

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No. 5637/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2008-09)

Shivhari Agarwal, 93-B Maker Tower, Cuffe Parade, Colaba , Mumbai-400 005.	बनाम/ Vs.	ACIT 12(2) Aaykar Bhawan, Churchgate, Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABPA 1008P		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Naresh Jain
प्रत्यर्थी की ओर से/Respondent by	:	Shri J. Saravanan

सुनवाई की तारीख / Date of Hearing	:	16/12/2015
घोषणा की तारीख / Date of Pronouncement	:	08/02/2016

आदेश / ORDER

PER RAJESH KUMAR, A. M.:

This appeal by the assessee is directed against the order dated 27.06.2011 of Commissioner of Income Tax (Appeals)-23, Mumbai (hereinafter called as the CIT(A)) for assessment year 2008-09. The assessee has raised following grounds of appeal:

1. *“On the facts and circumstances of the case and in law, the authorities below, have erred in calculating short term capital gain on sale of property at Rs.53,39,298/- as against Rs.15,27,567/- ignoring the cost of improvement incurred on the immovable property of Rs.38,11,731/- which is wrong on the facts and circumstances of the case and provisions of Income Tax Act 1961 and rules made there under.*
2. *“On the facts and circumstances of the case and in law, the authorities below, have erred in initiating the penalty proceedings u/s 271(1)(c) of the Income tax Act,1961 for the aforesaid additions.”*

2. The issue raised in the 1st ground of appeal relates confirmation of capital gain of Rs. 53,39,298 as against Rs. 15,27,567/- shown by the assessee. The facts in brief are that the assessee filed his return of income on 29.09.2008 declaring an income of Rs. 16,09,415/- which is comprised of income from sale of bunglow in Goa of Rs. 15,27,567/- being short term capital gain. The said bunglow was purchased on 17.02.2005 for Rs. 25,01,102/- and thereafter renovated by spending Rs. 38,11,731/- and ultimately sold during the year resulting into short term capital gain of Rs. 15,27,567/- which was offered for taxation.

3. The case of the assessee was selected for scrutiny and statutory notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The AO did not agree with the submissions of the assessee on the point of cost of house property claimed at Rs. 63,12,833/- which was arrived at by adding the cost of

purchase of Rs. 25,01,102/- and renovation expenditure of Rs. 38,11,731/-.The AO framed the assessment at Rs.54,21,146/- by calculating the gain from the property at Rs. 50,24,761/- by taking the cost of the property at Rs. 25,01,102/- by rejecting the contention of the assessee qua renovation expenditure of Rs. 38,11,731/-.

4. The Id CIT(A) confirmed the order of AO by dismissing the appeal of the assessee on various grounds that there was no proof of constructions carried out by the assessee when the property was in his possession, cost of kitchen equipments not being part of improvement, absence of proof of delivery of equipments to assessee, non mentioning of the fact of sale of furniture in the sale agreement , date of construction bill being post to date of furniture bill which itself was doubtful and the assessee not furnishing any confirmation of payments of the respective parties.

5. The Id. AR while arguing the case before us submitted that order of CIT(A) upholding the order of AO was wrong as he did not consider the facts in correct perspective. The Id counsel submitted that all the bills of renovation , furniture , kitchen equipment, labour charges , land filling charges and bill of air conditioners

were produced before the AO and also before the CIT(A). The ld counsel brought to our notice the bills attached at page no 4 to 9 of the paper book and clarified that the date of furniture bill was dated prior to the date of construction bill because the construction bill was final bill which was issued upon completion of the renovation whereas the payments were made on the various stages of renovations and the findings of AO and CIT(A) were incorrect so far as the dating of these bill were concerned. The AO and CIT(A) also reasoned the rejection of renovation cost that renovation and air conditioners bills were issued by Delhi based parties which is wrong as any contractors or suppliers could perform the contract anywhere. He also explained as to how the contractor from Delhi was engaged in Goa by advancing the arguments that the said contractor was rendering construction services to the group companies on which the assessee was director. The assessee had furnished the copies of all bills and vouchers and also payment details before the AO who instead of doing further verification chose to reject the renovation cost giving flimsy reasons for same. The ld AR also cited some decisions namely:-

- (i) ITO Vs Late Shri Hirendra Singh Baccha Singh ITA No 4635 & 4636/M/2011
- (ii) Dhakeswari Cotton Mills Ltd Vs CIT 26 ITR 775
- (iii) CIT Vs Spencer & Co Ltd 359 ITR 644(Mad)
- (iv) JCIT Vs Raj kumar Aggarwal & Sons 95IITJ315 (Del ITAT)

(v) ITO Vs Lalitaben B. Kapadia 115 IJ 938 Mum ITAT.

The Id Counsel eventually prayed for allowing the appeal of the assessee as the action of both the authorities were just based on suspicion, conjectures and hypothesis. On the other hand the Id. DR defended the orders of lower authorities.

6. We have considered the rival submissions and perused the materials on records. We find from the paper book filed by the assessee that the renovation cost was incurred over a couple of years the balance sheets of which were filed with the AO. We also note that the bills for renovation, furniture, labour charges and various kitchen and other equipments with full addresses of the recipient of payments were also filed with the AO who did not carry out any further verifications but rejected the plea of the assessee on hypothetical basis. In our opinion the assessee had discharged his burden by filing the various proofs of expenditure and payments thereof by filing balance sheets and bills and it the revenue who failed in its duty to carry out further verification. We do not agree with the observation of the AO and CIT(A) that there was no mention of sale furniture in “agreement to sell” whereas it was clearly stated on page no 22 of the paper book (relevant page of sale deed) that all amenities and facilities were also transferred. The assessee had also filed the balance sheet for three years ended

31.03.2005, 31.3.2006 and 31.3.2007 which are placed at page 1 to 3 of the paper book which duly accounted for the expenditure incurred on renovation. In our opinion the assessee had placed all the bills and vouchers qua the expenditure incurred by the assessee before the AO and CIT(A). In view of these facts the order of the CIT(A) is not correct and cannot be sustained as not based on facts before him. We, therefore, allow the appeal of the assessee by directing the AO to take the short term capital gain from sale of the property at Rs. 15,27,567/- by allowing the renovation expenses as claimed by the assessee.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 8th February, 2016

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :08.02.2016

Ps. Ashwini

Sd/-
(Rajesh Kumar)

लेखा सदस्य / Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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