

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&**

**SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.7111/Mum/2019  
(Assessment Year :2013-14)**

M/s. Toshvin Analytical Pvt. Ltd., 103, S.J. House Sitaram Mill Compound, N.M. Joshi Marg Lower Parel Mumbai – 400 011	Vs.	Deputy Commissioner of Income Tax Circle – 1(3)(2) Room No.540, Aayakar Bhavan, Maharshi Karve Marg, Mumbai – 400 020
<b>PAN/GIR No.AABCT4482D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Raturaj Gurjar
Revenue by	Shri Vijay Kumar Menon
<b>Date of Hearing</b>	<b>16/08/2021</b>
<b>Date of Pronouncement</b>	<b>30/08/2021</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.7111/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.CIT(A)-3/IT-10174/2016-17 dated 19/09/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/03/2016 by the Id. Dy. Commissioner of Income Tax-1(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. The ground No. i and ii raised by the assessee is with regard to computation of capital gains on sale of property.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a private limited company engaged in the business of marketing, installation and servicing of high technology, analytical and laboratory instruments, the returned income for the A.Y.2013-14 was electronically filed on 30/09/2013 declaring total income of Rs.6,93,07,420/-. During the year, the assessee sold a residential flat bearing No.1401, 14<sup>th</sup> Floor, B-Wing, Tower-I, Ashok Gardens, Sewri, Mumbai. Assessee filed computation of long term capital gains showing long term gains after indexation of Rs.1,87,62,681/-. The Id. AO observed that however in the return of income the same has been taken at Rs.1,90,80,664/-. The assessee has claimed set off of brought forward long term capital loss to the extent of long term capital gain in the return of income. The assessee filed purchase agreement and sale agreement of the flat before the Id. AO. The flat was purchased by the assessee from SWAN Energy Ltd., As per the purchase deed dated 30/05/2012, the seller i.e. SWAN Energy Ltd., agreed to sell and transfer to the assessee the apartment No.401, 14<sup>th</sup> Floor, B-Wing, Tower-I, having carpet area of 1291 sq.ft i.e. 119.94 sq.mtrs alongwith right to use one car parking space for a total consideration of Rs.83,03,500/-. We find that assessee made booking of the flat by making down payment of Rs.11,79,150/- on 09/06/2005. The assessee was allotted the apartment No.1401 on 14<sup>th</sup> floor of B Wing in Tower-I of Ashok Gardens, Sewri, Mumbai – 400 015 vide allotment letter dated 14/06/2005 by the vendor. After this, the assessee has been making payments in various instalments to the vendor as per the payment schedule. The last payment was made by the assessee on 19/03/2011 amounting to Rs.6,14,110/-. The assessee

sold this flat to Mr. Elton Menezes on 30/07/2012 falling in A.Y.2013-14 for a total consideration of Rs.3,61,00,000/-. The case of the assessee is that since the assessee had booked the flat way back in June 2005 and allotment letter was issued to him on 14/06/2005 and thereafter, the payments were made by him as per the payment schedule agreed upon, the property which was sold by him on 30/07/2012 constitutes long term capital asset and accordingly, the resultant gain would be long term capital gain. The case of the Revenue is that since the flat was registered in the name of the assessee only on 30/05/2012 and immediately thereafter within two months, the assessee had sold a flat and hence, the resultant gain would only be short term capital gains. Hence, the issue that arises for our consideration is whether the holding period of the asset should be reckoned from the date of registration of the property or from the date of allotment of the property for the purpose of deciding whether the asset transferred is a long term capital asset or a short term capital asset. We find that this issue is no longer *res integra* in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Vembu Vaidyanathan reported in 413 ITR 248 wherein it was held that, date of allotment would be relevant date for the purpose of determining the holding period of capital asset. It was also held that date of allotment so made shall be the relevant date for the purpose of capital gain tax as date of acquisition. It was also noted that the allottee gets title to the property on the issue of allotment letter and payment of instalments was only a follow-up action and taking delivery of the possession is only a formality. Respectfully following the aforesaid decision, we hold that the asset has been held by the assessee for more than three years as computed from the date of allotment and accordingly, the asset transferred would be a long term capital asset thereby resulting in long

term capital gains in the instant case. Assessee would also be eligible for benefit of indexation.

3.1. Having held that the asset transferred is a long term capital asset, the next question that arises for our consideration is whether the indexation benefit for cost of acquisition should be allowed to the assessee, based on the payments made in instalments and applying the cost inflation index in the relevant year of payment. We find that assessee itself had claimed indexation benefit by applying the cost inflation index in the year of payment of instalments. Hence, there is no dispute that arises in this regard.

3.2. In view of the aforesaid observations, we direct the Id. AO to accept long term capital gains returned by the assessee on sale of this flat and delete the addition made on account of capital gains made in this regard. Accordingly, the ground Nos. i & ii raised by the assessee are allowed.

4. The ground No.iii raised by the assessee is with regard to treatment of repairs and renovation expenses incurred by the assessee on the leased premises.

4.1. We have heard rival submissions and perused the materials available on record. We find that assessee was asked to furnish details of office renovation expenses on leased premises by the Id. AO during the course of assessment proceedings which was duly furnished by the assessee. The details of the same are as under:-

Sr. No.	Name of Contractors	Head of Accounts	Nature of Work	Fixed Assets	Ajit Shilpi's Exps.	Service Tax	Renovation Exp.	Total
1	Jalaram Lights Studio	Electricity Equipments	Lights	124961	17551			142512
2	TSR Enterprises	Electricity Equipments	Electrical work	225893	31727	4938	264578	527136
3	Ahmed Interiors Consolidated Carpet Ind. Ltd.,	Furniture	Civil, Carpentry work	995393	139802	23624	2650292	3809111
4		Furniture	Carpet	149550	21005			170555
5	Grace Engineers	Furniture	Chairs	299784	42105			341889
6	Isha Systems & Software	Office Equipments	Door Access Control	17313	2431			19744
7	Shemaroo Corporation	Office Equipments	Projector	54,550	7662			62212
8	Indu Arts & Frames P. Ltd.,	Painting	Painting	7312	1027			8339
9	Blue Star Limited	Plant & Machinery- Others	Air conditioning	943803	132557			1076360
10	Meghdoot Pumps	Plant & Machinery- Others	Water pump	24135	3390			27525
11	Ozone Airconditioning & Consultancy	Plant & Machinery- Others	AC installation	286224	40200	6405		332829
12	Addonix Technologies Pvt. Ltd.,	Renovation Exps	Dlink RI 45 connector				24560	24560
13	Art Work	Renovation Exps	POP work				278364	278364
14	Classic Fabrics	Renovation Exps	Fabrics				3300	3300
15	Pankaj Panchal	Renovation Exps	Labour charges				3780	3780
16	Paradise Ceramica (India) Pvt. Ltd.,	Renovation Exps	Tiles, sink, tabs etc.,				135337	135337
17	Raj Creations	Renovation Exps	Frosted vinyl film to be stuck on glass				88750	88750
18	Sharada Integrated Ventures	Renovation Exps	Roller Blinds				13636	13636
19	Standard Printing Solution	Renovation Exps	Name Plate				706613	706613
20	GVS Creation	Renovation Exps	12.5% on total project cost				7369	7369
21	Ajit Shilpi	Architect					607455	607455
				<b>31,28,918</b>	<b>4,39,457</b>	<b>34,967</b>	<b>47,84,034</b>	<b>83,87,376</b>

4.2. From the aforesaid details given in tabulation, the Id. AO accepted all the figures except the renovation expenses incurred in the sum of Rs.26,50,292/- for civil and carpentry work etc., through the contractor M/s. Ahmed Interiors seeking to treat the sum as capital in nature. Before the Id. CIT(A), assessee furnished all the bills of Ahmed Interiors and accordingly, the Id. CIT(A) sought remand report from the Id. AO. In the remand proceedings, we find that the aforesaid tabulation was duly

furnished by the assessee before the Id. AO together with all the bills of Ahmed Interiors. The Bills of Ahmed Interiors are enclosed from pages 291-302 of the paper book filed before us. We find that from the perusal of each of those bills which are in great detail, the assessee had identified the specific items which are giving enduring benefit to the assessee and accordingly, had capitalized the same in the books of accounts and claimed depreciation accordingly, both under the companies Act as well as under the Income Tax Act. In respect of items where no enduring benefit is available, the assessee had duly charged off as revenue expenditure. From the perusal of the bills enclosed in pages 291-302, this fact is glaring on us and hence, we do not find any infirmity in the action of the assessee on treating the said expenditure as revenue expenditure. We also find that the Id. CIT(A) had categorically given a finding that none of the expenditure entails any structural change or extension or improvement of the building. This finding has not been controverted by the Id. DR before us. Having given such a finding, we hold that the Id. CIT(A) ought not to have treated the said expenditure as capital in nature. In view of the aforesaid observations, we hold that the expenditure incurred in the sum of Rs.26,50,292/- should be allowed as revenue expenditure. Reliance in this regard had been rightly placed by the Id. AR on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Talathi and Panthaky Associated (P) Ltd., reported in 343 ITR 309 wherein it was held that cost of repairs / reconstruction of tenanted premises is revenue in nature and allowable as deduction. Respectfully following the aforesaid decision, the ground No.iii raised by the assessee is allowed.

5. The ground No.iv raised by the assessee is challenging the disallowance of foreign travel expenditure @20% of total expenditure on an adhoc basis by the Id. AO.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee had claimed an amount of Rs.21,05,758/- as foreign travel expenses on account of Managing Director. Since, the requisite details were not furnished by the assessee before the Id. AO, the Id. AO resorted to disallow 20% of the same on adhoc basis for attributing personal element of expenditure incurred thereon and disallowed Rs.4,21,152/- in the assessment. During the course of appellate proceedings, the assessee filed the details of the names of the employees with their designation and date of commencement of travel together with the details of foreign travel of Managing Director. The details of entire foreign travel of employees are enclosed in page 37 of the paper book. The details of entire foreign travel of Managing Director are enclosed in page 116 of the paper book as under:-

Sr No.	Name of the person	From	To	NO. OF DAYS	PLACE OF VISIT	PURPOSE	FC	Amount in Foreign Currency	Amount in Rs <sup>1</sup>	Air Ticket	Amount in Foreign Currency	Hotel & Other Expenses	Others	Total Amount in Rs.
1	Mr Nakul Toshniwal	09-May-12	14-May-12		USA	Business Visit	USD	1800	98,762.00	272,000.00	1,243.52	73,258.27	19827.00	463,847.27
		15-May-12	16-May-12		Boston to Detroit		USD	300.6		16,701.49				16,701.49
		16-May-12	20-May-12		Detroit to Los Angles		USD	175.6		9,756.42				9,756.42
		20-May-12	20-May-12		Los Angles to Washington		USD	849.6		47,329.30				47,329.30
2	Mr Nakul Toshniwal	14-Jun-12	16-Jun-12	3	Singapore	Business Visit	USD	\$ 300.00	13,710.00	104,000.00	447.27	20,269.24		137,979.24
3	Mr Nakul Toshniwal	17-Aug-12	29-Aug-12	12	Europe	Business Visit	USD	500	93,555.00	74,314.09				167,869.09
		30-Aug-12	31-Aug-12	2	Colombo		E	500		175,900.00	665.69	42,584.29	2300.00	220,784.29
		06-Sep-12	07-Sep-12	2	Singapore		SING D	300		126,500.00				126,500.00
4	Mr Nakul Toshniwal	14-Sep-12	21-Sep-12	7	Japan	Business Visit	JPY	63000	46,047.00	169,000.00	119,824.00	85,571.84		300,618.84
5	Mr Nakul Toshniwal	30-Oct-12	03-Nov-12	4	Singapore	Pharma Summit 2012	SING D	400	18,390.00	114,142.00		93,496.83	1,470.00	227,498.83
6	Mr Nakul Toshniwal	14-Mar-13	21-Mar-13	9	USA	Business Visit	USD	1000	55,068.00	209,800.00	2,002.04	113,401.65		378,269.65
7	Mr Nakul Toshniwal	22-Aug-12			Hyderabad					8,604.00				8,604.00
					TOTAL				325,532.00	1,328,047.30		428,582.12	23,597.00	2,105,758.42

5.2. The assessee also enclosed the entire bills in support of the aforesaid table from pages 117 to 289 of the paper book. It was pleaded by the assessee before the Id. CIT(A) that the Managing Director had incurred various expenses during his foreign travel which is meant for business purposes and had incurred various expenses on behalf of the company. Accordingly, these expenses were also duly reimbursed by the assessee company to the Managing Director. These details were very much available before the Id. AO in the assessment proceedings. We find that the entire foreign travel expenses of the employees of the assessee company have been duly allowed in full by the Id. AO. Admittedly, the Managing Director of the assessee company is also an employee of the company and hence, he cannot be treated in a different manner with that of the other employees with regard to allowability of foreign travel expenditure for business purposes. Accordingly, we direct the Id. AO to allow the entire foreign travel expenditure and delete disallowance of



Rs.4,21,152/- made on an adhoc basis. Accordingly, the ground No.iv raised by the assessee is allowed.

5.3. Ground No. v is general in nature and does not require any specific adjudication.

**6. In the result, appeal of the assessee is allowed.**

Order pronounced on 30/08/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 30/08/2021  
KARUNA, 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,

(Asstt. Registrar)  
ITAT, Mumbai