

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Sri G.C. Gupta, Vice President
and Shri Anil Chaturvedi, Accountant Member**

**ITA No. 210/Ahd/2011
Assessment Year 2007-08**

Asstt. Commissioner of Income Tax, Circle-5, 5 th Floor, Aayakar Bhavan, Race Course Circle, Baroda-390007 (Appellant)	Vs	Shri Mahesh Chunilal Shah, C/o Shah Enterprise, Laheripura New Road, Baroda-390001 PAN No. AKZPS 6615 E (Respondent)
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**Revenue by: Sri M.K. Singh, Sr. D.R.
Assessee by: Sri. M. J. Shah, A.R.**

Date of hearing : 05-08-2014
Date of pronouncement : 27-08-2014

आदेश/ORDER

PER : ANIL CHATURVEDI, ACCOUNTANT MEMBER:-

This appeal is filed by Revenue against the order of Ld. CIT(A)-IV,
Baroda dated 30-11-2010 for A.Y. 2007-08.

2. Assessee is an individual and stated to be deriving income from capital gains, house property and other sources. Assessee filed his return of income for A.Y. 2007-08 on 15-04-2009 declaring income of Rs. 7,82,950/-. The case was selected for scrutiny and thereafter assessment was framed u/s. 143(3) vide order dated 30-12-2009 and total income was determined at Rs. 45,26,558/-. Aggrieved by the order of AO, Assessee carried the matter before Ld. CIT(A). Ld. CIT(A) vide order dated 30-11-2010 allowed the appeal of the assessee. Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us and raised the following grounds:

"1(ii). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 37,43,606/- on account of long term capital gain on sale of godown situated at Cuttak.

1(iii). The CIT(A) erred in not appreciating the facts that without purchase document an inference cannot be drawn; moreover, the Valuation of the property was taken on 04.04.2001, whereas the godown was purchased on 16.11.1996. Therefore, re-valuation needs to be done. Further, as per loan papers, the loans were granted by the State Bank of India on 11.08.1997 whereas the assessee has claimed indexation from 16.11.1996 which is not appreciable. Moreover, the sale price as per sale deed dtd. 14.02.2007 is of Rs, 12500000/- lakhs; 1/2 share of the assessee should be of Rs. 6250000/- whereas it is shown by the assessee at Rs. 5334000/- only. Hence, the addition made by the AO should have been upheld by the CIT(A)."

3. During the course of assessment proceedings, AO noticed that assessee had sold a godown situated at Cuttak and had claimed capital gains. Assessee was asked to furnish the purchase deed of the godown that was sold. AO noted that assessee did not file the purchase deed. He also noted that assessee has shown his share of purchase price at Rs. 27 lacs and the indexed cost of acquisition was worked out at Rs. 45,94,426/-

and assessee had received his share of Rs. 53,34,000/-. AO was of the view that since the escalation in the land prices was by more than 300 to 400% it was improbable that in case of assessee the price has just increased by Rs. 26,34,000/- in 10 years. In the absence of evidence of cost of acquisition, he estimated the cost of acquisition at Rs. 5 lacs instead of 27 lacs as shown by the assessee and thereafter worked out the long term capital gain at Rs. 44,83,180/- and after giving the credit for the capital gain of Rs. 7,39,574/- shown by the assessee, the balance amount of Rs. 37,43,606/- was added to the total income. Aggrieved by the order of AO, Assessee carried the matter before Ld. CIT(A). Ld. CIT(A) after considering the submissions of the assessee and the remand report received from AO deleted the addition by holding as under:-

“4.3. I have carefully considered the facts of the case, the submissions of the appellant, the assessment order and remand report. The appellant had constructed the godown during April 1995-November, 1996. The godown was rented out to HLL and the rent from the godown is also declared in the return from AY 1998-99 onwards. Further, the interest paid on unsecured loans and the SBI loan are also claimed against the house property income. The interest is on unsecured loans of about Rs. 30 lakhs and the bank loan is Rs.24 lakhs. The valuation report also estimates that the investment on the construction of godown is about Rs. 54 lakhs. Thus, the cost of acquisition of Rs.27 lakhs (appellant's share) seems to be in order. The assumption of cost of estimation at Rs.5 lakhs by AO is without any basis as in that case the cost of construction would work out to about Rs. 30.74 per sq. ft which appears to be too low to be realistic. The addition of Rs.37,43,606/- as long term capital gain is thus directed to be deleted.”

4. Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us.

5. Before us Ld. DR relied on the order of AO. On the other hand, Ld. AR reiterated the submissions made before AO and Ld. CIT(A). He further submitted that the property was owned by the assessee along with his brother and his portion of capital gains has been accepted by the Department. He therefore submitted that since the property is the same a different view on the cost of the asset cannot be taken in the case of assessee. He further placed reliance on the decision of Madras High Court in the case of CIT vs. Kumararani Smt. Meenakshi Achi [2007] 292 ITR 0624 and the decision of hon'ble Punjab and Haryana High Court in the case of Jaswant Rai vs. Commissioner of Wealth-tax [1977] 107 ITR 0477. He thus supported the order of Ld. CIT(A).

6. We have heard the rival submissions and perused the material on record. The fact that the godown was constructed in F.Y. 1995-96 is not in dispute. The dispute is about the cost of construction. Assessee after considering the cost of acquisition at Rs. 27 lacs had worked out the capital gains which was not acceptable to AO, Ld. CIT(A) while allowing the appeal of Assessee has noted that the valuation report of the valuer had also estimated the cost of construction of the godown at Rs. 54 lacs and therefore the Assessee's share of $\frac{1}{2}$ worked out to Rs. 27 lacs and thus he has considered the cost of acquisition of Rs. 27 lacs considered by Assessee to be in order. Before us, Revenue has not brought any material to controvert the finding of Ld. CIT(A). Further, Assessee has submitted that the balance $\frac{1}{2}$ share which belonged to his brother and in his assessments, the cost of acquisition of the same godown has been accepted by the Revenue. Before us, no material has been brought on record to show that the valuation of the godown in the case of Assessee's brother has been challenged in appeal before Tribunal. We further find

that the Hon'ble Madras High Court in the case of CIT vs. Kumararani Meenakshi Achi (supra) has held that the differential treatment cannot be meted out to another co-owner while making the assessment of same property or while valuing the same property. In view of the aforesaid facts and relying on the aforesaid decision of Hon'ble Madras High Court, we find no reason to interfere with the order of Ld. CIT(A) and thus these grounds of Revenue are dismissed.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced in open court on the date mentioned hereinabove at caption page

**Sd/-
(G.C. GUPTA)
VICE PRESIDENT**

Ahmedabad : Dated 27/08/2014

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**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद