

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आयकरअपील सं./ I.T.A. No.5644/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

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| M/s Mukesh Gopaldas Dattani 3-C Avsar, 77/81 Kazi Sayed Street Mumbai-400 003, | बनाम/ Vs. | ITO – 17(2)(4) Room no. 123B, 1 st floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020 |
| स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAAFM-3204-E | | |
| (अपीलार्थी/Appellant) | : | (प्रत्यर्थी / Respondent) |

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| Assessee by | : | Shri Paresh Shaparia, Ld. AR |
| Revenue by | : | Shri Bharat Andhale, Ld. Sr. DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 03/06/2021 |
| घोषणा की तारीख / Date of Pronouncement | : | 30/08/2021 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income-Tax (Appeals)-58, Mumbai [CIT(A)], order dated 30/07/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 05/02/2013. The grounds raised by the assessee read as under:-

1. On the facts and circumstances of the case the Learned Commissioner of Income Tax (Appeals)-58 ("CIT-A") erred in confirming that provisions of Section

50C of Income Tax Act, 1961 ("Act") are applicable on the transaction in questions. The appellant prays that based on the facts of the case the provisions of Section 50C are not applicable.

2. On the facts and circumstances of the case the Learned- CIT-A has erred in ignoring the fact that, the transaction has taken place on 17 September 2009, the document was unregistered, and the provisions of section 50C of the Act were not applicable to unregistered documents executed prior to 01/10/2009. In spite of clear provisions of law, the Learned CIT-A has rejected the claim without giving any reasons in the appellate order. The conclusion reached by Learned CIT-A is erroneous and contrary to the provisions of the law.

3. On the facts and circumstance of the case the appellate had received part payment by account payee cheque which is recorded in the unregistered document and as per the proviso to section 50C of the Act, even if the said section is applicable the value has on the date of the agreement has to be taken and not subsequent date when the said document is registered. In spite of clear provisions of law, the Learned CIT-A has rejected the claim without giving any reasons in the appellate order. The conclusion reached by Learned CIT-A is erroneous and contrary to the provisions of the law.

4. On the facts and circumstance of the case the appellate the appellate prays that, the provision of section 50C of the Act cannot be invoked and the sale consideration disclosed in the agreement amounting to INR19,52,170/- needs to be considered for computing Long Term Capital Gain.

5. On the facts and circumstances of the case the Learned CIT-A erred in confirming that the sale consideration for transfer of property be determined at INR 59,99,500/- by invoking the provision by section 50C of the Act. The appellant prays that Learned CIT-A has erred in determining the sale consideration at INR 55,99,500/-

6. On the facts and circumstances of the case the appellant prays that sale consideration of INR.19,52,170/- be replaced with Sale consideration of INR. 59,99,500/- and Long Term Capital Gains may be computed.

7. On the facts and circumstances of the case the Learned CIT-A erred in confirming the claim of interest paid to partners amounting to INR 61,058/- which the Learned Assessing Officer disallowed. The appellant prays that the disallowance of interest is not justified and be deleted.

8. The Learned CIT-A has erred in confirming the levy of interest U/s 234B at INR 2,62,830/-. The appellant denies the liability of payment of interest U/s 234B. On the facts & circumstances of the case the appellant submit that levy of interest U/s 234B at INR 2,62,830/- is not justified and be deleted.

As evident the assessee is aggrieved by certain additions arising out of invocation of the provisions of Sec.50C. Another grievance of the assessee is disallowance of interest paid to partners.

2. Having heard rival submissions and after due consideration of material on record, our adjudication to the subject matter of appeal would

be as given in succeeding paragraphs. The assessee being a resident firm was assessed u/s 143(3) on 05/02/2013.

3. Addition under the head Capital Gains

3.1 During assessment proceedings, it transpired that the assessee, vide agreement dated 17/09/2009, transferred its right in respect of a leasehold property i.e., Shop Cum Godown No.10 in Block 'Y' APMC Complex, Navi Mumbai for sale consideration of Rs.19.52 Lacs which was offered to tax under the head 'Capital Gains'. The net sale consideration received by the assessee was Rs.9 Lacs whereas the balance amount of Rs.10.52 Lacs was directly paid by the purchaser to APMC (marketing committee) on behalf of assessee. It was noted that the property was used in earlier years for business purposes and the depreciation was being claimed as well as allowed on this property in those years. Therefore, Ld. AO opined that the gains would be short term in nature. The assessee submitted that the godown was used for business purposes from AYs 2001-02 to 2005-06 and its WDV as on 31/03/2005 was Rs.12.76 Lacs. The assessee discontinued business activity and stopped using the godown for business purposes. The same was let out and rental income was offered to tax from AYs 2006-07 to 2009-10 and no depreciation was claimed against the same since AY 2006-07 onwards. The cost of acquisition was taken to be WDV as on 31/03/2005. Therefore, the gains would be Long term in nature. However, not convinced, Ld. AO opined that the gains would be short term in nature.

3.2 It further transpired that the sale was affected by the assessee though unregistered transfer deed dated 17/09/2009. Thereafter, the

purchaser got registered a 'Deed of Declaration' on 07/09/2011 after paying requisite stamp duty as well as penalty for non-registration of documents within stipulate time. On these facts, Ld. AO opined that the provisions of Sec.50C would be applicable according to stamp duty prevailing on the date of registration of 'deed of declaration' i.e. 07/09/2011. The assessee controverted the same by submitting that deed of declaration was unilateral document signed by the purchaser. The same was not deed of transfer but a declaration to perfect the title as per the provisions of The Registration Act. No rights were transferred by the assessee under 'deed of declaration' since the same already stood transferred under unregistered transfer deed dated 17/09/2009. Hence, the provisions of Sec.50C would not be applicable to unregistered document since the stamp authorities have not assessed the value for the purpose of stamp duty. The said plea was rejected by Ld. AO since the word **assessable** was inserted in Sec.50C vide Finance Act, 2009 which was done to plug the loophole of persons not registering the sale documents to avoid the mischief of Sec.50C. Finally, Ld. AO substituted the agreed value with stamp duty value of Rs.59.99 Lacs and re-worked capital gains which were to be treated as short-term in nature.

3.3 Before Ld. CIT(A), the assessee inter-alia pleaded that the provisions of Sec.50C would not be have any application in case of sale of leasehold rights. The said plea was rejected since the leaseholds rights would be capital assets to which the provisions of Sec.50C would apply. Therefore, the action of Ld.AO in adopting the stamp duty value was upheld. However, the assessee's plea that the gains would be long

term in nature, found favor with Ld. CIT(A) and Ld. AO was directed to compute long term capital gain after indexation as if the asset was acquired in AY 2006-07. Aggrieved, the assessee is in further appeal before us.

4. At the outset, it could be noted that what the assessee has sold is leasehold rights in certain property and therefore, the provisions of Sec.50C would not be applicable to such a transaction. The provisions of Sec.50C apply in case of transfer of capital asset being land or building or both and are not applicable in case of transfer of leasehold rights in land & buildings. The said proposition is duly supported by the decision of Hon'ble Bombay High Court in the case of **CIT V/s Greenfield Hotels & Estates Pvt. Ltd. (77 Taxmann.com 308 dated 24/10/2016)** wherein Hon'ble Court has declined to admit the question raised by the revenue. Similar is the decision of Hon'ble Karnataka High Court in **V.S.Chandrashekhar V/s ACIT (ITA No. 70 of 2015 dated 02/02/2021)**. Similar is the decision of Mumbai Tribunal in **Atul G. Puranik V/s ITO (11 Taxmann.com 92 dated 13/05/2011)**. This being so, we would hold that the provisions of Sec.50C would not be applicable to the transaction under consideration and therefore, the consequential addition made in the hands of the assessee, would not be sustainable in law. We order so. This plea of Ld. AR stand allowed which render all the other related grounds as infructuous in nature.

5. Interest to Partners

5.1 The assessee paid interest of Rs.0.61 Lacs to the partners. The same was disallowed since the original partnership deed did not provide for payment of any such interest. The deed of addendum as executed by

the assessee on simple unstamped paper was rejected. The Ld. CIT(A) confirmed the stand of Ld. AO since the only income in the Profit & Loss Account was interest income. Whether interest was assessable as Business income was not established and therefore, the interest disallowance was confirmed. Aggrieved, the assessee is in further appeal before us.

5.2 Upon perusal of assessee's Profit & Loss Account, it could be seen that the only credit to Profit & Loss Account is 'Gain on Sale of Godown' & interest income. Both these items has been offered as well as accepted under the head 'Capital Gains' and 'Income from other sources' respectively. The expenditure has been fully disallowed by the assessee except to the extent of interest to partners for Rs.0.61 Lacs which has been disallowed by Ld. AO. As per the provisions of Sec.40(b), a firm is allowed deduction of interest paid to partners provided the same is paid in terms of the partnership deed. The Ld. AR has placed on record copy of 'Deed of Addendum' dated 01/04/2009 which provide for such payment of interest to the partners. Therefore, no case of disallowance could be made against the assessee. By deleting this addition, we allow this ground of appeal.

6. The appeal stand partly allowed in terms of our above order.

Order pronounced on 30th August, 2021.

Sd/-

(Mahavir Singh)
उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 30/08/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.