

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM  
And  
SHRI PAVAN KUMAR GADALE, JM**

**ITA No. 7432/mum/2012  
(A.Y. 2005-06)**

|                                                                                                                                            |     |                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Standard Chartered Bank<br>Crescenzo,<br>7 <sup>th</sup> Floor, C38-39,<br>G Block Bandra Kurla Complex ,<br>Bandra East<br>Mumbai-400 051 | Vs. | The Dy. Director of Income-<br>tax(International Taxation)-<br>2(1),<br>1 <sup>st</sup> Floor, Scindia House,<br>N.M. Marg, Ballard Pier,<br>Mumbai-400 038 |
| <b>Appellant</b>                                                                                                                           | ..  | <b>Respondent</b>                                                                                                                                           |
| <b>PAN No. AABCS4681D</b>                                                                                                                  |     |                                                                                                                                                             |

**Assessee by** : Shri Madhur Agrawal,  
Advocate  
**Revenue by** : Shri Milind Chavan, DR

|                               |            |
|-------------------------------|------------|
| <b>Date of hearing :</b>      | 08.12.2021 |
| <b>Date of Pronouncement:</b> | 27.01.2022 |

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal filed by Standard Chartered Bank [ The Assessee/ Appellant] for Assessment Year 2005-06 against the assessment order passed by the Assistant Director of Income Tax (International Taxation) 2(1), Mumbai [ The Id AO ] under section 143(3) read with section 144C (13) read with section 147 of the Act (hereinafter referred to as 'Act') dated 15<sup>th</sup> October, 2012. By this appeal, assessee has challenged the reopening of the assessment as well as the merits of

the addition. The grounds of appeal covered both the issues.

2. Facts show that assessee is a Branch of a foreign Bank. It is engaged in the business of banking activities and is assessed in India under Income tax Act on income attributable to the Indian operations of foreign bank.
3. For Assessment Year 2005-06, assessee filed its return of income on 31<sup>st</sup> October, 2005 at a total income of ₹680,94,57,960/-. Assessment order under section 143(3) of the Act was passed on 19<sup>th</sup> March 2008 at ₹ 96,28,18,807/-, which was subsequently rectified under section 154 of the Act on 30<sup>th</sup> May, 2008 at ₹909,67,56,864/-.
4. Case of the assessee was reopened by issue of notice under section 148 of the Act on 14<sup>th</sup> December, 2010 based on Survey under section 133A of The Act conducted in case of Z Square Shopping Mall, Kanpur on 13<sup>th</sup> May, 2010. During survey, it was noted that premises owned by the assessee was sold to a third party on 23<sup>rd</sup> April, 2004 by sale deed for a total sum of ₹14,25,00,000/- having market value as per stamp duty law of ₹23,74,08,709/-. Thus, Provisions of Section 50C of the Act were applicable which shows that there was a difference of ₹9,49,08,709/- in the 'full value of consideration' for computation of capital gains. Therefore, notice u/s

148 of the Act was issued. Assessee responded stating that assessee has executed the 'agreement to sale' of the above property on 31<sup>st</sup> August, 2003 offering entire sale consideration received by the assessee for capital gain for Assessment Year 2004-05 and also handed over the possession to the buyer in that year. Therefore, according to the Provisions of Section 45 of the Act, the property was transferred in Assessment Year 2004-05. The assessee has also offered capital gain tax in Assessment Year 2004-05 and therefore, there is no reason to invoke provisions of Section 148 of the Act for Assessment Year 2005-06 as there is no transfer in terms of provision of section 2(47) of the Act in AY 2005-06.

5. The learned Assessing Officer noted that assessee has offered capital gain of ₹3,56,77,724/- in Assessment Year 2004-05. However, the registered sale deeds are dated 23<sup>rd</sup> April, 2004 which falls in Assessment Year 2005-06, the difference between consideration as per stamp duty value and the value disclosed in sale deed amounting to ₹9,49,08,709/- was added for Assessment Year 2005-06. The draft assessment order was accordingly passed.
6. Assessee challenged it before the Dispute Resolution Panel-2, Mumbai [The LD DRP] that issued direction on 25<sup>th</sup> September 2012. The learned Dispute Resolution Panel directed that as the assessee has failed to provide evidence to substantiate the claim of

transfer of possession of the property and final receipt of money in Assessment Year 2004-05 and as the property was conveyed by registered deed on 23<sup>rd</sup> April, 2004, which is falling in Assessment Year 2005-06, addition between fair market value of property and actual consideration is rightly added by Id AO. Therefore, LD DRP directed that LD Assessing Officer is correct in making an addition of difference between the sale price and market value for stamp duty in Assessment Year 2005-06.

7. Based on this direction, the learned Assessing Officer passed the assessment order on 15<sup>th</sup> October, 2012, determining the total income of the assessee at ₹919,16,65,573/- therein, the only addition was of ₹9,49,08,709/- , being difference in actual sales consideration and Fair market value as per provision of section 50 C of the Act was made. The assessee is aggrieved with this order.
8. The learned Authorized Representative filed two paper books, one containing of factual documents containing 32 pages and other containing case law compilation of 96 pages. The learned Authorized Representative submitted that in notice under section 148 of the Act dated on 14<sup>th</sup> December 2010, wherein the reasons recorded shows that the reopening has been made for substituting fair market value of property sold by registered sale deed dated 23<sup>rd</sup> April 2004. The sale deed shows the sale consideration of ₹14,25,00,000/-

whereas, the stamp duty shows the market value of ₹23,74,08,709/-. Thus, the full value of the consideration received by the assessee was to be substituted by the fair market value as per stamp duty Act. He further, referred to the agreement to sale executed on 31<sup>st</sup> August, 2003, wherein, the property have been transferred for ₹14,25,00,000/- and total consideration has been received on 29<sup>th</sup> August, 2003. He referred to clause 1 of the Agreement for this proposition. He also referred to clause 3, where the actual physical vacant possession of the property was delivered to the buyer. He also referred to the statement of the computation of total income for Assessment Year 2004-05, where assessee computed the capital gain by considering the sale value of ₹14,25,00,000/- and offered capital gain of ₹3,56,77,724/-. He submitted that for Assessment Year 2004-05, the assessee has been assessed under section 143(3) of the Act by order dated 30<sup>th</sup> November, 2006, where the above short term capital gain has been accepted and assessed by the Assessing Officer. Therefore, his claim was, that though, capital gain has been offered for Assessment Year 2004-05, accepted by the Assessing Officer by making an assessment order under section 143(3) of the Act for that year as transfer u/s 2 (47) of The Act was complete in AY 2004-05, merely because the sale deed were registered in AY 2005-06, case of the assessee cannot be reopened in which the sale deeds

were registered. He further referred to the provisions of Section 50C of the Act and stated that only sale consideration is required to be substituted by the market value for computation of capital gain. In the present case, the capital gain has been charged to tax in Assessment Year 2004-05 and in Assessment Year 2005-06, only the difference between the market value and the sale consideration has been added by reopening of the assessment. He submitted that (1) this is not accordance with the law and (2) reopening is bad in law. He referred to the decision of Hon'ble Bombay High court in Writ Petition No.3649 of 2018 dated 7<sup>th</sup> February 2019 in the case of Ms Tarla Krishnakumar Shah, wherein on identical facts the reopening has been quashed. Accordingly, Assessee submitted that issue is squarely covered in favour of the assessee on the issue of reopening.

9. The learned Departmental Representative submitted that the registered sale deed executed in impugned Assessment Year 2005-06 and therefore, the learned Assessing Officer has correctly taxed the differential sale value for Assessment Year 2005-06. He further referred to the clause No.8 of the agreement to sale, wherein the sale deed is required to execute within 6 months of the agreement to sale. Therefore, according to him, the order of the learned Assessing Officer and the direction of the learned Dispute Resolution Panel are sustainable in law. He also

supported that only the registered sale deed results into transfer of its property and agreement to sale is not a valid mode of transfer of immovable property. For this, he relied on the decision of Hon'ble Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd. Vs. State of Haryana 14 taxmann.com 103. He submitted that capital gain is chargeable to tax in Assessment Year 2005-06 only. According to him, there is no infirmity in the reopening of the assessment as well as addition made by LD AO.

10. The learned Authorized Representative submitted that the transfer is required to be seen in view of the Provision of Section 2(47) of the Act. The decision of Hon'ble Supreme Court is on section 54 of the Transfer of Property Act and does not deal with the provision of Income Tax Act. He further relied on the order of the learned Dispute Resolution Panel wherein addition only being difference between the sale considerations was confirmed and it did not say that the transfer did not take place in Assessment Year 2004-05, but in AY 2005-06, according to the provisions of the Income Tax Act. Thus, he submitted that even if the reopening was to be made it was for Assessment Year 2004-05 and could not have been made for Assessment Year 2005-06.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities. We also considered the various judicial precedents cited before

us by the parties. In the present case the assessment u/s 143 (3) of the act was completed on 19<sup>th</sup> of March 2008. Subsequently notice u/s 148 of the income tax act was issued wherein the reasons were recorded as Under:-

"The assessee is a resident of the United Kingdom. Assessment in the case was completed in 19/03/2008 vide order passed u/s 143 (3) of The Income Tax Act.

Survey in the case of Z Square shopping mall private limited, Kanpur was carried out on 13/file/2010 by the DCIT VI, Kanpur. During the course of survey, it has been found that the property situated at premises number 16/113, MG Marg, The Mall, Kanpur which was owned by the assessee has been sold to Messer's ZAz sons export Ltd, Kanpur vide two sale deeds dated 23/4/2004 for total sum of ₹ 142,500,000 (3,67,55,436 + 10,57,44,564) whereas stamp authorities have charged stamp duty on market value at ₹ 237,408,709/- (8,20,14,101 + 15,53,94,608).



As per provisions u/s 50 C (1) where the consideration received or accruing as a result of transfer by the assessee of a capital asset being land or building or both, is less than the value adopted or assessed or assessable by an authority of the State government to as the stamp valuation authority for the purposes adopted or assessed or assessable shall for the purposes of Section 48 be deemed to be the full value of the consideration received or accruing as a result of such transfer.

In this case, the immovable property valued by stamp authorities at ₹ 237,408,709/- would be deemed to be the full value of the consideration received by the assessee. Thus there is a difference between market value and the sales consideration at ₹ 94,908,709/-.

In view of the above, I have reason to believe that income chargeable to tax has escaped assessment as the assessee has failed to disclose fully and truly all-material facts necessary for assessment in the above case within the meaning u/s 147 of the income tax

act. Accordingly, notice u/s 148 of the IT Act is issued for assessment year 2005 – 06 with the prior approval of DIT (IT) – I.”

12. Assessee replied on 17 January 2011 stating that for both the properties, assessee bank has executed ‘agreement to sale’ with the purchaser on 31st of August 2003 and they are falling in assessment year 2004 – 05. It was further stated that clause 1 and 2 of the ‘agreement to sale’, entire sale consideration of ₹ 142,500,000 was discharged by the purchaser on August 29, 2003 relevant to assessment year 2004 – 05, the entire sale consideration has been confirmed to have been received by the assessee. Further as per clause 2, sale consideration is not refundable to the purchaser Under any circumstances. It was further stated that the purchaser has confirmed that they have received the actual, physical, vacant possession of both the properties and the assessee bank is left with no right, title, interest, claim in the property and the purchaser has become the absolute owner of the property with full right to use the property as an absolute owner. The assessee also referred to clause 3 and 4 of the ‘agreement to sale’ and therefore it was stated that the ownership and the property has been transferred to the purchaser during financial year 2003 – 04 relevant to assessment year 2004 – 05. The assessee also submitted that according to the

provisions of Section 45 of the income tax act read with Section 2 (47) (v) any transactions involving allowing of, the possession of, any immovable property to be taken on retained in part performance of a contract of the nature referred to in Section 53A of The Transfer Of Property Act, amounts to transfer according to income tax act which is chargeable to tax u/s 45 of the and computed in terms of provision of section 48 of the Act. Accordingly as the consideration has been received fully, agreement to sale has been executed, possession of the property has been given, and therefore, the transfer has taken place in assessment year 2004 – 05. Based on this assessee stated that assessee has offered capital gain on sale of these properties to tax for assessment year 2004 – 05. The computation of the total income in the computation of capital gain for assessment year 2004 – 05 was also shown to the learned assessing officer. It was further stated that assessment year 2004 – 05 has been assessed u/s 143 (3) of the income tax act 1961 as per order dated 30/11/2006 wherein all these details have been verified. It is evident from letter dated 11/9/2006 during the assessment proceedings for assessment year 2004 – 05 wherein as per paragraph number 2 the assessee explained the details with respect to the sale of office building and further details were explained by letter dated 8/11/2006.



13. As per the assessment order passed u/s 143 (3) of the income tax act for assessment year 2005 – 06, the learned assessing officer has noted that only addition of ₹ 9,49,08,709 is required to be made to the total of income of the assessee for assessment year 2005 – 06, because of the fact that the remaining capital gain of ₹ 35,677,724/- has already been offered by the assessee in assessment year 2004 – 05, hence, same was not being considered again to avoid duplication of income.
14. The provisions of Section 50 C of the income tax act clearly provides that fair market value of the property is required to be substituted as consideration received or accruing as a result of the transfer of a capital asset by the assessee where the actual sale consideration received or accruing is less than the value adopted or assessed by an authority of state government for the purpose of payment of stamp duty in respect of such transfer. The value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for the purposes of computation of capital gain u/s 48 of the income tax act. Accordingly for computation of capital gain according to the provisions of Section 48 of the income tax act which is chargeable according to the provisions of Section 45 of the act, the difference between the actual sale consideration and fair market

value of the property as described u/s 50 C of the income tax act is required to be used.

15. In the present case for assessment year 2005 – 06 there is no transfer of asset, and therefore, there is no chargeability of capital gain u/s 45 of the act. Thus the provisions of Section 48 are also not triggered for this year. Therefore for assessment year 2005 – 06 there is no implication of provisions of Section 50 C of the act.

16. In the present case,

- a. "agreement to sale" has been entered in assessment year 2004 – 05,
- b. full value of consideration is received by the assessee,
- c. possession of the property has been given to the buyer,
- d. assessee offered same in the computation of total income Under the head capital gain,
- e. the learned assessing officer assessed the same u/s 143 (3) of the act,
- f. In the assessment, order for assessment year 2005 – 06 the learned assessing officer also did not make addition of total capital gain but merely the difference between the sale consideration and fair market value as determined by stamp authorities.

- g. Notice u/s 148 of the Act is issued for AY 2005-06 and not for 2004-05, for substituting fair market value of property u/s 48 of the Act.
- h. In AY 2005-06, difference between fair market value and sale consideration is added to the total income, without computation of capital gain.
17. For assessment year 2005 – 06, the only reason for taking action u/s 148 of the act is that the sale deed is registered on 23 April 2004, which falls in assessment year 2005 – 06. As per the provisions of Section 2 (47) of the act, the transfer in relation to capital asset includes any transaction involving the allowing of the possession of any immovable property to be taken on retained in part performance of a contract of the nature referred to in Section 53A of the transfer of property act. This is not disputed by the revenue. The learned AO impliedly has accepted in his assessment order also that the capital gain has already been charged to tax in assessment year 2004 – 05. The learned dispute resolution panel in paragraph number 2.5 has noted that assessee has failed to provide evidence to substantiate its claim of transfer of possession and final receipt of money in assessment year 2004 – 05 and as the property was registered on 23/4/2000 for i.e. during assessment year 2005 – 06, therefore, it confirmed the action of

the learned assessing officer to tax capital gain in the assessment year 2005 – 06. The learned DRP ignored the agreement to sell entered into by the assessee. Further if the learned DRP was of the view that capital gain is chargeable to tax in assessment year 2005 – 06, they should have directed the learned assessing officer to make the total addition of the capital gain in assessment year 2005 – 06. Even for Id AO and Id DRP it cannot act as deterring fact that capital gain is offered by assessee in AY 2004-05, those authorities are required to tax correct income in right hands for right assessment year. Therefore, there is a contradiction in the direction of the learned dispute resolution panel.

18. Coming to the decision of the honourable Supreme Court in case of Suraj lamp and industries private limited versus state of Haryana 14 taxmann.com 103 (SC) (2011) referred by the learned departmental representative, we find that the honourable Supreme Court has held that Section 54 of the transfer of property act makes it clear that a contract of sale, that is an agreement of sale does not, of itself, create any interest in, or charge on such property. Transfer of immovable property by way of sale can only be by a deed of conveyance. In the absence of a deed of conveyance, which is duly stamped and registered as required by the law, no right, title, or interest in any immovable property, can be transferred. Honourable

Supreme Court further held that any contract of sale which is not a registered deed of conveyance would fall short of the requirement of Section 54 and 55 and will not confer any title nor transfer any interest in any immovable property (except to the limited right granted u/s 53A of the act). Therefore, an agreement of sale, whether with the possession or without possession is not a conveyance. It conclusively held that sale of immovable property can be made only by registered instrument and an agreement of sale does not create any interest or charge on its subject matter. In paragraph 12 of the judgment, honourable Supreme Court has made a specific exclusion of provisions of Section 53A of the transfer of property act. When we look at the definition of the transfer of a capital asset Under the provisions of Section 2 (47) of the act, it includes in the definition of transfer any transaction involving the allowing of the possession of any immovable property to be taken on retained in part performance of a contract of the nature referred to in Section 53A of the transfer of property act 1882. Therefore though Under the transfer of property act, an agreement to sale coupled with the payment of the property and giving possession of the property may not result into complete right in favour of the purchaser, unless it is executed by sale deed which is duly stamped and registered, but in the hands of the buyer, if any transaction is covered u/s 53A of the transfer of property act, it will result into liability of



capital gain tax u/s 45 read with Section 2 (47) of the act. Therefore, in view of the specific provision under the income tax act for the purpose of taxability of transfer of immovable property, the reliance on the above decision of the honourable Supreme Court is misplaced.

19. In view of the above facts, we do not find any reason to uphold the reopening of the assessment as well as addition on merits for the reason that
- i. there was no transfer of any capital asset during assessment year 2005 – 06 but in assessment year 2004 – 05.
  - j. The capital gain has already been charged to tax by the learned assessing officer by passing an order u/s 143 (3) of the act for assessment year 2004 – 05.
  - k. The provisions of Section 50 C can be applied in the year in which provisions of Section 45, 48 read with Section 2 (47) of the act are triggered. In this case the provisions of Section 45, 48 and 2 (47) of the act are triggered in assessment year 2004 – 05 whereas the learned assessing officer has invoked the provisions of Section 50 C of the act for assessment year 2005 – 06.

I. There was no failure on part of the assessee at least for AY 2005-06, in disclosing fully and truly all material facts, as there was no Transfer u/s 2(47), nothing was chargeable u/s 45 and therefore no computation was to be made u/s 48 and therefore there is no applicability of section 50C in the year which is reopened by Id AO.

20. Accordingly Ground no 1 & 2 of the appeal are allowed.

21. In the result, Appeal filed by the assessee is allowed quashing reopening of assessment and deleting addition on the merits.

Order pronounced in the open court on 27.01.2022

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.01.2022

Sudip Sarkar, Sr.PS

**Copy of the Order forwarded to:**

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



//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**