



IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.5541/Mum./2015
(Assessment Year : 2011-12)

Asstt. Commissioner of Income Tax
Circle-18(3), [Erstwhile ACIT-14(3)]
Earnest House, Nariman Point
Mumbai 400 021

..... Appellant

v/s

Shri Gopal Ramrakh Maheshwari
C/o M/s. Maheshwari & Maheshwari
907, Dalamal House
206, Jamnalal Bajaj Marg
Nariman Point, Mumbai 400 021
PAN - AADPM2753M

..... Respondent

Revenue by : Shri H.M. Wanare
Assessee by : Shri K.C. Kankariya

Date of Hearing - 22.09.2016

Date of Order - 22.09.2016

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is directed against order dated 19th September 2015, passed by the learned Commissioner (Appeals)-29, Mumbai, for the assessment year 2011-12.

The grounds raised by the Revenue are as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that income from sale of flat declared by the assessee was capital gains, as against business income assessed by the A.O.

2. On the facts and in the circumstances of the case, the CIT(A) has failed to appreciate that:

a) the assessee has taken three flats (Wing G-302, G-402 & G-502) from the same builder, while he already has a Residential Property at Nanachowk.

b) the flat sold by the assessee during the year is out of 3 flats booked by the assessee in the residential building project constructed by the developer MIs. Apraulic Construction Investment & Finance Private Ltd., in which assessee himself is a director, thus, it is a transaction carried out to make easy and quick money by the director himself under the cover of capital gains.

c) though the assessee has held the flat sold for a period of seven years in the first look, but on careful perusal of facts it is apparent that he did not hold the flat in a condition in which it would fetch him an income and delay in the construction activity restrained him from selling and profit on sale on such right in residential house is taxable as adventure in the nature of trade.

d) the assessee has paid a sum of Rs.4,00,000/- against the agreed purchase price of Rs.26,25,000/- to the developer M/s.Apraulic Construction Investment & Finance Private Ltd. and entered into an agreement for sale dtd. 21.05.20 10 and the said flat was allotted to the assessee vide letter dtd. 26.4.2003, when it was under construction. Thereafter, the assessee has sold his right in the aforesaid agreement to acquire the flat by entering into an sale agreement dtd.21.10.2010 with Mrs. Shubangi Wadekar for sale of the above flat to her for a sum of Rs.60,00,000/-.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not sustaining the addition of Rs.1.05.016/- made by the AO u/s.14A r.w.r. 8D of the Income-tax Act, 1961.

4. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has failed to appreciate that the assessee earned exempt income in the form of dividend and did not make any disallowance of expenses against the same.

5. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has failed to appreciate that the assessee was holding substantial investment funds which yielded/likely to yield exempt income and he has also failed to maintain separate books of accounts for taxable income and exempt income."

2. At the outset, both the learned Representatives appearing for the parties submitted before us that the tax effect pertaining to the amounts disputed by the Department is less than the monetary limit of ₹ 10 lakh fixed by the CBDT in Circular no.21 of 2015 dated 10th December 2015, in relation to appeal before the Income Tax Appellate Tribunal. Taking into consideration the aforesaid submissions of the learned Departmental Representative and also finding that the CBDT circular under reference applies retrospectively, even to pending appeals, we dismiss the appeal of the Department as not maintainable.

3. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 22.09.2016

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 22.09.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai