

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री , राजेन्द्र लेखसदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI RAJENDRA , AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2223/Mum/2013

(निर्धारण वर्ष / Assessment Year:2005-06)

Late Smt. Malti Mahendra Mehta through her Legal Heigher 301, Neer Darshan, 387, Shankar Mattham Road, Matunga (CR) Mumbai – 400019	बनाम/ Vs.	The Income Tax Officer 21(3)(3) R. No.507, 5 th Floor, Pratayakskar Bhawan, Bandra Kurla Complex Bandra (E) Mumbai – 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAFPM7738J		
(पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ajay R. Singh & Shri Ravindra Poojary
Revenue by:	Shri Rajguru M. V.

सुनवाई की तारीख / Date of Hearing: 24.03.2017

घोषणा की तारीख /Date of Pronouncement: 29.03.2017

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 27.02.2012 passed by the Commissioner of Income Tax (Appeals)-32, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2005-06.

2. The assessee has raised the following grounds:-

- “1. *No reasons were provided to the assessee for re-opening of assessment for A.Y.2005-06 and the assessment made by learned Income Tax Officer and not dealt with by the learned Commissioner of Income Tax (Appeals) is bad in law. Moreover, it is without jurisdiction as the assessee requested to transfer the case at the correct jurisdiction which was not done.*
2. *The learned Income Tax Officer erred and not dealt with by the learned Commissioner of income tax (Appeals) in making additions as deemed House property income as the assessee did not let out the property.*
3. *The learned Commissioner of income tax (Appeals) has erred in taking indexation form F.Y.2000-01 instead of 1991-92 which was the date of agreement.*
4. *That learned Commissioner of Income Tax (Appeals) was not justified in making additions and the same is arbitrary and illegal.*
5. *That the additions made by the learned income tax officer may be deleted.*
6. *The assessee reserves the right to add / alter any ground of the time and or before the hearing.”*

3. The brief facts of the case are that the assessee filed her return of income for the A.Y.2008-09 on 31.08.2005 declaring total income to the tune of Rs.1,48,106/-. Thereafter, the case was reopened by issuance of notice u/s.148 of the Income Tax Act, 1961 (in short “the Act”) after recording the reasons. Notices u/s. 143(2) and 142(1) of the Act were issued and duly served upon the assessee. The assessee was an individual and shown her income from house property. It was observed that the assessee was the owner of the two shops i.e. shop no.1 at Airoli and shop No.24 at Vashi. No income from the house property was offered against

the properties held. Therefore, the deeming provision was applied and the income was assessed to the tune of Rs.93,950/- (Rs.76,450/- + Rs.17,500/-). The assessee had also sold her immovable property during the relevant F.Y. and took the cost of acquisition to the tune of Rs.20,08,021/- after taking the cost of indexation for the year of purchase being 1991-92. It was also found that the assessee entered into an agreement of sale dated 28.11.1991 with M/s. Jain Santoshi Developers Pvt. Ltd. but executed the confirmation deed dated 13.03.2000. The payment was asked and the assessee paid the payment on 07.05.1999 to the tune of Rs.6,75,000/-, on 27.03.1999 to the tune of Rs.1,47,413/-, on 13.03.2000 to the tune of Rs.10,080/- total to the tune of Rs.8,32,493/-. Since the agreement was unregistered, therefore, assessee was asked to submit the valuation report and accordingly, the assessee submitted the valuation report of Shri Bharat V. Dave dated 29.06.2004. Since the assessee became the owner on 13.03.2000, therefore, the cost of indexation was applied for the A.Y.2000-01 and the cost of acquisition came to the tune of Rs.10,27,239/-. The cost of property assessed by the Government valuer was much below of the cost of stamp duty authorities, therefore, the same was considered and the L.T.C.G was assessed to the tune of Rs.17,13,761/-. The total income was assessed to the tune of Rs.19,55,817/-. Since the assessee was not satisfied, therefore the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has challenged the validity of reopening u/s.147 of the Act. The learned representative of the assessee

has argued that the CIT(A) did not decide this issue on merits, therefore, in the said circumstances, the CIT(A) is required to be directed to decide this issue by giving an opportunity of being heard to the assessee in accordance with law. However, on the other hand, learned representative of the department has argued that the assessee failed to appear before the CIT(A) despite service of notice, therefore, the CIT(A) has decided the matter of controversy on merits in accordance with law which is not required to be interfere with at this appellate stage. On appraisal of the order passed by the CIT(A) in question, it came into the notice that the CIT(A) decided the appeal in the absence of the assessee. However, the said order in question dated 27.02.2012 speaks about the service of notices number of times mentioned therein. But anyhow it is also apparent on record that the CIT(A) only dealt the issue u/s.50C of the Act, however, while deciding the said appeal the CIT(A) did not decide the issue of reopening u/s.147 / 148 of the Act. In view of the said circumstances, we are of the view that the issue required necessarily adjudicated in the interest of justice. In view of the said circumstances when the CIT(A) did not decide the issue of reopening u/s.147 / 148 of the Act. Therefore, in the interest of justice we direct the CIT(A) to decide this issue after giving a reasonable opportunity of being heard to the assessee in accordance with law. The file is hereby restored back to the CIT(A) to decide this issue accordingly. This issue is decided in favour of the assessee against the revenue.

ISSUE NO.2 TO 4:-

5. Under this issue the assessee has challenged the finding of the CIT(A) vide which the CIT(A) has confirmed the value of the sold

property on the basis of stamp duty value u/s.50C of the Act for the purpose of computing capital gain. On appraisal of the order passed by the CIT(A) in question it is not in dispute that the said order has been passed by the CIT(A) ex-parte. The assessee failed to appear before the CIT(A) no doubt despite service of notice but the plea which has been taken by the assessee is in connection with the health ground of the assessee who also died on 01.05.2012 as per the death certificate attached in the application. The dates of the issuance and the services of the notices are 12.09.2011, 14.10.2011, 22.12.2011, 02.01.2012, 23.01.2012 and 10.02.2012. The non-appearance on account of health ground seems justifiable in view of the death certificate which speaks about the death of the assessee on 01.05.2012. Anyhow, the legal heir wants to represent the appeal and wants an opportunity to defend the case, therefore, in the interest of justice, we are of the view that the issue u/s.50C of the Act is also required to be adjudicated by the CIT(A) after giving an opportunity of being heard to the assessee in accordance with law. Therefore, we set aside the finding of the CIT(A) on this issue and direct the CIT(A) to decide the matter afresh after giving a reasonable opportunity of being heard to the assessee. Accordingly, these issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **assessee is hereby ordered to be allowed for statistical purpose.**

Order pronounced in the open court on 29th March, 2017.

Sd/-
(RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :29th मार्च, 2017

MP

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai