

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.7711/Mum./2019

(Assessment Year : 2006-07)

Late Smt. Bhanuben Dhanji Shah
Through her Legal Heir
Shri Hitesh Dhanji Shah
E-31, Konark Indraprashta
11th Floor, Jain Mandir Road
Sarvodaya nagar, Mulund (West)
Mumbai 400 080 PAN – AMRPS1215L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Range-23(2), Mumbai

.....Respondent

Assessee by : Shri Vishal Shah

Revenue by : Smt. Smita Nair

Date of Hearing – 23/06/2022

Date of Order – 22/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/09/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-40, Mumbai, [*learned CIT(A)*], for the assessment year 2006-07.

2. In its appeal, the assessee has raised following grounds:

"The order of Learned Commissioner of Income Tax (Appeals) 40-Mumbai is unsustainable both on facts and in law -

1) That on the facts and in law, the Learned CIT (A), has erred in confirming Long Term Capital Gain on sale of premises (Godown) at Rs.11,78,098/- as the appellant could not show the evidence u/s. 50 C of the IT. Act. which is baseless.

2) That on the facts and in law as per section 50C of the I.T Act, 1961 the matter was referred to valuation cell, hence order passed before getting the valuation report is bad in law and against principle of natural justice.

3) That on the facts and in law, the Learned CIT (A), has after calling for valuation Report from the department valuer, the said report was received dtd. 26/06/2014 passed by Asst. Valuation Officer, Valuation cell, Thane, bringing the value down to Rs.7.10,000/- from Rs.12,84,000/- The said report was already in the file of CIT(A) which was submitted first time vide letter dtd.31/10/2014 & again vide letter dtd.27/09/2019 filed on 30/09/2019. However, the CIT (A) did not take any cognizance of the said document before dismissing the appeal.

4) That on the facts and law, the Learned CIT (A) has erred in confirming the addition of Rs.81,775/- being the cost of improvement to the godown sold during the year under consideration. The details & submission were filed on 22/01/2013, 31/10/2014 and 30/09/2019. However, the CIT(A) did not take any cognizance of the said document before dismissing the appeal.

5) That on the facts and law, the Learned CIT (A) has dismissed the appeal by confirming the addition only on hearsay ignoring the documents produced by your Appellant. Therefore, the addition made is unjustified and the same may be deleted."

3. The issue arising in grounds no.1, 2 and 3, raised in assessee's appeal is pertaining to computation of long term capital gain.

4. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee being an individual, expired on 13/06/2019. Thereafter, Shri Hitesh Dhanji, representing as Legal Heir of the original assessee late Smt. Bhanuben Dhanji Shah, has filed revised Form no.36, duly introducing himself as a "Legal Heir" of Late Smt. Bhanuben Dhanji Shah, (the original assessee herein), which has been taken on record. During the year under consideration, the assessee filed her return of income declaring

total income of Rs.11,04,646, on 31/07/2006. Along with the return of income, the assessee filed computation of income, wherein the assessee has shown income from property, long term capital gains and income from other sources comprising of interest income from Bank, bond interest and interest on loans advanced. During the course of assessment proceedings, it was observed that under the head "*Long Term Capital Gains*", the assessee has shown a sum of Rs.3,10,975. In this connection, it was explained by the assessee that asset i.e., Bhivandi Gala, purchased in the year 1996 was sold during the year as per sale agreement dated 03/12/2005. In the Capital Account working filed along with the return of income, it has been claimed that the said property was acquired at a cost of Rs.64,990, on which the assessee incurred cost of improvement of Rs.81,775. The assessee arrived at an indexed cost of Rs.2,39,155, which was reduced from the sale price of Rs.6,00,000, and accordingly the balance amount was offered for taxation. From the copy of agreement filed by the assessee in support of the said sale of asset, the Assessing Officer noticed that the market value has been estimated by the Registration Authority at Rs.12,84,000. Considering the value determined by the Registration Authority as a correct market value, the Assessing Officer, vide order dated 05/09/2008 passed under section 143(3) of the Act, determined the long term capital gains of Rs.11,78,098, and added the same to the income of the assessee.

5. In appeal, the learned CIT(A), vide impugned order dated 30/09/2019, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative ('*learned AR*') submitted that during the pendency of appellate proceedings before the learned CIT(A), report from Department Valuation Officer regarding the value of the property was sought, which was not taken into consideration by the learned CIT(A), while dismissing the assessee's appeal.

7. On the other hand, the learned Departmental Representative ('*learned D.R.*') vehemently relied upon the orders passed by the lower authorities.

8. We have considered the rival submissions and perused the material available on record. We find that on 26/06/2014, the Asstt. Valuation Officer, Valuation Cell, Income Tax Department, Thane, had prepared valuation report under section 55A / 50C of the Act determining fair market value of the property namely Power Loom Gala, MH1441, Near Kaneri, Bhiwandi, as on 30/12/2005, at Rs.7,10,000. As per the assessee, the report from the aforesaid Department Valuation Officer, was sought by the learned CIT(A) during the pendency of its appeal. Since the impugned addition under the head "*Long Term Capital Gain*", which was upheld by the learned CIT(A), has been made on the basis of value determined by the Registration Authority without taking into consideration the report of the Department Valuation Officer, we deem it fit and proper to restore this issue to the file of the Assessing Officer for *de novo* adjudication. The Assessing Officer is directed to compute the capital gains after considering the value, as determined by the Department Valuation Officer. As a result, grounds no.1, 2 and 3, raised in assessee's appeal are allowed for statistical purpose.

9. The issue arising in ground no.4, raised in assessee's appeal is pertaining to disallowance of cost of improvement, as claimed by the assessee.

10. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the course of assessment proceedings, the assessee was asked to submit proof with regard to cost of improvement claim of Rs.81,775, with supporting bills, date of incurring such expenditure, source of funds, etc. However, in the absence of any details, the Assessing Officer, vide order passed under section 143(3) of the Act, disallowed the cost of improvement claimed by the assessee.

11. In appeal, the learned CIT(A) dismissed the appeal filed by the assessee on this issue.

12. Before us, during the course of hearing, the learned A.R. submitted that the assessee purchased a piece of land without any construction on it in the year 1996 and thereafter assessee incurred expenditure for construction A.C. Shield Power Loom Gala. The learned A.R. also referred to some pictures of the construction site, which are forming part of the paper book.

13. On the other hand, the learned D.R. relied upon the order of the lower authorities.

14. We have considered the rival submissions and perused the material available on record. In the present case, we find that the claim of the assessee was denied by the lower authorities in the absence of proof with

regard to cost of improvement claimed by the assessee. Even during the hearing before us, apart from showing certain photographs, the assessee has not produced any supporting bills, vouchers, source of funds, etc., in respect of its claim on account of cost of improvement and in the absence of these supporting details, we do not find any infirmity in the orders of the lower authorities denying the claim of the assessee on this issue. Accordingly, ground no.4, raised in assessee's appeal is dismissed.

15. Ground no.5 is general in nature and need no separate adjudication, in view of our findings in this order.

16. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open Court on 22/08/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 22/08/2022

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

Assistant Registrar
ITAT, Mumbai