



आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में
**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री मनोज के अगरवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI MANOJ K AGGARWAL, ACCOUNTANT MEMBER**

ITA No. : 4810/Mum/2014

(Assessment year: 2010-11)

प्रशांत अर्जुनराव कोल्हे Prashant Arjunrao Kolhe, B-1304/1404, Bldg No.1, Lok Everest Kachan Janga, Jatashankar Dosa Road, Mulund (West), Mumbai -400 080 PAN: AKTPK 4197 P	Vs	DCIT-26 (2), K G Mittal Hospital Bldg, Charni Road, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)

ITA No. :5155/Mum/2015

(Assessment year: 2010-11)

DCIT-26 (2), K G Mittal Hospital Bldg, Mumbai -400 020	Vs	प्रशांत अर्जुनराव कोल्हे Prashant Arjunrao Kolhe, B-1304/1404, Bldg No.1, Mumbai -400 080
अपीलार्थी (Cross Objector)		प्रत्यर्थी (Respondent)
Assessee by	:	श्री अजय ठाकरे Shri Ajay Thakare श्री ए सी बोहरा Shri A C Bohra
प्रत्यर्थी की और से Revenue by	:	श्री सी एस शर्मा Shri C S Sharma

सुनवाई की तारीख /Date of Hearing : 26-09-2016

घोषणा की तारीख /Date of Pronouncement : 26-09-2016

आदेश
ORDER

अमित शुक्ला, न्यायिक सदस्य:
PER AMIT SHUKLA, J.M.:

The aforesaid cross appeals has been filed by the assessee as well as by the revenue against impugned order dated 16.05.2014, passed by Ld. CIT(Appeals)-20, Mumbai for the quantum of assessment passed under section 143(3) for the assessment year 2010-11. We will first take-up assessee's appeal, vide which following grounds have been raised:-

“1(a) On the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs.3,04,238/- on account of suppression of sale proceeds of flat which was higher than the value of determined by the Stamp Duty Valuation Authority.

1(b) On the facts and the circumstances of the case the Ld CIT(A) failed to appreciate that the consideration received on sale of flat was higher as compared to stamp duty valuation and there was no reason to disbelieve the actual consideration received and resort to other sale instance in arriving at erroneous conclusion of suppression of sales.

1(c) On the facts and circumstances of the case the condition and location of capital asset sold in question was vastly different as compared to the capital asset considered for the purpose of sale instance”.

2. The brief facts *qua* the issue involved are that, the assessee is an individual who had purchased four flats in Rejoice building, Mulund (West), Mumbai. In the first transaction assessee had purchased Flat No. 305 and 306 on 17.04.2005 and Flat No.303 and 304 on 2nd August, 2006. All the four flats were sold by the assessee during the previous year relevant to assessment year 2010-11 on following sale price and dates:-

Flat No.	Sale Price Rs.	Date of Sale
305	36,50,000	24/06/2009
306	36,50,000	24/06/2009
303	35,00,000	14/07/2009
304	25,00,000	14/07/2009

The Assessing Officer observed that, the first two flats which were sold on 24.06.2009 to one party was sold at much

higher figure, whereas, the other two flats sold after 20 days were sold at a lesser prices. If the areas of both the flats are by and large same, then how the assessee has sold the other two flats at almost 20% of lesser price than the first transaction of sale of two flats. He further noted that, the assessee could not give proper satisfactory reply for the reasons of sale of two flats at a lower price. Solely on this premise he inferred that the assessee had suppressed the sales of subsequent two flats and accordingly, he estimated the sale consideration of these two flats at Rs.73 lakhs, that is, the price of the two flats sold in the first transaction and accordingly worked out the short-term-capital-gain of Rs.3,04,238/- in the following manner:-

Total Sale consideration	Rs. 73,00,000
Rs. 60 lacs shown by assessee and Rs. 13 lacs estimated as suppression	
Less: Expenses on transfer	Rs. 72,750
	Rs. 72,27,250
Less: Total cost of acquisition as given by the assessee	Rs. 69,23,012
Short Term Capital Gain	Rs. 3,04,238

3. The Ld. CIT(A), upheld the action of the Assessing Officer on the ground that, no convincing explanation has been filed by the assessee for selling second transaction of the flats at a lower price than the earlier transaction of the two flats.

4. Before us, the Ld. Counsel for the assessee, drew our attention to the 'Sale Deeds' of the two flats and submitted that, Flat No.303 and 304 were sold at Rs.35 lakhs and Rs.25 lakhs and the Stamp duty value of these two flats were determined at Rs.29,60,784/- and Rs. 24,51,382/-

respectively. Thus, assessee has sold the flats more than the stamp value which is consonance with the deeming provision of section 50C, because the assessee had sold the property at a higher FMV stipulated under section 50C. Reasons for selling the other two flats at a lower price were that, these two flats lacked location/view advantage and also the assessee wanted to get rid of these flats from the said building as early as possible and, therefore, the sale was made at a comparable lower price. In any case, he submitted that, once the flats have been sold more than the purchase consideration and at higher FMV assessed under the stamp duty valuation, then without there being any contrary material on record, or enquiry by the Assessing Officer, the sale consideration cannot be enhanced.

5. On the other hand, Ld. DR strongly relied upon the order of the Assessing Officer and the ld. CIT(A) and submitted that, if the two flats in the same building were sold for Rs.36.50 lakhs then how can there was a difference in sale price, especially when the flats are located in the same building and were sold in and around the same time. Thus, preponderance of probability does not favour the assessee.

6. We have heard the rival submissions, perused the relevant finding given in the impugned orders as well as material placed on record. The assessee had purchased four flats in one building from M/s Nirmal Life Styles. The date of agreement for purchase, purchase consideration, date of sale, sale consideration and value as per the Stamp valuation of the four flats are as under:-

S No.	Flat No./ Area	Date of Purchase	Purchase Price in Rs. As Per Agreement	Date of Sale	Sale price in Rs. as per Agreement	FMV as per Stamp Duty Valuation (Rs.)
1	305 441 Sq. ft.	17.4.2005	14,90,000	24.06.2009	36,50,000)53,55,210
2	306 519 Sq. ft.	17.4.2005	17,50,000	24.06.2009	36,50,000	
3	303 525 Sq. ft.	02.8.2006	29,60,784	14.07.2009	35,00,000	29,78,820
4	304 435 Sq. ft.	02.8.2006	24,51,312	14.07.2009	25,00,000	23,76,990

From the above, it can be seen that so far as two flats in dispute i.e. Flat No.303 and 304, the same have been sold at slightly higher price than the FMV assessed by the Stamp duty authority as per the stamp valuation. Thus, even under the deeming provisions of section 50C it cannot be held that, assessee has suppressed the sales. If the sale price of two flats sold in the second transaction was comparatively lower than the sale price of the two flats in the first transaction, then same should have been a starting point for conducting the basic enquiry by the Assessing Officer to ascertain the sale price and to controvert the sale price shown by the assessee. At least some material or information should have been brought on record by the AO to rebut that the sale price shown by the assessee is lower. Had there been the case where sale price shown was lower than the stamp duty valuation, then the sale price would have been deemed to be the value assessed under the stamp duty valuation in accordance with the section 50C. However, this is not the case here as the assessee's sale prices are evidenced by "sale agreements" placed in the paper book and is also higher than the FMV assessed. Thus, without any contrary material, we do not find any reason to uphold the reasoning and view taken by the authorities below that sale of the two flats sold

subsequently should be taken at the same price on which two flats were sold 20 days earlier. Thus, the addition made by the Assessing Officer on account of short-term-capital-gain of Rs.3,04,238/- is deleted and sale consideration shown by the assessee as per the sale agreement of the two flats, viz. flat no. 303 and 304 is to be taken as such. Accordingly, ground raised by the assessee is allowed.

7. Now, we will take-up revenue's appeal, vide which various grounds have been raised with regard , firstly, denial of benefit under section 54(1); secondly, addition of Rs.3,04,328/- on account of Stamp duty valuation; and lastly, Rs.5 lakhs on account of unsecured loans.

8. At the outset, the Ld. Counsel submitted that, the tax effect on the disputed issues raised in the grounds of appeal by the revenue is less than Rs.10 lakhs.

9. Ld. DR also admitted that the tax effects on the disputed issues are below the prescribed monetary limit of Rs.10 lakhs in light of the latest CBDT Circular No.21 of 2015.

10. Thus, in the wake of CBDT's Circular No. 21 of 2015 dated 10.12.2015, the monetary limit prescribed for filing of appeal before the Tribunal is Rs. 10 lakhs. Further it has also been clarified that this circular will apply on pending appeals also which is evident from para 10 of the impugned Circular, which reads as under:-

"10. This instruction will apply retrospectively to pending appeals to be filed henceforth in High Courts/Tribunals. Pending appeals

below the specified tax limits in para 3 above may be withdrawn/not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed”.

Thus, the appeal of the revenue is treated as dismissed as non-maintainable.

11. In the result, appeal of the assessee stands allowed and that of the revenue dismissed.

Order pronounced in the open court on 26th September, 2016.

Sd/-
(मनोज के अगरवाल)
लेखा सदस्य
(MANOJ K AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 26th September, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -28, Mumbai.
- 4) The CIT -26, Mumbai
- 5) विभागीय प्रतिनिधि “सी”, आयकर अपीलीय अधिकरण, मुंबई/
The D.R. “C” Bench, Mumbai.
- 6) गार्ड फाईल \
Copy to Guard File.

आदेशानुसार/By Order

// True Copy //

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS