

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.583/M/2018  
Assessment Year: 2013-14**

Mrs. Jyoti Rakesh Kapoor, 4B, Industrial Assurance Building, Churchgate, Mumbai - 400 020 <b>PAN: AAHPK2650F</b>	Vs.	Income Tax Officer, Ward 17(2)(1), Room No.123-B/H, 1 <sup>st</sup> Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant) (Respondent)		

**Present for:**

Assessee by : Mrs. Renu Kapoor, A.R.  
Revenue by : Mrs. N. Hemalatha, D.R.

Date of Hearing : 02.05.2018  
Date of Pronouncement : 16.05.2018

**ORDER**

**Per G. Manjunatha, Accountant Member:**

This appeal filed by the assessee is directed against the order of the Ld. CIT(A)-57, Mumbai dated 14.12.17 and it pertains to assessment year 2013-14. The assessee has raised the following grounds of appeal:

- “1. The learned CIT (Appeal) has erred in law and on the facts of the case in sustaining the order of the assessing officer holding that gift made by the assessee towards relinquishing 50% interest in the flat No. 52 at Ajanta Apartment, Colaba, Mumbai is a transfer within the meaning of section 2(47) of the Income Tax Act.
  
2. The learned CIT (Appeal) has erred in law and on the facts of the case in sustain the order of the assessing officer in not appreciating the fact that there was family agreement between members of the family by virtue of which the assessee relinquished her 50% interest in flat No. 52 at Ajanta Apartment, Colaba, Mumbai.

3. The assessee craves leave to add, alter or amend the above grounds of appeal.”

2. The brief facts of the case are that the assessee has filed her return of income for assessment year 2013-14 declaring total income at Rs.6,68,290/-. The case was selected for scrutiny and notices under section 143(2) and 142(1) along with detailed questionnaire dated 31.07.15 were issued. In response to notices, the authorized representative of the assessee attended from time to time and furnished the details as called for. During the course of assessment proceedings, the AO noticed that the assessee has gifted her 50% interest in flat No.52, Chanda Apartment, Colaba, Mumbai to her brother in law Shri Sanjay Kapoor vide gift deed dated 07.06.12. The AO further observed that during the year under consideration, the assessee has received gift from Shri Sanjay Kapoor of Rs.68,50,000/-. In the light of the above facts, the AO asked the assessee to explain as to why relinquishment of right in property shall not be treated as transfer within the meaning of section 2(47) of the Act, in view of the fact that the assessee has received cash gift of Rs.68,50,000/- in lieu of relinquishing her right in flat in favour of her brother in law. In response, the assessee vide her letter dated 07.01.16 submitted that she has gifted her right in property in favour of her brother in law in accordance with family arrangement, as the family has decided to buy a separate flat for family member and accordingly she had gifted her 50% right in favour of her brother in law. The gifts were made in the family as a family arrangement to maintain peace and harmony, therefore, the

same cannot be construed as transfer within the meaning of section 2(47) of the Income Tax Act, 1961. The AO after considering the relevant submissions of the assessee and also on analysis of provisions of section 2(47), observed that the assessee's alleged gift transaction by way of relinquishment of 50% interest in the property in favour of Shri Sanjay Kapoor is a transfer as Shri Sanjay Kapoor has gifted her an amount of Rs.68,50,000/- in lieu of relinquishing her right in the property. Therefore, the said transaction cannot be treated as family arrangements and accordingly, computed long term capital gain by taking into account fair market value of the property as on the date of gift and determined long term capital gain of Rs.6,31,019/-.

3. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has reiterated her submissions made before the AO. The assessee further submitted that the AO was erred in treating gifts between two family members as transfer which is liable to tax under section 2(47) of the Income Tax Act, 1961. The Ld. CIT(A) after considering relevant submissions of the assessee dismissed appeal filed by the assessee by holding that the facts narrated by the AO clearly come within the ambit of provisions of section 2(47) of the Income Tax Act, 1961 and hence the AO was right in computing long term capital gain for relinquishment of 50% right in property in favour of her brother in law. The relevant portion of the order of Ld. CIT(A) is extracted below:

**“4. Decision:**

The facts of the case are the appellant Smt. JyotiR. Kapoor & her brother in law Mr. Sanjay Kapoor carried out a joint business in the name of Jyoren Enterprises and both shared profits equally. In the year 1994 the family had purchased a Flat in Ajanta building (Flat No. 52) Colaba, Mumbai in which Ms. Jyoti Kapoor & Mr. Sanjay Kapoor owned 50% share. During the relevant year as a family had funds they purchased another flat in the same building (Flat No. 01) for a consideration of Rs. 4.5 cr., which was purchased in the name of Ms. Jyoti Kapoor and her husband Rakesh Kapoor as the family decided that both the brothers should own independent flats. So Ms. Jyoti Kapoor invested her 50% interest in flat no. 52 in Ajanta building and gifted her share to her brother in law Mr. Sanjay Kapoor. Copy of the gift deed was submitted.

The other development which occurred was Mr. Sanjay Kapoor gifted her 68,50,000/- in the year 2012-13 as she did not have adequate funds to buy the flat.

The AO has raised the query that why applicability of sec. 2 (47) in relation to gift received by assessee from her brother in law in AY 2012-13 and gift of half share in residential flat to her brother in law in AY 2013-14 should be attracted.

The assessee submitted that it is a family agreement and provision of sec 2(47) is not attracted. The AO held that as per provision sec 2(47) transfer includes sale, exchange or relinquishment of assets or extinguishment of any rights therein, and has concluded that the alleged gift is capital asset as per sec. 2 (14) of the IT Act and so capital gain is attracted in this case.

During the course of appellant proceedings the appellant submitted whatever was submitted before the AO. It was pointed out that divesting of her share therefore does not under any circumstances fall under the definition of sec. 2(47) of the IT Act. It was further submitted that it was a family settlement and following case laws were cited in support of that family settlement cannot be considered as a transfer u/s. 2(47).

1. Madras High court 299 ITR 348 Cit v Kay An enterprises and others (Annexure - 6)
  - Karnataka High court 21 [Taxmann.com](http://Taxmann.com) 101 CIT vs R Nagaraja Rao (Annexure - 7)
  - Smt. Vijaya Raje Scindia vs. ITO (ITA No. 2780(Bom/89) dated 17-12-1993.
  - H. H. Moharani Manekuraje Pawan vs. ITO (15 ITD 545(Indore),
  - Mohd. Haroon Japanwala vs. ITO (22 ITD 61) Delhi,
  - DCIT, Spl. Rg. 46 vs. Smt. Vaishali K Shah (ITA No. 7074/Mum/96 A. Y. 1992-93)
  - CIT vs. Sachin P. Ambulkar 42 [taxmann.com](http://taxmann.com) 22 (Bombay) - (Annexure - 8)

It is pertinent to discuss the following issues which the AO has brought out in the assessment order.

The AO's says the property was purchased by the assessee jointly with Shri. Sanjay Kapoor from their own funds partly by way of withdrawal from her capital in the partnership firm of M/s. Jyoren enterprises so this cannot be said to belong to family.

2. The other property bought in the name of the assessee Ms. Jyoti Kapoor and her

spouse in the year 2012 was purchased for total consideration of Rs. 4.5 Cr. And Rs. 2,42,82,833/- was invested by the assessee out of withdrawals from her capital Ale from the partnership firm MIs. Jyoren Enterprises and by way of loan from her husband. This shows that both properties were purchased by her own sources and so they do not fall under the ambit of family assets.

From the above analysis done by the AO it is clear that the above arrangement does not come under the purview of family settlement. Hence it will be pertinent to discuss the case law of Bombay High Court CIT Mumbai vs. Sachin P. Ambulkar (2014) 42 taxmann. Com 22 (Bombay).

The court held that ITAT in para 19 of its order has recorded thus.

“We find that in the instant case there has been genuine dispute among the family members and several suits were filed and judgement were pronounced. Finally the parties to the suits decided to come to a settlement and family agreement was reached and a consent Decree was passed by the Bombay High Court in suit no. 4614 of 198 in 16th Oct. 2003. The royalty paid by the Court receiver was only on interim relief of their share of income from the property of GD Ambulkar which right arose on account of their preexisting right in the properties as per WILL of GD Ambulkar.

Family agreement is a device by which dispute between family members as to their respected property were settled. Such settlement may involve division of property as between them and inconsequently a release of rights by one or the other in favour of the allottees. Conflicting legal claims get so settled”.

So it is very clear from the above High Court order that family settlements do not come under tax net wherein the properties belong to family pool.

In the instant case I agree with the reasoning of the AO that the said transaction comes under the ambit of sec. 2(47) and the provision of sec 45 are attracted and capital gain is attracted.

4. In the nutshell, the appellants Appeal is dismissed.”

4. The Ld. A.R. for the assessee submitted that the Ld. CIT(A) was erred in confirming addition made by the AO towards computation of long term capital gain on relinquishment of 50% interest in the family property in favour of another family member in accordance with family arrangement without appreciating the fact that the said transaction is a gift between two relatives.

5. On the other hand, the Ld. D.R. strongly supported the order of the Ld. CIT(A).

6. We have heard both the parties and perused the materials available on record. The factual matrix of the case are that during the year under consideration the assessee has gifted her 50% right and interest in a family property in favour of her brother in law by way of gift deed dated 07.06.12. During the same financial year the assessee also received a cash gift of Rs.68,50,000/- from Shri Sanjay Kapoor, the person who received gift from the assessee. Based on these facts, the AO come to the conclusion that the said gifts between the assessee and her brother in law Shri Sanjay Kapoor are not in nature of gifts between family members, but transfer within the meaning of section 2(47) of the Income Tax Act, 1961 as the assessee has received a consideration of Rs.68,50,000/- for relinquishing her right in the property. It is the contention of the assessee that she has gifted her share in the property for family settlement as per which the family has decided to buy a separate property for each member by internal arrangements, therefore, she has relinquished her 50% right in the family property in favour of her brother in law. Though she has received cash gift of Rs.68,50,000/- in pursuance of relinquishing her right in property, the said transaction is purely a family arrangement between the family members for better peace and harmony. Therefore, the AO was incorrect in treating the said transactions within the

meaning of transfer as defined under section 2(47) of the Income Tax Act, 1961.

7. Having heard both the sides, we find merits in the arguments of the assessee for the reason that the assessee has gifted her 50% share in the property in favour of her brother in law in pursuance of family arrangement between the family members for acquiring separate property for each family member. The said transactions cannot be considered as transfer within the definition of section 2(47) of the Income Tax Act, 1961. Although the assessee has received cash gift of Rs.68,50,000/- from the person who received gift from the assessee, such an arrangement is as per the family settlement between the members. Therefore, the AO was erred in bringing the above two gift transactions within the purview of definition of transfer as defined under section 2(47) of the Income Tax Act, 1961. The Ld. CIT(A) without appreciating the facts simply confirmed additions made by the AO. Therefore, we reverse the findings of the Ld. CIT(A) and direct the AO to delete additions made towards computation of long term capital gain for relinquishment of 50% share in property by way of gift.

8. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on 16.05.2018.**

**Sd/-  
(Joginder Singh)  
JUDICIAL MEMBER**

**Sd/-  
(G. Manjunatha)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 16.05.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.