

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.1581/Mum/2024  
(Assessment Year: 2014-15)**

Vicki Electronics, Gala No. 23, Back side Sidhpura Industrial Estate, Off. S.V. Road, Goregaon (W), Mumbai – 400062.	Vs.	Income Tax Officer 31(3)(5), Bandra Kurla Complex, Mumbai –400051
PAN/GIR No. AAAFV0824B		
(Applicant)		(Respondent)

Assessee by	None
Revenue by	Ms. Nidhi Agarwal, Sr. DR

सुनवाई की तारीख/Date of Hearing	14.01.2025
घोषणा की तारीख/Date of Pronouncement	25.02.2025

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order dated 08.02.2024, passed u/s 250 of the IT Act, 1961 ('the Act'), by the Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 2014-15. The grounds of the appeal are as under:

"1. The Ld. CIT (A), NFAC, Delhi [hereinafter referred to as "the CIT (A)"] erred in law and on facts in

*upholding a disallowance of Rs. 30,13,025/- in respect of repairs to the Appellant's Building.*

2 *The CIT (A) erred in law and on facts in not considering favourable Remand Report of the Assessing Officer while upholding the aforesaid disallowance of Rs. 30,13,025/-.*

3. *The CIT (A) erred in law and on facts in upholding the action of the Assessing Officer of referring the valuation of land and building to the District Valuation Officer ("the DVO") without forming his opinion for such reference and further erred in rejecting valuation made by the Registered Valuer, on behalf of the Appellant, without assessing any cogent reasons.*

4. *The CIT (A) erred in upholding the Computation of STCG of Rs. 2,04,10,667/- made by the Assessing Officer in respect of sale of building as against the computation of STCG of Rs. 87,27,632/- offered by the Appellant.*

5. *The CIT (A) erred in upholding the Computation of LTCG of Rs. 53,63,098/- made by the Assessing Officer in respect of sale of land as against the NIL amount offered by the Appellant in respect of sale of land.*

6. *The CIT (A) erred in law and on facts in overlooking the fact that the Assessing Officer did not follow the mandate of section 55A of the Act r.w.s. 16A of the Wealth Tax Act, 1957.*

7. *The CIT (A) erred in law and on facts in overlooking the fact that the DVO violated the provisions of section 55A of the Act r.w.s. 16A of the Wealth Tax Act, 1957 as also the principles of natural*

*justice while valuing the Appellant's immovable property.*

8. *The CIT (A) erred in law and on facts in overlooking the fact that the DVO made the valuation of immovable property without following the accepted principles of valuation, which is self - explanatory and self - evident on the face of his valuation report.*

9. *The CIT (A) erred in law and on facts in upholding the Assessing Officer's action of not allowing deduction in respect of purchase of the new shop costing Rs. 86,70,000/- while working out short term capital gain on sale of building under section 50 of the Act.”*

2. At the time of hearing, none appeared on behalf of the assessee when the case was called repeatedly. Neither any application for seeking adjournment has been filed. From the perusal of the court file. We noticed that this is the seventh opportunity and even on the last date of hearing the bench had given last opportunity to the assessee but still nobody appeared on behalf of the assessee, which shows that assessee is not interested in pursuing the present appeal. On the other hand, Ld.DR present in the court is ready with the arguments and therefore we have decided to proceed with the hearing of the case, ex parte.

3. The brief facts of the case are that the assessee was manufacturing electrical wires and cables. During the year, assessee had sold land and building therefore, after conducting enquiries and providing opportunity of hearing

AO passed order of assessment on 29 December 2016 under section 143(3) of the IT Act, thereby making additions under the head, long-term and short-term capital gain.

4. Aggrieved by the said order assessee had preferred an appeal before the Ld. CIT(A), but the same was dismissed.

5. Aggrieved by the order of Ld. CIT(A), assessee has preferred the present appeal before us on the grounds mentioned hereinabove.

6. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the additions made by Ld.AO and upheld by Ld. CIT(A). Therefore we have decided to take up and dispose of all the grounds through the present consolidated order.

7. After hearing Ld.DR, perusing the documents placed on record and the orders passed by the revenue authorities. we found that all the grounds raised by the assessee were dealt with by Ld. CIT(A) in its orders and the operative portion of the order of Ld. CIT(A) is contained in para number 9 to para number 16 of its order and the same is reproduced here in below:

*“Decision:-*

*9. I have gone through the assessment order and the submissions made by the AR of the appellant. The facts of the case are that during the impugned AY the appellant had sold an immovable property which*

*consisted of land which was acquired from MHADA and building constructed thereon. The contention of the appellant was that the appellant had closed the business due to global slump in 2008. The appellant had sold the immovable property situated at 92C, Govt. Industrial estate, Kandhivali West to M/s Endosys Healthcare India Pvt. Ltd for a total consideration of Rs.3.64,50.000/- (Rs.2,28,34,500/- for building and Rs.1,36,15,500/- for land) The AO has made verification of various claims of the appellant with reference to short term and long term capital gain offered to tax and after due verification and after obtaining the report of the DVO reworked the short term capital gain and long term capital gain. By virtue of the same total income was assessed at Rs.1,82.28.280/- as against total income returned of Rs.11,82,160/-, Aggrieved by the said addition, the appellant is in appeal and has raised 09 grounds which are adjudicated as under-*

*10. Ground no.1 & 9 is general in nature and hence, not adjudicated,*

*11. Ground no.2 is relating to not giving proper opportunity of being heard to the appellant and gross violation of principles of natural justice. As seen from the assessment order, the AO has given sufficient time and opportunity after the notice u/s.143(2) of the Act was issued on 28.08.2015. The assessment has been completed on 29.12.2016. The AO has also issued show cause notice dated 13.12.2016 in respect of purchase and sale of properties. The appellant has complied with the said show cause notice on 23.12.2016 giving the details. Hence. there was no denial of natural justice. The AO has given sufficient*

*time and opportunity to the appellant. Hence, there is no merit in this ground and accordingly. Ground no. 2 is dismissed.*

*12. Ground no.3 is relating to the repair expenses incurred by the appellant in cash amounting to Rs.30,13,035/- which was claimed as cost of improvement in working STCG on sale of property. According to the AO, when he called for the details of cost of improvement incurred by the appellant, the appellant filed few copies of cash/credit memo which were not proper invoices having VAT/Sales tax Nos. Therefore, the genuineness of the said bills was not proved by the appellant. The appellant even failed to prove the payment proof through bank statement or cash book. As the appellant failed to substantiate the claim through proper documentary evidences, the AO rejected the claim of the appellant towards the cost of improvement claimed to have been incurred by the appellant amounting to Rs.30,13,035/-*

*12.1 During the appellate proceedings, the appellant submitted that as the building was in bad shape, the appellant was advised to undertake major work to improve the condition of the building for which the expenses were incurred in cash. It was further submitted that the RCC building with 4500 sq. ft. was 15 years old with ground and 1 st floor and unless it was repaired and painted, selling the same was difficult. Hence. it was claimed that building material dealers and the other parties do not have the VAT registrations and bank accounts for which expenses were incurred in cash and all expenses incurred are less than Rs 20.000/- and hence, provisions of Section 40A(3) of the Act are not attracted.*

12.2 The AO in his remand report dated 25.05.2018 stated that he summoned 05 parties who were claimed to have done the renovation work. They admitted that they did the work for the appellant but did not give any details as to the exact nature of work carried on by them with the help of any drawings etc. The appellant is based in Mumbai and not in any rural area to claim that building material is available only with the vendors who do not have VAT/Sales tax Registration. In Mumbai, most of the transactions are carried on through banking channels and it is incorrect on the part of the appellant to claim that the vendors do not have the bank accounts. Further, the appellant has violated the provisions of Section 40A(3) of the Act as well as the details of expenditure claimed show that all the expenses are more than Rs.20,000/-and hence, should have been incurred through account pay cheques or drafts. As the appellant has not complied with the provisions of Section 40A(3) of the Act, the expenditure incurred is not allowable as deduction. Moreover, the appellant is a firm maintaining the books of accounts. The expenditure incurred on renovation of the building should have been added to the cost of the asset in the Balance Sheet which was also not done. Thus, the appellant has not complied with any of the evidences which can prove the genuineness of expenditure which was incurred. Firstly, the appellant has incurred the expenditure in cash, the appellant has not shown the withdrawals of cash from its bank account, the bills produced do not have any VAT/Sales tax Registration, the parties produced though confirmed that they did the work for the appellant but did not prove with documentary evidence what exactly work was done with any drawings etc. Therefore, the renovation expenditure

*claimed by the appellant is in the nature of afterthought and the facts do not show that the said expenditure was genuine. Hence, the disallowance of renovation expenditure made by the AO is found to be correct and accordingly, sustained. Ground no.3 is dismissed.*

*13. Ground no.4 & 5 are relating to referring the valuation of the property sold to District Valuation Officer(DVO) and accepting his report and ignoring the report of the Approved Government Valuer. The facts of the case are that the appellant had sold land and factory building during the impugned AY. In the computation of the total income, the appellant bifurcated the sale price of land and offered it as LTCG and sale price of building was offered as STCG being a depreciable asset. As the land was purchased prior to 01.04.1981, the appellant obtained the valuation report of the said land from the Approved Government Valuer which was valued at Rs. 14,50,800/-.*

*13.1 During the assessment proceedings, the AO referred the valuation of the said land to the DVO who vide report dated 28.12.2016 valued the land at Rs.8,78,850/-The appellant is disputing the valuation done by the DVO. The appellant now is disputing the comparative instances taken by the DVO to value the land belonging to the appellant. The two instances taken by the DVO are at Malad which is about 3-4 Kms from the land belonging to the appellant and the other being at Kandivali East which is about 5 Kms from the appellant's land. The DVO has taken the comparative sales instances in the distance of 4-5 Kms and which are in the limits of Municipal Corporation of Mumbai. However, the registered valuer of the appellant has not*

*referred to any sale instances while valuing the land of the appellant. The DVO is the authorised and technically competent officer of the department for valuation of immovable assets. The reports submitted by the DVO are binding on the AD. Hence, in view of the fact that DVO has prepared the report on the basis of comparative instances in vicinity of 4 to 5 Kms in the Municipal limits, the valuation done by the DVO is found to be on proper and technical footing and therefore, the same is upheld. The AO's reference to DVO is also upheld as the AO is not competent to examine, the valuer's report. Thus, ground no.4 & 5 are dismissed as without merit.*

*14. Ground no.6 & 7 are relating to not considering the purchase of new shop in commercial complex amounting to Rs.86,70,000/- as the shop in question was not registered with the Sub-Registrar. According to the AO, the appellant claimed deduction for having purchased immovable property situated at Shop No. S-108, Rajiv Gandhi Commercial Complex, Mumbai for Rs.86,70,000/- from the STCG. When the AO examined the purchase deed, it was noticed that the purchase deed was on Rs.100 stamp paper and not registered with the Sub-Registrar. The said property was purchased from Mrs. Kalpana Dangi for which purchase consideration was not paid and it was shown as liability in the books. The AO held that the appellant had done this transaction to reduce the liability of capital gains tax by making an agreement on paper which is not registered with Sub-Registrar and not even paid the purchase consideration. The AO has also given a finding in Para 4.8 of the assessment order that the appellant's office was situated at Gala No.23 backside, Siddhpura Industrial estate, next to*

*Unique tower, off SV Road, Goregaon West Mumbai and not where the property was claimed to have purchased at Shop No. S-108 Rajiv Gandhi Complex, Malad West Mumbai.*

*14.1 The AO sought report from his Inspector about the ownership of S-108 Rajiv Gandhi Complex, Malad West Mumbai. The Inspector reported that a play school in the name of Jingle Mingle Pre Primary School was being run from the said place and appellant's office was never shifted at the said place. As the appellant had not even offered any rent for the said premises from the pre primary school, the AO issued notice u/s 133(6) of the Act to the Secretary of Rajiv Gandhi Cooperative Society. The said Secretary vide letter dated 24.12.2016 stated that the appellant is unknown entity to the society, the possession of Gala 5-108 is in the name of Mr. Baban S Ghadge as per society records, who had submitted an undated sale deed executed in favour of Ms. Kalpana Dangi. Since 2009, the said Shop No. S-108 Rajiv Gandhi Complex, Malad West Mumbai was given on leave and license to the Jingle Mingle Pre-Primary school. The latest maintenance bill dated 1.10.2016 was raised in the name of Mr. Baban S Ghadge. The share certificate of the society was not issued as neither Mr. Baban S Ghadge or Ms. Kalpana Dangi complied with statutory requirement of transfer of property as per society bye laws. It was further clarified that unless the property is transferred by MHADA in favour of a particular person, the transfer is void. Based on these findings, the AO held that the purchase of new property was only on paper and the same was not actually purchased which was a crystal clear from the facts and investigation carried.*

14.2 During the appellate proceedings, it was submitted that Ms. Kalpana Dangi purchased the said shop from Mr. Baban Ghadge on 13.10.2007. The appellant purchased the said shop from Ms. Kalpana Dangi and had paid Rs.8,00,000/- on 8.10.2013 for which bank statement was produced evidencing the payment. The appellant also claimed that the possession of the shop was with the appellant and hence, the appellant should be considered as the owner of the shop even though the property is not registered in the name of the purchaser as per the ratio of decision in the case of CIT vs. Poddar Cements Pvt. Ltd. 226 ITR 625(SC).

14.2 During remand proceedings, Ms. Kalpana Dangi admitted to have sold the shop S-108 to the appellant on having received advance of Rs.8,00,000/-. It was also submitted by her that the rental income from the play school was offered to tax in her individual return for AY 2014-15

14.3 I have gone through all the details furnished by the appellant with reference to the purchase of property at Shop No. S-108, Rajiv Gandhi Complex, Malad West Mumbai. As seen from the reply of Secretary of the Society of Rajiv Gandhi Complex, the shop in question continues to be in the name of Mr. Baban Ghadge. Ms. Kalpana Dangi has claimed to have purchased the said shop from Mr. Baban Ghadge on 13.10.2007 by a sale deed which is not registered. Subsequently, Ms. Kalpana Dangi has given a declaration, which is a self-declaration dated 09.07.2010 to the Sub-Registrar that she is the owner of the premises and paid the stamp duty of the transaction. This proves that Ms.

*Kalpna Dangi is the owner of the said shop on record (though not on the record of the MHADA and Cooperative Society). Now, Ms. Kalpna Dangi claims to have sold the said shop to the appellant vide sale deed (undated) notarised before notary Mr. P P Surve. But the said sale deed is not registered even till date with the Sub-Registrar. The appellant has claimed to have paid Rs.8,00,000/- which is less than 10% of the recorded sale consideration of the shop and received possession of the shop. Now the appellant is claiming that because he has received the possession even though purchase consideration is not fully paid, it should be considered as purchase by virtue of the possession.*

#### 14.4

*The appellant has not registered the sale deed till date even after about 8 years of the transaction goes to show that the transaction of purchase is only on paper. Ms. Kalpna Dangi claims to have handed over the possession of the property to the appellant by taking an advance of Rs.8,00,000/- which is less than 10% of the agreed price. No seller will give the possession of the property unless entire amount of sale consideration is paid. Ms. Kalpna Dangi seems to be relative of partners of the appellant firm as couple of partners were found to be having 'Dangi' surname. The appellant has not produced any proof of payment of balance consideration to Ms. Kalpna Dangi in next about 8 years. Therefore, the sale deed done with Ms. Kalpna Dangi is more in nature of an arrangement to reduce the tax burden coming out of the payment of STCG. The intention of the appellant never seems to be to purchase the shop from Ms.*

*Katpana Dangi which is apparent from facts of the case. In view of all these facts, I am convinced that the purchase of shop no. S-108, Rajiv Gandhi Complex, Malad West Mumbai was mere an arrangement for avoiding payment of STCG and rightly has been disallowed by the AO. The action of the AO in disallowing the purchase of S-108, Rajiv Gandhi Complex, Malad West Mumbai is sustained.*

*15. Ground No.8 is relating of levy of interest u/s.234A, 234B & 234C of the Act. Interest under these sections is consequential in nature and hence, has to be charged when additions are made. Accordingly, ground no. 8 is dismissed.*

*16. In the result, the appeal is treated as dismissed for statistical purpose.”*

8. After having gone through the entire order passed by Ld. CIT(A) and also the orders passed by the Ld.AO. We found that nothing has been placed before us to controvert the findings of Ld. CIT(A), therefore in the absence of any concrete, documentary evidences or submissions, we find no reasons to interfere into or to deviate from the lawful findings so recorded by the Ld. CIT(A). Therefore, we dismissed the grounds raised by the assessee and uphold the order passed by Ld. CIT(A).

9. In the result the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 25.02.2025.

Sd/-

Sd/-

**(PRABHASH SHANKAR)**  
**ACCOUNTANT MEMBER**

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 25/02/2025

AKV

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति // True Copy //

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai