

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 584 of 2016**

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PRINCIPAL COMMISSIONER OF INCOME TAX 2,....Appellant(s)

Versus

GINGER PROPERTIES PVT LTD....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MR.JUSTICE A.J. SHASTRI**

Date : 25/07/2016

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue has challenged judgement of the Income Tax Appellate Tribunal dated 19.02.2016 raising following question for our consideration:

“Whether the Appellate Tribunal has substantially erred in quashing the order of revision passed by Commissioner of Income Tax u/s. 263 of the Act, though AO failed to make detailed inquiry with respect to issue of capital gain?”

2. Brief facts are that the respondent-assessee had purchased non-agriculture land at Ahmedabad on 23.10.2008 for a consideration of Rs. 1.37 crores (rounded off). The same

property was sold by the assessee on 29.01.2010 to one Symphony Comfort Systems Ltd. As per the sale deed, a sum of Rs. 1.60 crores was paid to the assessee. Remaining amount of Rs. 3.69 crores was paid to one Genus Commu Trade Pvt Ltd. being a confirming party.

3. The issue of taxing the assessee for capital gain on such sale came-up during the course of scrutiny assessment for the assessee's return for the assessment year 2010-11. The Assessing Officer, after raising various queries with respect to the said sale transaction, accepted the assessee's stand and computed the capital gain after giving benefit of permissible deductions considering the sale proceed of Rs. 1.60 crores accruing to the assessee.

4. This order was taken in revision by the Commissioner in exercise of powers under Section 263 of the Act. The Commissioner was of the opinion that the Assessing Officer did not carry out proper inquiries and accepted the version of the assessee that Genus Commu Trade Pvt Ltd. had received sizeable sale consideration of Rs. 3.69 crores being a confirming party. It was noted that there was an unregistered sale deed in favour of said Genus Commu Trade Pvt Ltd. dated 23.11.2009 and the Assessing Officer, therefore, should have made detailed inquires which he failed. CIT (Appeals) was therefore of the opinion that the order of the Assessing Officer

was erroneous and also prejudicial to the interest of the Revenue. He, therefore, set aside the assessment and directed the Assessing Officer to carry out fresh assessment after proper inquires.

5. The assessee challenged this order before the Tribunal. The Tribunal, by the impugned judgement, allowed the appeal of the assessee noting that the Assessing Officer had raised relevant queries which were as under:

“Q.6. Furnish copy of purchase and sale deed of plot No. 113/2/2.

Q.7 Furnish working of capital gain.

Q.8. Furnish breakup of investment of Rs. 1,49,45,664/- reflected in the balance sheet.”

6. To these queries, the assessee had supplied following answers:

“6. Copy of purchase and sale deed of plot No. 113/2/2 is enclosed hereiwith.

7. Working of capital gain is as per return of income.

8. As regard investment of Rs. 1,49,45,664/- it is stated that it is a amount of last year investment there was no new investment made during the year and no amount shown as a investment as on 31.03.2010 balance sheet.”

7. The Tribunal was, therefore, of the opinion that the Assessing Officer had raised specific queries which were also replied

specifically by the assessee. Thus, this was not a case where the inquiries were caused by the Assessing Officer. The Commissioner, therefore, committed an error since the decision of the AO of treating Genus Commu Trade Pvt Ltd. as confirming party which cannot be stated to be erroneous and prejudicial in the interest of the Revenue.

8. Learned counsel for the Revenue submitted that the Assessing Officer accepted the version of the assessee without proper inquiries, particularly, with respect to the interest of the said Genus Commu Trade Pvt Ltd., who claimed to have derived certain rights under an unregistered sale deed. The CIT (Appeals) therefore, correctly directed further inquiries by the Assessing Officer. In this context counsel relied on the decision of Delhi High Court in case of *Gee Vee Enterprises vs. Additional Commissioner of Income Tax, Delhi-I and ors.* reported in **99 ITR 375**.
9. From the record we can see that the Assessing Officer had examined entire transaction including from the point of view of the confirming party receiving considerable portion of the sale proceeds. This is not a case where the Assessing Officer failed to enquire into the transaction at all. Further, the Revenue has not brought anything on record to suggest how the sale proceeds of Rs. 3.69 crores in the hands of Genus Commu Trade Pvt Ltd. was treated. Surely on the receipt of sale proceeds of Rs. 3.69 against the price of Rs. 1.60 crores paid by the Genus Commu

Trade Pvt Ltd. on 23.11.2004, the said company also would be answerable to and subjected to capital gain. Without any murmur about how the Revenue treated such proceeds in the hands of the Genus Commu Trade Pvt Ltd., it would not be proper to question the very transaction and seek to tax the difference in the hands of the assessee.

10. For such reasons, this appeal is dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

Jyoti

