

1.3 It is submitted that Notice issued under Section 148 of the Act and the consequential re-assessment under Section 143(3) read with Section 147 of the Act are bad in law and invalid.

In view of the above, the assessee prays that the re-assessment for the above year may kindly be set aside / struck down as the same is invalid, illegal and contrary to the law.

The Assessee hereby craves the leave to add to, alter, amplify or amend the above Ground or Grounds of Cross Objection which are without prejudice to each of them, as and when the need arises at the time of hearing of the appeal.”

4. The brief facts of the case are that the original return of income was filed by the assessee declaring nil income. The case was selected for scrutiny and assessment was finalized u/s 143(3) of the Act vide order dated 10.03.2014 wherein the Ld. AO accepted the total income at nil. Subsequently, information was received from the Investigation Wing of the department that the assessee trust had sold an immovable property for an amount of Rs. 15,25,00,000/- during FY 2010-11 relevant to AY 2011-12. It was further reported that the market value of the property was Rs. 22,21,34,500/- as per the registration documents wherein stamp duty valuation had been mentioned. Accordingly, the case was reopened u/s 147 of the Act and reassessment was made u/s 143(3) r.w.s. 147 of the Act vide order dated 11.12.2018 wherein the capital gains were computed after applying provision of section 50C of the Act by adopting stamp duty value for the purpose of working out the capital gains. Assessment was



finalized at an income of Rs. 2,45,07,428/- on account of long-term capital gains so computed.

5. Aggrieved with the order of the Ld.AO, the assessee filed an appeal before the Ld. CIT(A) who allowed the appeal of the assessee on merits.

6. Aggrieved with the order of the Ld. CIT(A), the revenue has filed appeal before us. On the other hand, CO has been filed by the assessee on legal grounds challenging the reopening of the assessment.

7. Before us, Ld. AR has submitted that assessee is a charitable trust duly registered with the Charity Commissioner as well as u/s 12A of the Act. It was further submitted that an MOU was executed on 30.06.2006 with the purchasers vide which the consideration for the transfer was agreed upon at Rs. 15,00,00,000/-. Further, a sum of R. 1,00,00,000/- was duly received by the assessee from the purchasers vide pay order dated 28.01.2006. The assessee being a charitable trust the said MOU was subject to permission from the Charity Commissioner, Mumbai region. After requisite verification, the Charity Commissioner vide order dated 10.05.2010 granted sanction for transfer of property for a consideration of Rs. 15,25,00,000/- after considering the prevailing fair market value of the property. It was claimed by the Ld. AR that even if the provisions of section 50C are to be applied, the stamp duty value should be taken as on 30.01.2006 i.e. the date of MOU. The valuation of the property as on 30.01.2006 as per the stamp duty Ready Reckoner was Rs.



11,50,54,310/-. Since the actual sale consideration of Rs. 15,25,00,000/- is much higher than this value, the provisions of section 50C cannot be invoked.

8. In this regard, Ld. AR pointed out that the first proviso of section 50C(1) is applicable in the case of the assessee, which provides for taking the value adopted or assessed by the Stamp Duty Authority on the date of agreement instead of the date of registration. He also submitted that even though the proviso was inserted w.e.f. 01.03.2017 but being curative in nature with the purpose to remove the hardship, it needs to be given retrospective effect as per the settled legal position. In supports of his arguments, Ld. AR has filed a copy of the MOU between the trust and the purchasers M/s. Maker Properties Pvt. Ltd and a copy of the Charity Commissioner's order dated 10.05.2010. Further, a copy of the order of the co-ordinate bench of **ITA No. 2301/Ahd/2014 DCIT, Patan Circle, Patan v/s Saifee Jubiee High School & Madressa Yusufiyan Society** has also been furnished in which similar issue has been decided in favour of the assessee.

Ld. DR, on the other hand, strongly relied on the orders of lower authorities.

9. We have considered the rival submissions and perused the material available before us. Admittedly, the assessee trust had entered into the agreement on 30.06.2006 to sell the property in question for Rs. 15,00,00,000/- but the same was subject to approval of the Charity



Commissioner. Since the approval was obtained only after four years on 10.05.2010, the registration was made on 09.10.2010 at a consideration of Rs. 15,25,00,000/- as approved by the Charity Commissioner. We have also perused the order of the co-ordinate bench in which on similar facts and circumstances, the co-ordinate bench has held as under:

“4.....We find no merit in the instant argument. Page 11 of the paper book indicates that the Charity Commissioner had passed his order as per the provisions of the Bombay Trust Act and Rules (as applicable in Gujarat state) approving the impugned sale at a price of Rs.12.50lacs which ultimately culminated in the sale deed. There can hardly be any quarrel that such an approval involves a long drawn procedure of public notice inviting relevant bids. The Revenue fails to dispute that the assessee Trust is bound by such an approval order passed by the statutory authority. We further find that hon'ble jurisdictional high court's judgment in Om Shri Jigar Association Vs. Union of India (1994) 209 ITR 608 (Guj) as followed in (2010) 327 ITR 185 (Bombay) Virendra vs. appropriate authority & Ors. holds that there is no inference of understatement of consideration in such a case involving an approval accorded by the Charity Commissioner under the Bombay Trusts Act. Mr. Kabra seeks to distinguish the same by pleading that the said case law pertains to the proceedings u/s.269UD of the Act instead of Section 50C of the Act. We observe that this distinction fails to rebut the fact that the above hon'ble high courts have considered the relevant provisions enshrined in Bombay Trust Law vis-à-vis understatement of sale considerations of the relevant capital assets therein. We conclude in this factual backdrop that whatever sale price Charity Coinmissioner had approved had to be followed in assessee's impugned sale deed. Couple with this, the lower appellate authority has already observed that there are various restrictions on usage of the capital asset. All this findings have gone uncontroverted from Revenue side. We thus see no reason to accept Revenue's sole substantive ground. The same is therefore rejected. So is the outcome of its appeal ITA No. 2301/Ahd/2014.”

10. Respectfully following the decision of the co-ordinate bench, we hold that the price determined by the Charity Commissioner has to be adopted as the fair market value as both the parties are bound by the order of Charity Commissioner. Therefore, there is no reason to invoke the provisions of section 50C in the instant case. Accordingly, the appeal of the revenue is dismissed.



11. The CO filed by the assessee relates to re-opening of the assessment. Since the issue has been decided in favour of the assessee on merits, these legal grounds are not being adjudicated, having been rendered academic in nature.
12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 29.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

