

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 643/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2009-10)

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| Manjulaben D Brahmbhatt Through L/H Shri Kishor B Brahmbhatt, Patel Falia, Gotri Gam, Vadodara - 390021 | बनाम/ Vs. | ITO Ward – 1(2)(4), Race Course, Vadodara - 390007 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BCUPB7650J | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से /Appellant by : | Shri Manish Shah, A.R. |
| प्रत्यर्थी की ओर से / Respondent by : | Shri Sumeet Kumar Verma, Sr.D.R. |

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| सुनवाई की तारीख / Date of Hearing | 25/01/2019 |
| घोषणा की तारीख /Date of Pronouncement | 29/01/2019 |

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-5, Ahmedabad ('CIT(A)' in short), dated 22.01.2017 arising in the assessment order dated 26.02.2015 passed by the Assessing Officer (AO) under S. 143(3) rws 147 of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. As per grounds of appeal, the assessee has challenged the jurisdiction of the AO assumed under S.147 of the Act as well as the

additions made on account of capital gains in the hands of the assessee on merits.

3. When the matter was called for hearing, the learned AR however dispensed with the objection towards assumption of jurisdiction and proceeded the case on merits.

4. As pointed out on behalf of the assessee, the assessee is an individual who *inter alia* shown income from capital gains at Rs.40,400/-. The AO noticed from AIR information available on system that the assessee has sold immovable property on 22.07.2008 for a consideration of Rs.1,80,30,000/-. An inquiry was made on the chargeability of capital gains on the sale of aforesaid property in the hands of the assessee in the course of scrutiny assessment. The assessee claimed before the AO that she has received sale consideration of Rs.1,21,628/- in AY 2009-10; Rs.1,44,186/- in AY 2010-11 and Rs.1,44,186/- in AY 2011-12 only and accordingly capital gain of Rs.40,282/- was computed for AY 2009-10 and similar capital gains were computed of Rs.57,819/- for AY 2010-11 and Rs.58,911 for AY 2011-12. It was thus claimed by the assessee that she has received total Rs.4,10,000/- only in different assessment years as her share of co-ownership in the sale consideration and the capital gains were accordingly offered by her in different assessment years based on actual receipts. The AO however took a view that the assessee (co-owner) enjoyed 25% of the share in the said property after death of her husband and accordingly assessee was entitled to sale consideration on Rs.45,07,500/- instead of Rs.4,10,000/-. The AO accordingly re-computed the capital gain at Rs.44,26,514/- in the hands of the assessee as chargeable capital gains.

5. Aggrieved, the assessee preferred the appeal before the CIT(A).

6. Before the CIT(A), the assessee pointed out that she enjoys only 1/41th share in the property as per the sale deed and accordingly the AO has committed error in computing excess capital gains in the hands of the assessee *de hors* actual receipt of Rs.4,10,000/- as her share. The CIT(A) partially agreed with the contention of the assessee that she does not have absolute right on the property but however held that she was entitled to 1/8th share in the sale consideration. The CIT(A) accordingly granted partial relief to the assessee.

7. Further aggrieved, the assessee preferred appeal before the Tribunal.

8. The learned AR for the assessee submitted that the documents in the form of property index copy, conveyance deed and other documents clearly show that assessee herein was entitled to 1/41th share in the co-owner property and has actually received the consideration of Rs.4,10,000/- as her share in the property. The learned AR referred to the decision of the Hon'ble Gujarat High Court in the case of Pr.CIT vs. Lalitaben Govindbhai Patel (2018) 94 taxmann.com 396 (Guj) for the proposition that where the assessee received a certain sale consideration out of sale of co-ownership right and did not receive the remaining amount of the total consideration, the question of charging capital gain from the assessee on a larger sum than what was received would not arise. The learned AR thus submitted that in the view of the demonstrable documents to show the shares of the assessee in the property sold is only 1/41th share, there is no justification to impose capital gains on the larger amount. The learned AR however fairly agreed with the chargeability of the capital gains accrued in AY 2009-10 in question itself on account of the transfer of the property regardless of receipt of the sale consideration in three different assessment years. The learned AR accordingly urged

that direction should be given to the AO to compute capital gains on 1/41th share in the co-ownership of the property sold.

9. The learned DR relied upon the order of the CIT(A).

10. We have carefully considered the rival submissions. In view of the narratives made on behalf of the assessee above, we find that the action of the AO is not justified in view of the decision of the Hon'ble Gujarat High Court in Lalitaben (supra). The AO is not justified in imposing capital gains on the larger sale consideration than what has accrued to the assessee. On facts, the assessee has demonstrated that she was entitled to 1/41th share in the sale consideration which was actually received. Thus, the AO is directed to take the sale consideration in proportion to her share in the property and re-compute the capital gain in accordance with law.

11. In the result, appeal of the Assessee is partly allowed.

This Order pronounced in Open Court on 29/01/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 29/01/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।