

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “B”, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.3011/Mum/2014 for Assessment Year: 2008-09**

Sh. Bhupendra D Goradia , 22, 2 nd Floor, Satguru, 16, French Road, Mumbai-400007 PAN:AABPG1097N	Vs.	ITO 16(2)(4), Mumbai
(Appellant)		(Respondent)
Assessee represented by	Sh. Bhupendra Shah -AR	
Revenue represented by	Sh. Suman Kumar -DR	
Date of hearing	17.04.2017	
Date of order	26.05.2017	

Order under section 254(1) of income Tax Act

Per Pawan Singh Judicial Member;

1. This appeal by assessee under section 253 of Income Tax Act (Act) is directed against the order of Commissioner (Appeals) dated 23 December 2013 for assessment year 2008- 09. The assessee has raised following grounds of appeal;

(1) On the facts and in the circumstances of the case and in law, the learned Commissioner(Appeals) erred in computing long-term capital gain of Rs.50,86,932/- on impugned sale of flat though the transfer of the said flat was not complete as clause 11 and 22 of Article of agreement dated 28 December 2007.

(2) On the facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in disallowing 476000/-out of total cost of improvement of Rs. 576000/-in respect of flat under reference while determining the long-term gain.

2. Brief facts of the case are that assessee filed return of income for the relevant assessment year on 8th September 2008 declaring total income of Rs.4,63,136/-. The assessing officer while framing assessment order noticed that as per AIR information the assessee sold a property at a value of Rs. 76,50,011/- on 28th of December 2007. The assessee has not shown any long-term capital gain arising out of sale of the said property. When confronted by assessing officer, the

assessee contended that due to mistake the property remains to be included. The assessee was asked to provide details regarding the date of acquisition, cost of purchase and the sale consideration of the property. The assessee furnished the necessary details and a statement of computation of long-term capital gain. In the computation of long-term capital gains, in addition to the indexed cost of acquisition, the assessee claimed indexed cost of improvement on account of renovation expenses of Rs. 22,66,971/-. The claim of expenses relates to the cost of improvement in the year 1986, the assessee also filed copy of the bills with regard to expenses on renovation. The assessee had shown the expenses of Rs.5,76,000/- on renovation. The details and the evidences furnished by assessee were not accepted by assessing officer holding that assessee failed to substantiate the expenses made on the improvement. The assessee simply filed xerox copy of the bills without giving any details of mode or source of payment, thus the claim of renovation was not accepted by assessing officer. On the basis of information supplied and after deducting the cost of acquisition the assessing officer worked out the capital gain of Rs. 50,86,932/- and added to the total income of the assessee. On appeal before Commissioner (Appeals) the action of assessing officer was sustained. Further aggrieved, by the order of Commissioner (Appeals) the assessee filed present appeal before us.

3. We have heard learned AR of the assessee and learned DR for the revenue and perused the material available on record. Ground No. 1 relates to computation of long-term capital gain on sale of flat. The learned AR of the assessee argued that the assessee sold a residential flat during the year under reference and earned profit, however, on account of default by purchases the sale remains incomplete. The assessee has taken legal action against the purchaser by filing a Civil Suit in the Bombay High Court. As the sale is not complete during the year, hence no capital gain income is taxable during the year under reference. The assessing officer not considered the entire facts of the case. The assessee has brought all the facts on record before assessing officer, relating to the recession of contract of sale of flats and the litigation filed before the High Court. The learned AR of

assessee also shown us the copy of Arbitration Application filed before Hon'ble Bombay High Court and the order passed therein. On the other hand learned DR for the revenue argued that the assessee received the entire sale consideration of the flat transferred by assessee. The possession of the Flat/capital asset was also handed over by the assessee to the purchaser. The sale was complete within the financial year under consideration. The litigation launched by the assessee is not helpful to the assessee. The assessee has failed to specify as to what is the claim of the assessee before the Arbitrator or the nature of relief claimed in such proceedings/ litigation. The learned DR for the revenue prayed for rejection of ground of the appeal.

4. We have considered the rival contention of the parties and gone through the order of authorities below. There is no dispute that possession of the said property/ capital asset/flat was also handed over by the assessee to the purchaser during the relevant year under consideration. Further there is no dispute that assessee has received full value of consideration of the property. The only grievance of the assessee is that the purchasers was given a credit of Rs. 3.5 lakh by the Society Realty flat in question situated and that the said amount should have been paid to the assessee instead of purchasers. The assessee has raised a dispute regarding the entitlement of said credit of Rs. 3.5 lakh before Hon'ble Bombay High Court. We have seen the order of Hon'ble Bombay High Court dated 8 October 2010. We have seen that the assessee has not disputed the execution of transfer deed. Even before the High Court while filing a petition or in the Arbitration the assessee not sought relief for rescinding the contract of sale/ transfer deed. The only dispute before the High Court and in Arbitration is related with description of money. Further, no dispute that assessee sold his residential flat during the year under consideration. The High Court with the consent of the Counsel of parties referred the dispute and differences between the parties to Mr. Markand Gandhi Sole Arbitrator. We have further seen the arbitration petition wherein the assessee has claimed interest due to delay in payment of agreed amount and the refund of reimbursement of credit received

by purchaser from the Housing Society only, where the flat is situated. All these facts were duly considered by learned Commissioner (Appeals) before passing the impugned order. Hence, we do not find any reason to interfere with the findings of learned Commissioner (Appeals) . In the result the ground of appeal raised by assessee is dismissed.

5. Ground No. 2 relates to disallowing Rs. 4,76,000/- on account of cost of improvement. The learned and AR of the assessee argued that assessee has filed sufficient evidence in respect of expenses relating to cost of improvement made in the flat in the year 1986. The assessee had incurred a total of Rs. 5,76,000/-on such improvement. The assessing officer disallowed the entire expenses. However, the learned Commisioner (Appeals) out of total expenses allowed only in Rs. 1.00/- lakh. The learned AR of the assessee further argued that assessee has placed on record the complete details of payments made to Shri Ashok Yadav who undertaken a repair and improvement work, and the payments made to M/s Amrut Construction, interior decorator along with the receipts. It was further argued that all these expenses were duly shown by assessee in the return of income. On the other hand the learned DR for the revenue supported the order of authorities below. The learned DR for the revenue further argued that there is no evidence on record to prove that assessee is regularly filing his balance-sheet before the revenue authorities. The entries shown by the assessee in his computation of income are self-serving statement. It was further argued that the learned Commissioner (Appeals) has already given partial relief to the assessee. The assessee is not entitled for any further relief under this ground of appeal.
6. We have considered the rival contention of the parties and gone through the orders of authorities below the assessing officer disallowed the entire claim holding that the assessee has submitted copy of bills, the payments has been made in respect of civil and labour work and the assessee failed to substantiate that the expenses were made. The during the appellate proceedings the assessee filed certain more receipt with regard to the improvement in the flat. The learned

Commissioner (Appeal) forwarded those evidences to the assessing officer for his remanded report. The assessing officer furnished his remand report dated 6 September 2013. In the remand report the assessing officer contended that assessee claimed the expenses on account of cost of improvement of Rs.2,30,000/- paid to Ashok Yadav and Rs. 3,54,340/- paid to interior decorator M/s Amrut Construction. During remand proceedings the assessing officer sent notices under section 133(6) to both the parties. No reply was received M/s Amrut Construction, however, the notice sent to Ashok Yadav was not served. The assessing officer opposed the claim of the assessee. In the rejoinder relating to the cost of improvement, the assessee contended that during the course of remand proceeding the assessee submitted copy of return of income filed by assessee for assessment year 2003- 04 and assessment year 2007-08 along with balance-sheet for respective years. These documents were available with the Department since 2003 and good evidences to establish the cost of the flat. The assessing officer has not given any comment on the cost of the flat shown in the balance-sheet and rejected the claim of assessee on the ground that one party did not reply and on another notice was not served. We have seen that learned Commissioner (Appeals) while considering this ground of appeal observed that the assessee has filed certain evidence by way of return of income and balance-sheet for earlier years the case for assessment year 2003- 04 and 2007- 08 which allegedly shown the cost of flat at Rs. 11,53,434/- against Rs. 5,77,475/- adopted by assessing officer for computation of long-term capital gain in the assessment order.

7. The learned Commissioner (Appeals) further observed that merely reflecting the entry in accounts and the balance-sheet, it cannot be said that assessee has actually made these payments and rejected the contention of the assessee. However, considering the remand report of assessing officer and the fact that the flat in question is very old and certainly some renovation must have been taken place in between the year 1985 when the property was acquired and in the year 2007 when the property was sold. The learned Commissioner (Appeals)

allowed only Rs. 1.00/- lakh out of the total claim of Rs. 5,76,000/-, on account of improvement. We have seen that the learned Commissioner (Appeals) granted partial relief after considering the facts with regard to cost of improvement and the cost of interiors. The estimation of Id Commissioner (Appeals) is at lower side. Considering the facts that property was acquired in the year 1985 and was transferred in the year 2007, we allowed Rs.2,50,000/- as cost of improvement and interior. The AO is directed accordingly. In the result the ground No.2 raised by assessee is partly allowed.

8. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26th day of May 2017.

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER
MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL

Mumbai; Dated 26/05/2017
S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai