IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.8866/Mum/2025
(Assessment Year :2017-18)

Padma Plastic 6, Subhalaxmi 1st Floor, 8th Road Santacruz West Mumbai – 400 055	Vs.	Commissioner of Income Tax Circle 22(1), Mumbai
PAN/GIR No.AADFP3080A		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Dalpat Shah, CA
Revenue by	Shri Virabhadra S Mahajan, SR DR
Date of Hearing	**12/03/2026**
Date of Pronouncement	**02/06/2026**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the impugned order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, for the Assessment Year 2017-18 arising out of the assessment framed under section 147 read with sections 143(3) and 144B of the Income Tax Act, 1961.

2. The assessee is principally aggrieved by the action of the authorities below in assessing the entire sale consideration of Rs.4.42 crores received on transfer of two industrial units as long-term capital gain without granting indexed cost of acquisition by adopting fair market value as on 01.04.2001 and further in not allowing transfer premium paid to MIDC while computing capital gains. The assessee has also challenged the consequential levy of interest under sections 234A and 234B.

3. Briefly stated, the assessee is a partnership firm consisting of two partners, namely Shri Yatin Vora and Shri Vipul Vora. The assessee was engaged in the business of labour job work and manufacture of Gum Rosin from its industrial undertaking situated at MIDC, Pawane, Navi Mumbai. One industrial unit bearing No. C-166/2 was acquired on 09.12.1986 and subsequently the adjoining industrial unit bearing No. C-166/1 was acquired on 03.11.2000 from the Court Receiver, High Court, Bombay, pursuant to a distress auction sale conducted by Bank of India for recovery of dues from the defaulting concern M/s. Atul Traders. The assessee purchased the said property for Rs.25 lakhs and, according to it, was also required to bear various liabilities attached to the property.

4. It is the case of the assessee that from Financial Year 2008-09 onwards the business suffered severe setbacks on account of labour unrest, industrial disputes and regulatory changes affecting its business operations. These circumstances ultimately resulted in closure of the business from Financial Year 2009-10 onwards. The assessee has further explained that due to closure of business and absence of taxable income, returns of income were not filed in the subsequent years. It has also been stated that a robbery occurred in the factory premises on 17.01.2012 resulting in loss of various records and documents.

5. During the year under consideration, both industrial units were sold to M/s. GD Coldzone LLP for an aggregate consideration of Rs.4.42 crores, comprising Rs.2.36 crores in respect of Unit No. C-166/1 and Rs.2.06 crores in respect of Unit No. C-166/2. Tax was deducted by the purchaser under section 194IA. Since no return of income had been filed, proceedings under section 147 were initiated and notice under section 148 was issued on 23.03.2021. In response thereto, the assessee filed return of income declaring Nil income and long-term capital loss of Rs.67,93,833 after claiming indexed cost of acquisition.

6. During the course of assessment proceedings, notices under sections 143(2) and 142(1) were issued from time to

time. According to the Assessing Officer, though the assessee furnished copies of purchase and sale agreements, it failed to furnish satisfactory details regarding computation of capital gains and source of acquisition of the properties. The Assessing Officer observed that the assessee had not substantiated the claim of capital loss and accordingly proceeded to assess the entire sale consideration of Rs.4.42 crores as long-term capital gain. The assessment was completed under section 147 read with sections 143(3) and 144B determining total income at Rs.4.42 crores.

7. Before the learned CIT(A), the assessee challenged the aforesaid action and filed valuation reports prepared by Government Approved Valuer M/s. S.V. Joglekar & Associates determining fair market value of both industrial units as on 01.04.2001. It was contended that both assets had been acquired prior to 01.04.2001 and therefore, in terms of section 55(2)(b), the assessee was entitled to substitute the fair market value as on 01.04.2001 as cost of acquisition. It was further contended that the valuation reports constituted crucial evidence and that the claim could not be denied merely because the reports became available immediately after completion of the assessment proceedings. The assessee also claimed deduction of transfer premium paid to MIDC amounting to Rs.22.20 lakhs.

8. The learned CIT(A), however, was not persuaded to accept the aforesaid contentions. According to him, the valuation reports were obtained only after completion of assessment; the burden to establish fair market value was entirely upon the assessee; the valuation adopted by the approved valuer appeared excessive, particularly because Unit No. C-166/1 had been purchased only a few months earlier for Rs.25 lakhs; and the assessee had failed to file returns for several preceding years. He further held that adequate opportunities had been granted during assessment proceedings and therefore the valuation reports subsequently filed could not be relied upon. The claim relating to MIDC transfer premium was also rejected and the assessment order was confirmed.

9. Before us, the learned counsel for the assessee reiterated the submissions advanced before the authorities below and strongly contended that the entire approach adopted by the Assessing Officer is contrary to the statutory scheme governing computation of capital gains. He submitted that both assets having been acquired prior to 01.04.2001, the assessee had an absolute statutory right to substitute fair market value as on that date. He further submitted that the valuation reports prepared by the Government Approved Valuer could not have been rejected without any contrary material or reference to the Departmental Valuation Officer. It was also argued that Unit No. C-166/1 had been acquired

through a Court Receiver auction and therefore the auction purchase price could never be treated as representative of market value. The learned counsel further submitted that transfer premium paid to MIDC was intrinsically connected with transfer of leasehold rights and therefore allowable while computing capital gains.

10. The learned Departmental Representative strongly relied upon the orders of the authorities below and submitted that the assessee failed to discharge the burden cast upon it by law and that the valuation reports having been obtained after completion of assessment could not be accepted.

11. We have carefully considered the rival submissions, perused the assessment order, the impugned appellate order, the valuation reports of the Government Approved Valuer, the purchase and sale agreements of both industrial units, the MIDC records and the entire material placed before us. The controversy involved in the present appeal lies within a narrow but important compass. The assessee does not dispute the transfer of the two industrial units during the relevant previous year, nor is there any dispute regarding the sale consideration received from the purchaser. The real controversy pertains to the manner in which the capital gains have been computed by the Assessing Officer and thereafter sustained by the learned CIT(A). The grievance of the assessee

is that while computing the capital gains, the authorities below have completely ignored the statutory entitlement available under section 55(2)(b) of the Act to substitute the fair market value as on 01.04.2001 as the cost of acquisition and have further declined to consider the valuation reports prepared by a Government Approved Valuer merely because such reports became available immediately after completion of the assessment proceedings. On the other hand, the Revenue authorities have proceeded on the premise that the assessee failed to discharge the burden of substantiating the fair market value as on 01.04.2001 during the assessment proceedings and therefore no such claim could be entertained subsequently.

12. Before examining the rival stands, it would be necessary to first notice the approach adopted by the Assessing Officer. A perusal of the assessment order reveals that despite the assessee having furnished copies of the purchase agreements and sale agreements relating to both the industrial units, the Assessing Officer proceeded on the footing that the assessee had neither satisfactorily explained the source of acquisition of the properties nor furnished a proper computation of capital gains. Proceeding on that premise, he brought to tax the entire sale consideration of Rs.4.42 crores received on transfer of the two industrial units as long-term capital gain. Significantly, no deduction whatsoever was granted either

towards the actual cost of acquisition, indexed cost of acquisition, fair market value as on 01.04.2001, expenditure incurred in connection with transfer or any other deduction contemplated under section 48. Thus, what has ultimately been subjected to tax is not the profit arising from transfer of the capital asset but the entire gross consideration received on sale. In our considered opinion, such an approach strikes at the very foundation of the statutory scheme governing capital gains. The charging provision under section 45 and the computation provisions contained in sections 48 and 55 constitute an integrated code and capital gain can be brought to tax only after applying the computation mechanism prescribed by law. Taxing the entire sale consideration without giving effect to the statutory computation provisions is contrary to the scheme of the Act itself.

13. The learned CIT(A), while affirming the assessment, has substantially rested his conclusion on the reasoning that the valuation reports of the Government Approved Valuer were obtained only on 28.03.2022, i.e., after completion of assessment on 27.03.2022; that the burden to establish fair market value as on 01.04.2001 lay entirely upon the assessee; that the valuation adopted by the approved valuer appeared excessive because Unit No. C-166/1 had been purchased on 03.11.2000 for Rs.25 lakhs whereas the approved valuer estimated its fair market value at Rs.64.88

lakhs as on 01.04.2001; and that the assessee had not filed returns of income for several years after closure of its business. However, having examined the entire record, we are unable to persuade ourselves to concur with the aforesaid reasoning. The starting point of the controversy is the undisputed fact that both industrial units were acquired prior to 01.04.2001. Unit No. C-166/2 was acquired in 1986 and Unit No. C-166/1 was acquired on 03.11.2000. Once this foundational fact is accepted, the statutory consequence contemplated by section 55(2)(b) inevitably follows. The provision expressly confers upon an assessee the right to substitute fair market value as on 01.04.2001 as the cost of acquisition in respect of assets acquired prior to that date. Such right flows directly from the statute and is not dependent upon any concession by the Assessing Officer. Therefore, once the assessee sought to exercise that option and supported the same by valuation reports prepared by a Government Approved Valuer, the authorities below were required to examine the claim on its merits rather than reject it on technical considerations.

14. We further find that the chronology placed on record clearly demonstrates that the assessee had specifically sought adjournment on 25.03.2022 on the ground that the valuation report from the Government Approved Valuer was awaited. Merely two days thereafter, on 27.03.2022, the assessment

came to be completed. The valuation report admittedly became available on 28.03.2022. Thus, this is not a case where an assessee, after suffering an adverse assessment, sought to create evidence at a much later stage. The valuation exercise was already in progress and culminated almost contemporaneously with the passing of the assessment order. Once such evidence became available and was duly placed before the first appellate authority, it was incumbent upon the appellate authority to examine the same on merits. Appellate proceedings under the Income Tax Act are a continuation of assessment proceedings and their primary object is to determine the correct tax liability in accordance with law. They are not intended to perpetuate an incorrect assessment merely because a relevant document became available shortly after completion of the assessment proceedings.

15. Equally untenable, in our opinion, is the observation that the valuation adopted by the approved valuer appears excessive because Unit No. C-166/1 had been purchased only a few months earlier for Rs.25 lakhs. The record unmistakably reveals that the said property was not acquired through a normal commercial transaction. It was purchased from the Court Receiver pursuant to a distress auction conducted in recovery proceedings initiated by Bank of India against a defaulting borrower. It is a matter of common

commercial knowledge that properties sold through distress auctions, recovery proceedings or court supervised sales often fetch values substantially below prevailing market rates. Therefore, the mere fact that the auction purchase price was Rs.25 lakhs cannot automatically lead to the conclusion that the fair market value as on 01.04.2001 could not have been higher. More importantly, while the learned CIT(A) repeatedly observed that the valuation appeared inflated, neither he nor the Assessing Officer pointed out any specific defect in the methodology adopted by the approved valuer. No reference was made to the Departmental Valuation Officer. No comparable sale instances were brought on record. No technical infirmity in the valuation reports has been demonstrated. In absence of any contrary material, an expert valuation report prepared by a Government Approved Valuer cannot be rejected merely on suspicion or conjecture.

16. We also find that even while confirming the addition, the learned CIT(A) himself observed that the action of the Assessing Officer in treating the entire sale consideration as capital gain without even reducing the actual cost of acquisition appeared excessive. Once such a finding was recorded, it was incumbent upon the appellate authority to either recompute the capital gains in accordance with law or restore the matter for proper verification. Confirmation of an admittedly excessive computation is difficult to reconcile with

the appellate function entrusted under the Act. Likewise, the observations of the learned CIT(A) regarding non-filing of returns by the assessee since Assessment Year 2011-12 do not advance the Revenue's case insofar as computation of capital gains is concerned. Whether the assessee was justified in not filing returns in earlier years is an entirely separate issue. The present controversy relates to determination of correct taxable income for Assessment Year 2017-18. Even assuming that the conduct of the assessee was less than satisfactory, such conduct cannot authorize the Revenue to compute capital gains in a manner contrary to the express provisions of sections 48 and 55. Tax liability must ultimately be determined on the basis of law and facts and not on the basis of perceived conduct of the taxpayer.

17. We further find considerable force in the assessee's reliance upon CBDT Circular No.14 (XL-35) dated 11.04.1955. The circular embodies a salutary principle that tax authorities should assist taxpayers in securing lawful reliefs and should not take advantage of ignorance, inadvertent omissions or procedural lapses where substantive entitlement otherwise exists. The circular certainly does not mandate acceptance of unsupported claims; however, where a claim is otherwise legally tenable and supporting evidence becomes available during appellate proceedings, the authorities are expected to determine the correct tax liability

rather than deny relief on hyper-technical considerations. Similar is the position regarding the claim of transfer premium paid to MIDC amounting to Rs.22.20 lakhs. The material available on record prima facie indicates that the payment was intrinsically linked with transfer of leasehold rights. Whether the expenditure was directly borne by the assessee or adjusted through the overall transfer arrangement is a matter requiring factual verification. However, the claim could not have been rejected without undertaking a meaningful examination of the underlying documents, particularly when the issue is inextricably connected with computation of capital gains itself.

18. Having regard to the entirety of facts and circumstances discussed hereinabove, we are of the considered opinion that neither the assessment order nor the impugned appellate order can be sustained. At the same time, we also find that the valuation reports and other connected factual aspects have not been subjected to any verification by the Assessing Officer. Therefore, instead of ourselves embarking upon the exercise of determining fair market value as on 01.04.2001, we deem it appropriate, in the interests of justice, to restore the matter to the file of the Assessing Officer. The Assessing Officer shall examine the valuation reports prepared by M/s. S.V. Joglekar & Associates, consider the assessee's claim for substitution of fair market value as on 01.04.2001 under

section 55(2)(b), examine the claim relating to transfer premium paid to MIDC and thereafter recompute the capital gains strictly in accordance with law. If the Assessing Officer entertains any doubt regarding the valuation adopted by the approved valuer, he shall be at liberty to invoke the statutory valuation mechanism available under the Act. Needless to say, adequate opportunity of hearing shall be granted to the assessee and all evidences relied upon by it shall be duly considered before passing the fresh order.

19. Accordingly, Ground No.1 raised by the assessee is allowed for statistical purposes.

20. Ground No.2 relating to levy of interest under sections 234A and 234B is consequential in nature and the Assessing Officer shall recompute the same while giving effect to this order.

21. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 2nd June, 2026.

(ARUN KHODPIA)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 02/06/2026
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai