

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2107/MUM/2018  
Assessment Year: 2014-15**

Smt. Kashmira Modi  
5, Sheel, Marie Co-op, Hsg  
Society, Abdul Gaffar Khan  
Road, Worli, Mumbai-  
400018.

ITO-21(2)(1), Piramal  
Chambers, Mumbai-12.

Vs.

**PAN No. AAFPM7124E**

**Appellant**

**Respondent**

Assessee by : Mr. Bhupendra Shah, AR  
Revenue by : Mr. Manoj Kumar Singh, DR

Date of Hearing : 25/01/2019  
Date of pronouncement: 12/04/2019

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax-33, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3)(ii) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. In the facts and circumstances of the case, the CIT(A) has erred in confirming and holding that the capital gain has accrued on entering into

- redevelopment agreement in respect of flat No. 11 on 04/04/2013 registered on 05.04.2014 as exchange liable to transfer.
2. In the facts and circumstances of the case, the CIT(A) has erred in confirming and holding that the capital gain has accrued on entering into redevelopment agreement in respect of flat No. 11 owned by the appellant.
  3. In the facts and circumstances of the case, the CIT(A) has erred in confirming the disallowance of exemption u/s 54 in respect of flat no. 7.
    - a. In the facts and circumstances of the case, the CIT(A) has erred in confirming and incorrect adoption of pro-rata value of flat no. 11 amounting to Rs.6,20,60,880/- while calculating the sale value of flat no. 11 by a method which is nowhere prescribed under the law.
    - b. In the facts and circumstances of the case, the CIT(A) has erred in overlooking Stamp Duty Valuation of redevelopment agreement in respect of flat No. 11 while calculating the value of flat NO. 1102/02 which ought to have been followed.
    - c. In the facts and circumstances of the case, the CIT(A) has erred in overlooking Stamp Duty Valuation of redevelopment agreement in respect of flat No. 11 comprises of leasehold land and construction cost and therefore section 50C could not be applied to leasehold land as per various judgments of various authorities.
    - d. In the facts and circumstances of the case, the CIT(A) has erred in confirming the assessment order in which the Assessing Officer followed directions of JCIT u/s 144A without providing opportunity to the appellant to rebut the directions of JCIT u/s 144A.
  4. In the facts and circumstances of the case, the CIT(A) erred in confirming in making enhancement of Rs.1,12,54,187/- towards amount received from developers as Short Term Capital Gain although the same is against 3 orders of Mumbai ITAT.

5. The Commissioner of Income Tax (A) wrongly confirmed interest u/s 234 A, B, C, & D and also erred in initiating penalty u/s 271(1)(c) in respect of enhancement.

3. In the instant case, the appellant has raised issues on natural justice in the 3<sup>rd</sup> ground of appeal. As stated above, the appellant has stated that the Ld. CIT(A) erred in confirming the assessment order in which the Assessing Officer (AO) followed direction of Joint Commissioner of Income Tax (JCIT) u/s 144A without providing opportunity to the assessee to rebut the directions of JCIT u/s 144A.

Being an issue on question of natural justice, we advert to the above ground of appeal immediately. In the order dated 14.03.2018, the Ld. CIT has mentioned at page 2 the same ground of appeal (as 7<sup>th</sup> ground of appeal) which is reproduced below:

“In the facts and circumstances of the case and in law, the AO has erred in following directions of JCIT u/s 144A and also not providing opportunity to the appellant to rebut the directions of JCIT u/s 144A.”

However, in the impugned order the Ld. CIT(A) has not adjudicated the above ground of appeal.

4. Having heard the rival submissions and perused the relevant materials on record, we find that section 144A has been inserted by the Taxation Laws (Amendment) Act, 1975. It authorizes the Joint Commissioner w.e.f. 01.10.1998 to call for records of a case either on his own motion or on a reference made by the Assessing Officer or an application made by the assessee, before the assessment is finalized, and to issue such directions as he considers fit in the circumstances of the

case for completion of the assessment. Opportunity to the assessee is to be provided for if the directions proposed to be issued are prejudicial to him. It has been made clear that directions which merely lay down the lines on which an investigation is to be made are not to be treated as prejudicial to the assessee. Section 144A is operative w.e.f. 01.01.1976.

In the instant case, as mentioned earlier, the Ld. CIT(A) has not adjudicated the above ground of appeal which was before him as the 7<sup>th</sup> ground of appeal. Therefore, we set aside the appellate order dated 14.03.2018 and restore the matter to the file of the Ld. CIT(A) to pass an order, after giving reasonable opportunity of being heard to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

**Order pronounced in the open Court on 12/04/2019.**

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 12/04/2019

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**