IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1109 OF 2018

Devdatta Chandrakant Patil ….Appellant

V/s.

Income Tax Officer and Ors. …Respondents

Mr. Jatindra C. Patil for Appellant.
Ms. Samiksha Kanani a/w Prasanna Pawar for Respondent

CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 7th FEBRUARY 2024

P.C. :

1. Appellant is impugning an order pronounced on 17th May 2017 passed by the Income Tax Appellate Tribunal (ITAT) in an appeal that was filed by appellant. Appellant was aggrieved by an order passed by the Commissioner of Income Tax (Appeals) – 2, Thane [CIT(A)] on 31st May 2016 by which the CIT(A) observed that the Assessing Officer (A.O.) had incorrectly observed that the provisions of Section 50C of the Income Tax Act, 1961 (the Act) would be applicable. The CIT(A) had directed the A.O. to recompute the capital gain by taking the actual sale consideration received by assessee and not on the basis of value determined by the Stamp Valuation Authority. The CIT(A) also directed the A.O. to allow all the expenditures which has been incurred by assessee for selling the plot while computing capital gains in the hands of assessee. Even though it was only an order of remand to recompute the capital gains, it is assessee's case that

no capital gain in fact is payable. Therefore, assessee had filed an appeal and the ITAT dismissed the appeal.

2. Since the matter has been remanded to the A.O., we would direct the A.O. to hear assessee, consider the submissions made by assessee including the statement that no capital gain is payable and not just simply work out the capital gains. The A.O. may pass such order as he deems fit in accordance with law but shall also deal with the submissions of assessee on merits as to why capital gain was not payable.

3. Appeal accordingly disposed.

(DR. NEELA GOKHALE, J.) **(K.R. SHRIRAM, J.)**