IN THE INCOME TAX APPELLATE TRIBUNAL ‘A’ BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI RAVISH SOOD,JM

आयकर अपील सं./ I.T.A. No.887/Mum/2017
(**निर्धारण वर्ष /** Assessment Year: 2011-12)

Shri. Devdatta Chandrakant Patil Room No. 10, 2nd Floor, Navdeep Co-op Housing Society; Uran, Tal-Uran.	**बनाम**/ Vs.	ITO, Ward 4; Panvel.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.		AJHPP5728J
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से/**Appellant by**	:	Shri Jitendra Patil
प्रत्यर्थी की ओर से/ **Respondent by**	:	Smt. Vinita J. Menon

सुनवाई की तारीख/ **Date of Hearing**	:	05/04/2017
घोषणा की तारीख / **Date of Pronouncement**	:	17/05/2017

आदेश / O R D E R

PER RAVISH SOOD, JM:

The present appeal filed by the assessee arises from the order passed by the CIT(A)-2, Thane, dated 31.05.2016, which in itself arises from the assessment order passed by the A.O. under Sec. 143(3) of the Income Tax Act, 1961 (for short ‘Act’), dated 16.01.2014.

2. Briefly stated, the facts of the case are that the assessee had filed its return of income on 05.08.2011 declaring income of Rs.

1,76,000/-. The case of the assessee was taken up for scrutiny proceedings and notice was issued to the assessee u/s 143(2) of the 'Act'.

3. That during the course of the assessment proceedings it was observed by the A.O that CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED (for short 'CIDCO') had way back in the year 1985 acquired land which was co-owned in equal share by the assessee and 5 other co-owners, and in lieu thereof had given a total compensation of Rs. 34,650/-, and had further alloted a 550 sq. mtr plot on 22.05.2007 at Dronagiri, to the assessee and the aforesaid 5 co-owners, in equal 1/6 share each. The aforesaid plot was sold by the aforesaid persons (hereinafter referred to 'Original licensees') by way of a MOU, dated. 28.05.2007 to one M/s Sompura Developers, for a total consideration of Rs. 38,50,000/-. That due to non performance on the part of the 'Original licensees', a Civil Suit was filed by M/s Sompura Developers (supra) in the Court of Civil Judge (S.D) at Panvel, for Specific Performance of Agreement dated. 28.05.2007. Thereafter the 'Original licensees' and M/s Sompura Developers (supra) entered into a compromise on 16.02.2010, as per which the 'Original licensees' agreed to transfer the aforesaid plot in the name of M/s Sompura Developers (supra), as per the revised escalated price, i.e @ Rs. 9,500/- per square meter, as a result whereof the sale consideration stood substituted at Rs. 52,25,000/-, as against Rs. 38,50,000/-(supra) which was earlier agreed amongst the parties vide MOU dated. 28.05.2007. That in view of the terms of the compromise the Estate Agent, viz. Mr. Zubair Pittu received commission of Rs. 9 lakhs.

4. The A.O during the course of assessment proceedings observing that the assessee had not offered for tax the Capital gain on the transfer of his 1/6th share of the aforesaid plot, therein called upon the assessee to put forth an explanation as regards the same. The A.O thereafter not being satisfied with the explanation of the assessee, therein resorted to Sec. 50C of the 'Act' and adopted the value of Rs. 61,27,000/- fixed by the Stamp Valuation authority, as the deemed sale consideration and worked out the Capital gain in the hands of the assessee at Rs. 10,19,654/-. The A.O thereafter deliberating on certain other issues assessed the income at Rs. 12,37,560/-.

5. That the assessee assailed the order of the A.O before the CIT(A), who after deliberating on the contentions raised by the assessee before him in the backdrop of the facts of the case though rejected the contention of the assessee that the aforesaid sale transaction of the plot was not exigible to tax, but however observed that as the plot under consideration was a lease hold plot, therefore the provisions of Sec. 50C could not be invoked. The CIT(A) thus in the backdrop of his aforesaid observations directed the A.O to recompute the capital gain by taking the actual sale consideration received by the assessee, and not on the basis of the value determined by the Stamp valuation authority. The CIT(A) further directed the A.O to allow all the expenditures which had been incurred by the assessee for selling the plot, while recomputing the Capital gains in the hands of the assessee.

6. The assessee being aggrieved with the order of the CIT(A) had therein carried the matter in appeal before us. The Ld. Authorized representative (for short 'A.R') for the assessee vehemently submitted that the sale of the aforesaid plot not being exigible to tax, as such had wrongly been subjected to tax by the lower authorities. Per contra, the Ld. Departmental representative (for short 'D.R') heavily relied on the orders of the lower authorities and therein averred that the same had rightly been brought to tax by the A.O which thereafter had been upheld by the CIT(A). It was submitted by the Ld. A.R that the appeal of the assessee was devoid of any merit and thus was liable to be dismissed.

7. We have heard the authorized representatives for both the parties and perused the orders of the lower authorities. We have given a thoughtful consideration to the facts of the case and are of the considered view that the CIT(A) after duly appreciating the facts of the case had rightly observed that the plot sold by the assessee was a sale of a 'Capital asset', which thus was clearly liable to be brought to tax under the head 'Capital gain'. We find that the CIT(A) had in all fairness directed the A.O to recompute the capital gain on the basis of the sale consideration received by the assessee, as well as allow deduction of all the expenses incurred by the assessee at the time of sale of the aforesaid plot. We are unable to persuade ourselves to subscribe to the contention of the Ld. A.R that as the plot under consideration was allotted to the assessee and the other 5 co-owners on 22.05.2007 in lieu of the acquisition of their land by CIDCO way back in the year 1985, therefore the consideration received on subsequent sale of the said plot vide MOU/Compromise deed dated.28.05.2007/16.02.2010, would partake the color and character of compensation received on acquisition of its land by CIDCO, which as averred by the Ld. A.R would be exempt u/s 10(37)(iii) of the 'Act'. We are of the considered view that the aforesaid contention of the Ld. A.R is absolutely misconceived, as by no stretch of imagination the sale consideration received on the sale of the plot allotted by CIDCO to the assessee and the other 5 co-owners as on 22.05.2007 can be characterized as compensation received on acquisition of land of the assessee. We find ourselves to be in agreement with the well reasoned order passed by the CIT(A), and finding no reason to take a different view therefore uphold the same.

8. The appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 17/05/2017

Sd/-	Sd/-
(R.C. Sharma)	(Ravish Sood)
लेखा सदस्य /Accountant Member	न्यायिक सदस्य /Judicial Member

मुंबईMumbai; दिनांकDated : 17.05.2017

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)
4. आयकर आयुक्त / CIT– concerned
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल /Guard File

आदेशानुसार/BY ORDER,

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