



आयकर अपीलिय अधिकरण "ई" न्यायपीठ मुंबई में।

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

श्री आर सी शर्मा, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI R C SHARMA, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 4685/Mum/2016

(Assessment year: 2011-12)

श्री सुनील मोतिराम हूले Shri Sunil Motiram Hule, Block No. 82, Bldg. No.14, Valmiki Nagar, Minth Bunder Road, Chendani Koliwada, Thane (West) PAN: AAIPH 1769 D	Vs	ITO 3(3), Ashar IT Park, B Wing, R. No.16Z, Wagle Ind Estate, Thane (West), Thane -400 604
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री श्रीपद पी कानेकर Shri Shripad P Kanekar
Respondent by	:	श्री विक्रम बांतरा Shri Vikram Bantra

सुनवाई की तारीख /Date of Hearing : 08-09-2016

घोषणा की तारीख /Date of Pronouncement : 08-09-2016

आदेश
ORDER

श्री अमित शुक्ला, न्या स:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order passed by Ld. CIT(Appeals)-I, Mumbai dated 26.02.2016 for the assessment year 2011-12 on the following grounds of appeal:-

- “1. The learned Commissioner of Income Tax (Appeals) erred on confirming the action of the Assessing Officer taxing Rs.75,92,864/- on account of capital gain by invoking the provisions of Section 50C without considering facts related to property and joint owners.
2. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer taxing

Rs.75,92,864/- without making reference to Valuation officer under sub-section (2) of Section 50C of the Income Tax Act, 1961”.

2. At the outset, it is noticed, the appeal of the assessee is barred by limitation by 39 days. For condonation of delay, the assessee has filed an affidavit, wherein, assessee has deposed that his legal consultant has not properly represented and looked into the matter and did not file the appeal within due date. There were latches on the part of the legal consultant at that time. Later on, assessee has changed the Counsel and it was then the appeal could be filed and accordingly, there was a delay of 39 days.

3. After hearing both the parties, we agree with the contention of the assessee that there were no latches on part of the assessee and there was reasonable cause in not filing the appeal on time. Accordingly, we hereby condone the delay of 39 days and the appeal is admitted for hearing on merits.

4. Before us, the Ld. Counsel has filed voluminous compilation of paper book containing along with a petition for admission of additional evidences as per the Rule 29 of the ITAT Rules. In addition, the assessee has also filed additional grounds of appeal. In the said petition, the assessee has given detail reasons as to why the additional evidences could not be filed along with the other documents, which for the sake of ready reference are reproduced herein below:-

“I come from a very conservative Fisherman community. In all seven Plots of Land were owned by my family in Mulund West. All the dealings till the death of my Father, were done by my eldest uncle, Mr. Gopinath Mahadev Koli and my father and we i.e. my Mother, my brothers and my sisters along with me used to blindly

श्री सुनील मोतिराम हूले

Shri Sunil Motiram Hule

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sign the paper in front of us. Thus till 2007 (date of death 25.03.2007), I had no say in any of the land Dealings. As a result I was not much aware of the realities.

None of the Chartered Accountants ever informed me

- i to produce the relevant documents, which are mostly Court Case Papers.
- ii the variation in Stamp Duty Valuation rate from Rs. 26,528/- per square meter to Rs. 32,900/- per square meter, on Plots of land situated in one place and valued in one month i.e. July, 2010.
- iii that in case of two Plots of land, even in the Deed of Conveyance it was clearly mentioned that " along with the illegal and unlawful structured and/or slims constructed by some unauthorized dwellers standing thereon" and these Plots of land were valued by the Office of Stamp Duty at the highest rate of Rs. 32,900/- per sq. mtr.

FACTS AND ASSESSMENT of A.Y. 2011-12

Four Plots of Lands were conveyed by 23 members on 02.07.20 10 in the name of M/ s. Shrinath Builders and three Plots of Lands were conveyed by 23 members on 17.07.2010 in the name of M/s. Buildcube Construction Pvt. Ltd., as detailed below:

No.	Reg No.	Agreement Value	Market Value	Area in Square Meter	Av. Market rate per Sq. Meter	Annex ure
1	6328	4,00,000	2,33,59,000	710.00	32,900	"A"
2	7596	6,22,000	3,54,99,500	1,079.00	32,900	"B"
3	7594	1,60,40,000	14,53,85,500	4,509.90	32,237	"C"
4	6330	48,60,000	4,89,01,000	1651.50	29,610	"D"
5	6702	6,26,50,000	17,42,88,000	6,561.00	26,528	"E"
Total		8,45,72,000	42,74,33,000	14,511.40		

Based on the Stamp Duty Valuation of Rs. 42,74,33,000/-, my share of Market Value was determined at Rs. 1,33,93,290/-.Based on the valuation report submitted during the assessment Indexed Value of the property was determined at Rs. 37,96,272/- and Long Term capital Gain was determined at Rs. 95,97,018/- (**Copy of Valuation Report is enclosed as Annexure "N" from page no. 533 to 539**)

SUPPORTING DOCUMENTS:

In support of my claim, I am giving herewith following information/ documents:

1. I was 1/27th share holder of ancestral property situated in Mulund West, Mumbai 400 080. (Refer page No. 344 of Annexure "F")

2. In all we owned 3 S. Nos. namely, S. No. 53, 54 and 101. (Refer page No. 349 of Annexure "G");
3. On 06.07.1984 a Plot of Land admeasuring 5,653 Sq. Meters at Survey No. 101, Hissa No. 2 (Part), CTS No. 702 (Part) was sold along with Power of Attorney by all 27 Owners to M/s. Vijay Enterprises. (Refer page No. 351 point No. 10 of Annexure "G" being single bench order of Mumbai High Court in suit no. 1780 of 1993 dated 21st November, 2005).
4. On 29.04.1985 three Sale Agreements were also entered into along with Power of Attorney by all 27 Owners with M/s. Vijay Enterprises for sale of Plot of Land admeasuring 1,684 Sq. Meters at Survey No. 53, Hissa No. 1, CTS No. 700 (part), Plot of Land admeasuring 546 Sq. Meters at Survey No. 54, Hissa No. 3 (part), CTS No. 698 (part) Hissa No. 2 (Part), CTS No. 702 (Part) and Plot of Land admeasuring 5,633 Sq. Mtrs. at Survey No. 101 Hissa No. 2 (part), CTS No. 702 (part). (Refer point no. 6 on Page No. 349, point no. 10 page no. 351 and point no. 13 on page No. 349, 355 and 356 of Annexure "G".)
5. Due to dispute between M/s. Vijay Enterprises and us, in the year 1992 we cancelled the Power of Attorney issued in favour of M/s. Vijay Enterprises (**Refer page no. 359 point no. 17 of Annexure "G"**)
6. We sold the Plots of land at S.No. 101 to M/s. Shreenath Builder, by entering five different agreements, by each of seven sub families. (**Photo copies attached herewith as Annexure "H" to "L" from page no. 428 to 501.**)
7. All the agreements were dated 22.12.1992.
8. Possession of the above mentioned Plot of land was duly handed over by all 27 members to M/s. Shreenath Builders on 22.12.1992. (**Photo copy of Possession Letter is attached herewith as Annexure "P" refer page no. 553 and 554.**)
9. Meanwhile, by three agreements dated 10th October, 1987, three agreements dated 3rd December, 1987 and one agreement dated 26th April, 1987 M/s. Vijay Enterprises had sold two plot of lands situated on Survey No. 53, Survey No. 54 to M/s. Shreenath Enterprises (**Refer point No. 12 page no. 366 of Annexure "G"**).
10. These six Agreements to Sale were not disputed by us. Nor did we challenge the possession of these Plots. Photo copy of IOD issued by B.M.C. to M/s. Shreenath Builders dated **12.05.1993 and 23.06.1993 is attached herewith as Annexure "Q" refer page no. 555 and 560 and "R" refer page no. 561 and 567.**
11. Possession of total Plot of Land situated at S.No. 53, S. No. 54 and S. No. 101 was confirmed by Single bench of Mumbai High Court,

Page No. 376 of Annexure "G" reads as "The defendant no. 1

i.e. Mr. G.M. Koli was thereafter cross examined by the defendant no. 29 i.e M/s. Shreenath Builders and in his deposition he has deposed that at the time of visit of the Commissioner in the aforesaid appeal, he was present and he has signed the Commissioner's report. He has also deposed that he has executed the agreement in respect of Survey No. 101 and handed over the possession of the said property to defendant no. 29".

Page No. 425 of Annexure "G" reads as "I am of the opinion that the defendant no. 29 i.e M/s. Shreenath Builders being in possession of the said land under section 53A of the Transfer of Property Act is entitled to be continued in possession".

Page No. 525 of Annexure "M" reads as "We also find that the defendant No. 29 has proved execution of possession receipt in his favour.

12. The order of the single bench was subsequently reconfirmed by the double Bench of Bombay High Court on 20,04,2010. **Refer Annexure "M" from page no. 502 to 532".**

5. The Ld. AR submitted that, in the impugned case, these additional evidences go to the very root of the issue involved and will have huge effect on the disputed addition. He further submitted that if these additional evidences are to be admitted, then matter can be restored back to the file of the AO for fresh adjudication. Ld. DR also did not have any objections if the matter is to be restored back to the file of AO for fresh consideration and adjudication.

6. After considering the rival contentions and also on perusal of the material placed on record, we find that the main issue involved relates to taxing of long-term-capital-gain, whereby the sale consideration has been enhanced

under the deeming provisions of section 50C. It is seen that, before the Id. CIT (A) proper representation could not be made by the counsel and assessee being salaried employee could not himself represent its case properly. This is evident from the order of Ld. CIT(A) wherein he has observed that, since assessee's Counsel has not made any request for making reference to the DVO, therefore, the same is not being made. Now, before us, a huge compilation of additional evidences has been filed, which at the fact of it goes to the very root of issue involved. Thus, under the facts and circumstances as narrated above, we are admitting the evidences as well as the additional ground filed by the assessee and the entire matter is restored back to the file of the AO for fresh consideration and adjudication of Long-term-capital-gain after giving due and effective opportunity to the assessee to present his case. Thus, we remand back the entire issue to the file of the AO for fresh adjudication after considering the additional evidences and also the issue raised in additional ground and decide in accordance with the provisions of law. Accordingly, grounds raised before us are allowed for statistical purposes.

7. In the result, appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 8th September, 2016.

Sd/-
(आर सी शर्मा)
लेखा सदस्य
(R C SHARMA)
ACCOUNTANT MEMBER

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

Mumbai, Date: 8th September, 2016.

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT-I, Aurangabad/CIT(A) Concerned____,_____.
 - 4) The Pr. CIT-2/CIT - Concerned____, Mumbai
 - 5) विभागीय प्रतिनिधि "ई", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "E" 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