

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 5104/Mum/2016
(Assessment Year: 2012-13)

Hari Mittar Yadav Flat No. 02, Ground Floor, Regal Apartment, 19 Chapel Road, Bandra (W), Mumbai-400 050	Vs.	ITO-23(1)(5) Mumbai
PAN/GIR No. AAMPY 0653 R		
(Appellant)	:	(Respondent)

Appellant by	:	None
Respondent by	:	Shri Hoshang B. Irani

Date of Hearing	:	25.08.2022
Date of Pronouncement	:	21.11.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13. As there was no representation on behalf of the assessee, we hereby proceed to dispose this appeal by hearing the Id. Departmental Representative (Id. DR for short) and on perusal of the available material on record.

2. The assessee has filed the revised grounds of appeal which reads as under:

1. The Ld. Commissioner of Income Tax (Appeals)-32, Mumbai [hereinafter referred to as the Ld. CIT(A)] erred in passing the order dated 27.05.2016 upholding the action of Ld. Income Tax Officer - 23(1) 5., Mumbai [hereinafter referred to as Ld. A.O:] in making addition of Rs.50,44,750/- invoking the provisions of section 50C of the Act Without appreciating the facts

and circumstances of the case. Thus, the order dated 27.05.2016 passed by Ld. CIT (A) is bad in law and the same may be quashed.

2. *The Ld. CIT(A) failed to appreciate that the provisions of section 50C is not applicable in the facts of present case. Hence, the addition of Rs.50,44,750/- under section 50C of the Act is unjustified and the same may be deleted.*

3. *The Ld. Assessing Officer erred in levying interest under section 234A, 234B and 234C without appreciating the fact that the appellant denies his liability to the same.*

3. The assessee has challenged the addition made by the Assessing Officer (A.O. for short) and confirmed by the Id. CIT(A) as per the provision of section 50C of the Act.

4. Brief facts are that the assessee was into the business of commission agency and has also rented out a boutique shop during the A.Y. 2012-13. The assessee filed his return of income dated 29.01.2013, declaring total income of Rs.6,89,500/-, consisting of income from house property and income from other sources. The assessee's case was selected for scrutiny and assessment order u/s. 143(3) was passed on 27.03.2015, where the A.O. had made several additions, pertaining to long term capital gain (LTCG) u/s.50C, interest paid on borrowed capital u/s.24B, unexplained expenditure debited to profit and loss account u/s.37(1) and disallowance u/s.80C.

5. Aggrieved by this, the assessee was in appeal before the Id. CIT(A), who confirmed certain additions and deleted some of the additions made by the A.O.

6. The assessee is in appeal before us only on the addition made u/s. 50C, pertaining to LTCG as per the revised grounds of appeal filed by the assessee.

7. The facts of the case are that as per the AIR information, it is observed that the assessee had transferred an immovable property for a sale consideration of Rs.12 lacs vide registered deed of transfer dated 18.01.2012 entered into between the assessee and

Shri Vishwanth K. Shetty, being the vendor and Shri Suresh Dhondu Waghmare and Shri Balbir Singh Gabbar Singh as the purchasers.

8. During the assessment proceeding, the A.O. observed that the stamp duty authority valued the said property at Rs.1,00,89,500/- for the purpose of computation of stamp duty, which was said to be accepted by the sale parties, thereby paying the stamp duty assessed by the government authority. The A.O. made enquiries to the assessee pertaining to the difference in the stamp duty value and the sale consideration evidenced in the sale deed. The assessee contended that the impugned property was declared as depreciable assets in A.Y. 2006-07 in the returns filed by the partnership firm M/s. Vihar Enterprises where the assessee and Shri Vishwanath K. Shetty received Rs.12 lacs each and contended that the said property was transferred by the assessee along with co-owner during the year 2006. The assessee furnished copies of the deed of the partnership, deed of retirement and reconstitution of partnership, Indemnity Bond cum Affidavit cum Undertaking to substantiate the claim of the assessee that the said property was sold in the year 2006, but the sale deed was effected only in the year 2012 due to some misunderstanding between the buyers and the sellers. The lower authorities failed to accept the contention of the assessee, as the said deeds furnished by the assessee were unregistered deeds merely entered in the judicial stamp papers.

9. The Id. Departmental Representative (Id. DR for short) for the Revenue during the appellate proceeding submitted that the assessee has failed to furnish the documentary evidence to prove that the property was sold in the year 2006 itself and whether the possession of the property was handed over to the buyers were all not corroborated by

documentary evidences. The ld. DR stated that neither the sellers nor the buyers have disputed the valuation of the stamp duty, assessed by the concerned authority and it is also to be noted that the parties have also paid the entire stamp duty charges as per the valuation determined by the government authority. The ld. DR further to this stated that the ld. CIT(A) has calculated the indexation cost of acquisition and had assessed the LTCG at Rs.30,10,193/- instead of Rs.50,44,750/- as assessed by the A.O.

10. The ld. DR relied on the order of the ld. CIT(A).

11. Having heard the ld. DR and perused the material on record. It is evident that the alleged property has been purchased by the assessee and his co-owner jointly for a sale consideration of Rs.24,00,000/- in December, 2003 in the name of partnership firm M/s. Vihar Enterprises. Pursuant to the deed of the partnership, deed of retirement and reconstitution of partnership, Indemnity Bond cum Affidavit cum Undertaking dated 05.07.2006 and 06.09.2006, the assessee was entitled to Rs.12,00,000/- as his share in the firm during the year ended 31.03.2006, relevant to A.Y. 2006-07. The assessee's contention that as per the deed of retirement dated 06.09.2006, the said property was transferred and the assessee has relinquished his right in the said property since that day. The assessee further stated that the transfer of deed entered upon on 18.01.2012 is erroneous, as it had specified that the assessee has sold the property in his personal capacity which has to be the capacity of a partner of the firm. The assessee has also furnished two deeds of reconstitution of partnership dated 05.07.2006 and 06.09.2006 respectively to substantiate his stand. It is pertinent to point out that this stand of the assessee is not corroborated with sufficient documentary evidence and the deed of the

reconstitution relied upon by the assessee is merely an unregistered document, which does not instill confidence in our view. These documents are merely executed on a judicial stamp paper of Rs.500/-. The Id. CIT(A) has relied on the provisions of Indian Partnership Act along with the state amendments, which mandates compulsory registration of the partnership firm and registration of reconstitution of the firm with the Registrar of Firms appointed by the State Government for this purpose. It is pertinent to point out that the assessee has failed to provide any such communication to the Registrar of Firms related to the reconstitution of the firm. The assessee has also failed to furnish the original partnership deed or the registered reconstitution deeds.

12. Upon perusal of the recitals of the deed of transfer executed on 18.01.2012, it is evident that none of the clauses has a mention that the said property was transferred during the year 2006 and that the sale was on behalf of the partners of the partnership firm.

13. From the above observation, we are of the considered view that the assessee has failed to corroborate his claim by documentary evidence neither before the lower authorities nor before us. As the assessee has failed to discharge the onus casted upon him, we conclude that the transfer of property was executed on 18.01.2012 and not in the year 2006, as alleged by the assessee. The case laws relied upon by the assessee in the case of *Modipon Ltd. vs. Department of Income Tax* dated 09.01.2015, is distinguishable on facts and the co-ordinate bench decision in the case of *Dy. CIT vs. Venkat Reddy* in ITA Nos. 974 & 975 of 2010 (Hyd.) pertains to the genuine delay in the registration of the sale agreement. In this case, there has been a subsequent rectification deed registered

which substantiates the assessee's claim, but in the present case the assessee has failed to prove his claim by way of any documentary evidence which can be relied upon.

14. From the above observation, we are of the view that there is no infirmity in the order of the Id. CIT(A) and we hereby uphold the order of the Id. CIT(A).

15. In the result, this appeal by the assessee is dismissed.

Order pronounced in the open court on 21.11.2022

Sd/-

Sd/-

(Om Prakash Kant)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 21.11.2022

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai