

आयकर अपीलिय अधिकरण "ए" न्यायपीठ मुंबई में।

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

श्री राजेंद्र, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 3182/Mum/2013

(Assessment year: 2008-09)

अनीता संतकुमार वर्मा Anita Santkumar Varma, 14 Manav Mandir, Acharya P K Atre Marg, Worli Hill Road, Worli, Mumbai -400 018 स्थयी लेखा सं.:PAN: AABPV 4439 K	Vs	Asst CIT CIR 18(1), Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री Shri Govind Jhaveri
Respondent by	:	श्री Shri M Murali

सुनवाई की तारीख /Date of Hearing : 08-03-2016

घोषणा की तारीख /Date of Pronouncement : 16-03-2016

आदेश
ORDER

अमित शुक्ला : न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 04.01.2013, passed by Ld. CIT(A)-16 Mumbai, for the quantum of assessment completed under section 143(3), for the assessment year 2008-09, on the following grounds of appeal:-

- “1.On the facts and circumstances of the case and in law the Commissioner of Income Tax (A) [CIT(A)] erred in confirming the AO's order in disallowing an amount of Rs.5,31,050/0 being the cost of improvement incurred by the appellant in computing short term capital gains.
2. The learned CIT(A) failed to appreciate that the property was purchased and sold along with the furniture and the appellant had incurred expenses in only refurbishing the furniture and fixture, which in turn yielded a better sale value of the capital asset in the instant case”.

2. The facts in brief are that, the assessee has shown short-term-capital-gains (STCG) on sale of immovable property. In the computation of income, the assessee had shown purchase cost at Rs. 45 lakhs for the property purchased on 20th October, 2006 and has shown sale consideration of Rs.1,12,00,000/- as per the sale agreement dated 05.04.2007. While arriving at STCG, the assessee has reduced from the sale consideration, a sum of Rs.25,08,750/- which was towards furniture and fixtures. In response to the show cause notice, as to how the cost of development expenditure includes furniture, the assessee submitted the following bills of Mansi Enterprises, for incurring of expenditures:-

- (i) Bill No. 9 dated 27/12/2006 for Rs.9,94,500/-
(ii) Bill No. 27 dated 09/02/2007 for Rs.9,99,000/-
(iii) Bill No.30 dated 21.03/2007 for Rs.5,15,250/-
Rs.25,08,750/-
=====

3. The Ld. AO noted that, out of the aforesaid, following expenses were found to be incurred for furniture, which cannot be allowed:-

Bill Sr. No.	Details of expenses	Amount (Rs.)
27/7	Removing existing furniture as wardrobe Dining table, chair, sofa set, cupboard And making in size by using new Materials, all new decorative fittings, Polishing etc.	3,93,550/-
30/4	Providing & fixing old and new Furniture as portion with shutter with all fixture	1,37,500/-
	Total	5,31,050/-

Thus, out of the total expenditure claimed for Rs. 25,08,750/-, the AO disallowed Rs. 5,31,050/- and held that it cannot be treated as cost of improvement under section 48.

4. The Ld. CIT(A) too after detailed reasoning has confirmed the action of the AO.

5. Before us, the Ld. Counsel for the assessee referred to the agreement for sale of the property and drew our attention to clause (O) of the agreement, whereby the assessee (vendor) had carried out and modified the said office premises by incurring the expenditure of Rs. 25 lakhs. From this clause, the Ld. Counsel pointed out that, without incurring such expenditure, the sale would not have been affected at all, as it was on understanding between the assessee and the purchaser. He further submitted that, the assessee has also filed a petition for admission of additional evidences, which contains copy of confirmation letter from, Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Limited, i.e. Purchaser to show that the said premises was purchased on the stipulation of the changes to be carried out in the premises as per the terms of negotiation. He submitted that, additional evidence has a vital bearing on the issue involved. Besides this, affidavit of the assessee has also been filed. Ld. D.R. on the other hand relied on the orders of the authorities below.

6. After considering the contentions raised by both the parties and on perusal of material placed on record, we find that the sole dispute is with regard to the cost of improvement for an amount of Rs.5,51,050/- which has been incurred towards alternation and modification of lay-out, furniture and design, as per the requirement of the Purchaser. It has been contended to be a pre-condition of the Purchaser for buying the office premises, without which sale would not have been affected. Earlier, the assessee had filed supporting bills before the AO as well as the CIT(A), however, in the additional evidences filed before us along with the petition, assessee has enclosed confirmation letter from the buyer along with the affidavit of the assessee which, in our opinion has a very vital bearing on the issue involved. Accordingly, we admit the additional evidences and remit the matter back to the file of the AO to consider the additional evidence/s and then decide the issue on the basis of the material record as well as additional

evidences and decide the issue accordingly. Thus, ground raised by the assessee are treated as allowed for statistical purposes.

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

Order pronounced in the open court on 16th March, 2016.

Sd/-
(राजेंद्र)
लेखा सदस्य

(RAJENDRA)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य

(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 16th March, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -16, Mumbai.
- 4) The Commissioner of Income tax -18, Mumbai.
- 5) विभागीय प्रतिनिधि “ए” , आयकर अपीलीय अधिकरण, मुंबई/
The D.R. “A” Bench, Mumbai.
- 6) गार्ड फाईल \

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आदेशानुसार/By Order

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

*चव्हान व.नि.स

*Chavan, Sr.PS