

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

सर्वश्री बी.आर.बास्करन, लेखा सदस्य एवं संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE S/SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1198/Mum/2014
(निर्धारण वर्ष / Assessment Year :2004-05)

Smt.Ranjanben Hasmukh Shah, 3-Veer Building, 21, Tagore Road, Santacruz (W), Mumbai-400054	बनाम/ Vs.	Asstt. Commissioner of Income Tax, 19(2), Mumbai.
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AAPPS4173H

अपीलार्थी की ओर से / Appellant by :	Dr.P Daniel
प्रत्यर्थी की ओर से/ Respondent by :	Shri Uday B Jakke

सुनवाई की तारीख / **Date of Hearing** : **3.12.2015**
घोषणा की तारीख / **Date of Pronouncement** : **3. 2.2016**

ORDER

PER SANDEEP GOSAIN, JM:

This is assessee's appeal for assessment year 2004-05, in which she has made a grievance that the Id. CIT(A) did not grant sufficient opportunity of being heard and erred in confirming the action of the AO in assessing Long Term Capital Gain as unexplained cash credit u/s 68 of the Income Tax Act, 1961 amounting to Rs.2,08,845/.

2. The assessee is an individual and filed return of income at Rs.5,33,329/- on 30.3.2005. On the basis of information received from DDIT(Inv), Unit 1(4), Mumbai a search and seizure operation was carried out on the group of companies and other entities managed and controlled by one Mr.Mukesh Chokshi and his associate Mr. Jayesh Sampat. On

perusal of the record, the AO observed that the assessee has sold shares of M/s Buniyad Chemicals at Rs.2,08,845/- which was purchased at Rs.2467/- on 17.5.2001. After claiming indexation on the cost, the taxable Long Term Capital gains has been shown at Rs.2,06,377/-. The AO processed the case u/s 147 and 148 of the Act. After considering the details submitted by the assessee, the AO did not favour the assessee and a sum of Rs.2,08,854/- was added to the total income of the assessee under section 68 instead of treating it as Long Term Capital Gains. Aggrieved by the order of the AO, the assessee filed appeal before Id.CIT(A), who in turn confirmed the action of the AO on the ground that despite of having given sufficient opportunity of being heard to the assessee, she failed to substantiate her case.

3. We have heard both the parties and perused the record. Before us, the Id.AR of the assessee has submitted that the AO made an addition u/s 68 and the Id.CIT(A) confirmed his action. Before, the Id. CIT(A), she could not express her stand for want of sufficient opportunity and the Id. CIT(A) dismissed the appeal of the assessee. The Id. AR before us, now prayed that if one more opportunity is granted to the assessee, she would be able to prove her case on merit and hence submitted that the matter may be restored to the file of the Id. CIT(A) for fresh application of mind. We find merit in the contention of the Id. AR. We find that though the Id. CIT(A) time and again given sufficient opportunity to the appellant but even then the assessee did not produce herself without any plausible reason, if the assessee would get one more opportunity of being heard and no prejudice would be caused to the revenue. Under the circumstances, in our view, the ends of justice would meet, if the cost is imposed for such negligence on the part of the assessee. Accordingly, we called upon the assessee to deposit a sum of Rs.10,000/- on or before 28th Feb 2016. Accordingly, on this condition we set aside the order of the

Id.CIT(A) and restore this appeal to the file of the Id. CIT(A) with a direction to give one more opportunity to the assessee to furnish information and documents for redressel of her grievance. Accordingly, we allow this appeal for statistical purposes and for fresh application of mind by the Id. CIT(A).

4. Resultantly, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court 3rd Feb, 2016.

Sd

sd

(बी.आर.बास्करन/ B.R.BASKARAN) (संदीप गोसाईं/SANDEEP GOSAIN)
लेखा सदस्य /Accountant Member न्यायिक सदस्य/Judicial Member

मुंबई Mumbai; दिनांक Dated. 3rd, Feb, 2016

व.नि.स./ SRL, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

True copy

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