

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5721/Mum/2010

(निर्धारण वर्ष / Assessment Year: 2006-07)

Akbarali A. Probunderwalla 203, Marine Chambers, New Marine Lines, Mumbai - 400020	बनाम/ Vs.	Income Tax Officer 1(1)(1) 5 th Floor, Aaykar Bhavan, M. K .Road, Churchgate, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFUPP4745G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Dr. K. Shivaram and Ms. Sheetal Jadhav
Department by:	Shri R. P. Rastogi

सुनवाई की तारीख / Date of Hearing: 12.05.2016

घोषणा की तारीख /Date of Pronouncement: 25.08.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 12.03.2010 passed by the Commissioner of Income Tax (Appeals) 1, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2006-07.

2. The assessee has raised the following grounds:-

- “1.a. The learned CIT(A) erred on facts and in law in confirming the taxing of the Appellant on the sale of development rights to M/s.Landline Builders by M/s. Sharp Construction Co. which amounts to double taxation.*
- b. The learned CIT(A) erred on facts and in law in confirming the application of section 50C of the Income Tax Act, when the Appellant had not received any consideration nor were the development rights sold by him.*
- c. The learned CIT(A) erred on facts and in law in stating that the development rights of the land in question were transferred by the appellant.*
- d. The learned CIT(A) erred on facts and in law in not accepting the fact that M/s. Sharp Construction Co. has paid tax on the sale of development rights of the same plot in question.”*

3. The brief facts of the case are that the assessee filed his return of income on 23.03.2007 declaring total income to the tune of Rs.84,090/- The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”) on 22.08.2007. Subsequently, the case was selected for scrutiny and notice u/s.143(2) dated 29.10.2007 was issued and served upon the assessee. Notice u/s. 142(1) of the Act was also issued on 23.06.2008 and served upon the assessee on 24.06.2008. The assessee was an individual having salary income, income from house property and capital gain and partner in the M/s. Sharp Construction Co. The assessee was also a director with M/s. A.K.Porbunderwala Builders Pvt. Ltd. During the previous year

relevant to the A.Y.2006-07, development deed was registered with M/s.Landline Developers on 23rd day of August, 2005 for a consideration of Rs.15,00,000/-, in which the assessee was stated to be the owner. On seeing the return of income of the assessee, it was observed that there was no income and gain on this transactions. Therefore the notice was issued and after receipt of the reply value of the sale of land to the tune of Rs.54,37,010/- was added to the income of the assessee as capital gain u/s.45 r.w.s 50C of the Act. The Assessing Officer was of the view that the assessee introduced the land in the name of M/s.Sharp Constructions Co. in 1986-87 or 1994-95 for only Rs.73,800/- just to evade the tax. The said land was not reflected in the closing stock. The profit was not offered to tax of Rs.15,00,000/-. The land was with the name of Shri Akbarali A. Porbandwala. The Assessing Officer was of the view that the intention of the assessee was to evade the tax by transferring the land to partnership firm, therefore the Assessing Officer invoked the provision u/s.50C of the Act and accordingly assessed the income of the assessee and taxed. The CIT(A) was also of the same view.

4. We have heard the argument advanced by the learned representative of the parties and perused the record. The bone contention of the assessee is that the income from the land is not liable to be taxed twice. The assessee has shown the land with M/s.Sharp Constructions Co. wherein the income from the land was assessed by

the Assessing Officer by virtue of order dated 26.12.2008 for the A.Y.2006-07. The said order was also challenged before the CIT(A) who confirmed the order of Assessing Officer by virtue of order dated 05.01.2010. Subsequently, the matter went up before the Income Tax Appellate Tribunal, Mumbai who also decided the case in ITA No.2663/Mum/2010 for A.Y.2006-07. The said order perused which clearly speaks about the assessment of the income with regard to the land belonging to the M/s. Sharp Constructions Co. in question. The Assessing Officer has also assessed the income upon the said land on account of alienation by the Akbarali A. Probunderwalla to M/s. Landline Builders Pvt. Ltd. by virtue of development deed registered on 23.08.2005 for a consideration of Rs.15,00,000/- again by treating the land belonging to Akbarali A. Probunderwalla individually. Now it is not in dispute that the land has been assessed twice one on the part of M/s. Sharp Construction Co. which is the partnership firm and the other on behalf of the individual Akbarali A. Probunderwalla. The land was used for the purpose of the firm. The said consideration to the tune of Rs.15,00,000/- was assessed twice one on the part of the M/s. Sharp Construction Co. and Akbarali A. Probunderwalla individually. It is the case of double taxation because the alienation of the land has been assessed two times which does not seem justifiable. Accordingly, these issues are decided in favour of the assessee against the revenue and set aside the finding of the CIT(A) on the above said issues.

5. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 25th August, 2016.

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25th August, 2016

MP

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai