

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ “ए” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE HON’BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.61/Mum/2014
(निर्धारण वर्ष / Assessment Year :2008-09)

Sanjay C Kothari, legal Heir on behalf of Late Smt Krishna Kothari, 15-A, Mittal Court, Nariman Point, Mumbai-400021	बनाम/ Vs.	Income Tax Officer-14(1)(3), 2 nd floor, Earnest House, Nariman Point, Mumbai-400021
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AAPPK3528G

अपीलार्थी ओर से / Appellant by:	Shri K Gopal
प्रत्यर्थी की ओर से/Respondent by	Shri Kailash Kanojiya

सुनवाई की तारीख / Date of Hearing : 21.7.2016
घोषणा की तारीख /Date of Pronouncement : 6.10.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and it is directed against the order of the Ld. CIT(A)-25, Mumbai dated 22.10.2013 pertaining to A.Y.2008-09.

2. The issue raised in the grounds of appeal no.3 is against the confirmation of addition of Rs.23,83,141/- under the head Short Term Capital Gains (STCG) on the transfer of residential flat by the Id. CIT(A) by

holding that the AO without appreciating the fact that the flat has not actually been transferred during the year and under the provisions of section 2(47) of the Income Tax Act, 1961(hereinafter referred to as the Act), therefore, the invocation of the provisions of section 50C is not justified at all.

3. Facts of the case in brief are that the assessee filed his return of income on 29.9.2008 declaring total income of Rs.5,97,600/- which was processed under section 143(1) of the Act. Thereafter, the case was selected for scrutiny and statutory notices were issued u/s 143(2) on 5.8.2009 and u/s 142(1) dated 5.4.2010 were duly issued and served upon the assessee. The AO during the course of assessment proceedings found from the balancesheet for the assessment year 2007-08 that a sum of Rs.3,38,31,050/- was appearing as advance for property being Gundecha Garden and also received unsecured loan of Rs.33,66,631/- from Shri Sanjay Kothari which was also shown in the balancesheet. The assessee got the possession of the said flat on 7.2.2007 and which means the assessee got right in the said property. However, the assessee continued to show the advances of property in the balancesheet as on 31.3.2007 which was wrong as the assessee should have shown in the balancesheet the purchase of flat and instead.

4. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below. On perusal of the page 139 of the paper book reveals that Smt Krishna Kothari and Sanjay Kothari were co-owners of the flat in Gundecha Gardens Co-

op.Soc Ltd as evidenced by a certificated dated 10.6.2008 bearing share certificate no.216, Member's registration No.D-30. The assessee died on 13.9.2009 as evidenced by the death certificate dated 22.12.2010 issued by Municipal Corporation of Greater Mumber, which is placed at page 141 of the paper book. We also note from page No.125 of the paper book which is a copy of letter addressed to the Hon'rary Secretary of the Society for deletion of name of original (deceased) member informing the society that one of the co-owner Smt.Krishna Kothari expired on 13.9.2009 requesting the society to insert the name of Mrs.Meenakshi Sanjay Kothari as the second co-owner in the record of the society in place of the deceased co-owner. We have also perused the pages 132,134 and 138 which comprises of indemnity bond filed by Mrs.Meenakshi Sanjay Kothari and undertaking of Mrs.Meenakshi Sanjay Kothari, affidavit at page 136 to 138 which is joint affidavit of Shri Sanjay C Kothari, Son of Mrs.Krishna Kothari, Smt. Sangita Dinesh Mohta, Daughte, Mrs. Surekhas Sanjay Mimani, daughter and Mrs.Shalini Girdhri Chandak, daughter and Mrs.Meenakshi Sanjay Kothari, daughter in law requesting the society that all legal heirs have left their interest as well claim in the shares certificate no.216 as well as residential flat no.1402 in the building of the society except Shri Sanjay C Kothari who is already holding joint ownership along with the deceased joint owner and such his membership should be continued along with his wife. Taking into account all the facts and documents filed on record, we find that the deceased assessee has not transferred the flat in favour of her son Sanjay C

Kothari and the AO has merely quest and imagine on the basis of deletion of certain entries in the balance sheet of both persons that transfer of flat has taken place and accordingly invoked the provisions of section 50C of the Act in order to calculate STCG and added the sum of Rs.23,83,145/- in the hands of deceased assessee which was confirmed by the Id. CIT(A) by upholding the finding of the AO. In our considered opinion, the provisions of section 50C can only be invoked when the transfer of property/land/flat has taken place and not otherwise. In view of our observations, the order of the Id.CIT(A) sustaining the addition cannot be sustained. Accordingly, we set aside the Id.CIT(A) and direct the AO to delete the addition.

5. In the result, the appeal of the assessee is allowed.

The above order was pronounced in the open court on 6th Oct, 2016.

घोषणा खुले न्यायालय में दिनांक: 6th Oct, 2016 को की गई ।

Sd
(JOGINDER SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 6th Oct, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai