



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

आयकर अपीलीय अधिकरण "आई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No. 7066/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2008-09)

Shri Owais M. Husain 701/13/14, Queens Court 1/115, Dr. E. Moses Road Worli, Mumbai-400 021.	बनाम/ Vs.	Income Tax Officer-2(2)1 Air India Building Nariman Point Mumbai-400 021
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AHWPM-0171-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Prakash K. Jotwani- Ld.AR
Revenue by	:	Shri Samir Tekriwal- Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	11/07/2019
घोषणाकीतारीख / Date of Pronouncement	:	30/07/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-56, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-*



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

56 ITO/(IT)-2(2)(1)/2016-17/39-H dated 01/09/2017 on following grounds of appeal: -

“On the facts and circumstances of the case and in law:

Ground No. 1: Re-opening the assessment: -

The learned CIT (A) erred in confirming the Assessing Officer's action of reopening the assessment for AY 2008-09 and failed to take into consideration the objections raised by the appellant, namely:

- (i) CIT (A) erred in upholding the lower authority's reason of reopening i.e. treatment of proceeds from sale of paintings as income from other sources in previous Assessment Years thereby disregarding the fact that the Appellant had offered sale of paintings as Capital Gains.
- (ii) CIT (A) erred in concluding that the reopening notice was not only dated within but also issued within the time allowed in section 149 of the Income Tax Act in spite of the circumstances being contrary to the Standard Operating Procedures published by the Department of Posts,
- (iii) The CIT (A) erred in disregarding the fact that the AO has contradicted herself at the time of recording the reasons. The AO herself acknowledged that the amount of Rs. 38,00,000/- has been offered to tax as Capital Gains in the Return of Income for the relevant assessment year; subsequently in the concluding paragraph she stated that the same amount of Rs. 38,00,000/- had escaped assessment.

Ground No. 2: 'Annual Let Out Value'

- (i) The learned CIT(A) erred in not considering the additional ground of appeal thereby depriving the Appellant the option to categorize the property of his own choice as 'self occupied property', out of 3 properties owned by the Appellant, in spite of the property at Queens Court specifically mentioned as self occupied in the return of Income.
- (ii) The learned CIT (A) erred in upholding the Annual Ratable Value u/s. 23(1)(a)/(b) of the 2 Worli properties (in spite of the property at Queens Court specifically mentioned as self occupied in the return of Income) at Rs.9,90,000/- each, based on unauthentic information -on the pretext of '*local enquiry*', instead of adopting the Municipal Ratable value.
- (iii) The learned CIT (A) failed to take into consideration the various case laws, which have explained the terms used in section 23(1)(a), i.e. "what might be reasonably expected from year to year".
- (iv) Without prejudice to point (ii) above the learned CIT (A) erred in not appreciating the fact the local enquiry of FMV was carried out during the course of Assessment in the Year 2013-14 while the concerned Assessment Year was AY 2008-09 thereby arriving at a much higher value.

Ground No. 3: 'Unexplained income' or 'Long Term Capital Gains'

- (i) The learned CIT(A) erred in confirming the action of the AO in treating the income of Rs. 80,75,000/- arising from the sale of painting (which were gifted by the Appellant's father late Mr. M F Hussain), as 'Unexplained income' instead of accepting the assessee's treatment as Long-Term Capital Gains under the head 'Income from Capital Gain'.
- (ii) Without prejudice, the CIT (A) erred in confirming the addition of Rs. 38,00,000/- being paintings sold through M/s. Art Musings, confirmation of which was provided by them to show genuineness of the transaction.”

2.1 Facts on record would reveal that the assessee being non-resident individual was subjected to reassessment proceedings for the year under consideration. The assessment was framed u/s 143(3) read with Section



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

147 of the Income Tax Act, 1961 by Ld. Income Tax Officer (international taxation)-2(2)(1), Mumbai [in short 'AO'] on 30/03/2016 wherein the total income of the assessee was determined at Rs.103.58 Lacs. The assessee is son of the world-renowned artist and Padma Vibhushan Late Mr. M.F. Husain.

2.2 The original return of income was filed by the assessee on 22/10/2010 declaring an income of Rs.46.08 Lacs under the head Long-Term Capital Gains [LTCG] from sale of paintings gifted by his father for Rs.38 Lacs, interest on Bonds for Rs.8 Lacs and interest on Savings Account for Rs.0.08 Lacs. However, the said return was non-est / invalid return in view of the fact it has been filed beyond time limit prescribed u/s 139(4) which permits the assessee to file its return of income at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

2.3 The case of the assessee was reopened by issuance of notice u/s 148 dated 31/03/2015 directing the assessee to respond to the same. In response, the assessee filed a return of income on 01/03/2016 declaring an income of Rs.89.41 Lacs. The difference in income declared in two returns arises on account of the fact that in subsequent return, the assessee offered notional rent from two vacant house properties and additional Long-Term Capital Gains from sale of paintings which were stated to be gifted to him by his father over his life time. At the same time, the assessee demanded reasons for reopening the assessment which were duly supplied. Although the assessee raised objections against reopening of



assessment, however, the same were rejected and the matter was proceeded with on the merits of the case.

2.4 In return of income filed in response to reassessment proceedings, the assessee had reflected receipts of Rs.80.75 Lacs on account of sale of painting and offered the same as Long-Term Capital Gains in view of the fact that the same were gifted paintings and the cost of acquisition of the paintings was *Nil*. Some of the painting were stated to be sold through an art gallery *Art Musings*. In support of sale of paintings, the assessee submitted ledger confirmation from *Art Musings* in support of the sale of paintings. However, Ld. AO, instead of treating the income as Long-Term Capital Gains, chose to assess the same under the head *Income from other sources* as unexplained income in view of the fact that the assessee could not substantiate the sale of painting with requisite documentary evidences. The said differentiation would assume importance since the gains under the head Long-Term Capital Gains would attract concessional rate of tax in comparison to income assessed under the head *Income from other sources*.

2.5 Finally, the assessment was framed on 30/03/2016 wherein the income of the assessee was determined at Rs.103.58 Lacs which comprised-off of following income: -

No.	Head of Income	Amount (Rs.)
1.	Income from House Property	13.86 Lacs
2.	Business / Professional Income	0.80 Lacs
3.	Unexplained Income	80.75 Lacs



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

4.	Income from Other Sources	8.16 Lacs
	Total	103.58 Lacs

The income from House Property is notional rental value on estimated basis from two house properties viz. one flat situated at Queens Court, Worli, Mumbai and another flat situated at Dhun Apartment, Worli, Mumbai. The third property situated at Chennai was taken to be as Self-Occupied House Property. The Ld. AO worked out Annual Value of the flats at Rs.9.90 Lacs each and computed the notional rental income at Rs.13.86 Lacs against the same.

3. Aggrieved, the assessee agitated the stand of Ld.AO, however, without any success, before Ld. first appellate authority vide impugned order dated 01/09/2017. The Ld. CIT(A), while upholding the validity of assessment proceedings, confirmed the quantum additions. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee, Shri Prakash K. Jotwani, drawing our attention to the reasons recorded to invoke reassessment proceedings, advanced arguments to support the fact that reassessment proceedings stood vitiated in the eyes of laws. The quantum additions have been assailed on merits also. Our attention has been drawn to the orders of the Tribunal for AYs 2006-07 & 2007-08 for the submissions that similar view may be taken in this year also. Per Contra, Ld. Departmental Representative [DR], relying upon the observations of Ld. AO, submitted that the assessee miserably failed to prove the sale of



paintings and therefore, the income was nothing but undisclosed income of the assessee.

5.1 We have carefully heard the rival submissions and perused relevant material on record and deliberated on the judicial pronouncements cited before us including the decision of Tribunal in assessee's own case in earlier years. First, we take up the issue of validity or reassessment proceedings.

5.2 At the outset, the reasons recorded by Ld. AO to trigger reassessment proceedings against the assessee, could be extracted in the following manner: -

“

In this case, the assessee has filed return of income with DCIT-12(2), Mumbai on 22.10.2010 declaring income of Rs.46,08,850/- being capital gain of Rs.38,00,000/- on sale of painting and Rs 8,08,850/- being income from other source.

In the case of the assessee in earlier years for A.Y.-2006-07 and 2007-08 the sale of painting by the assessee has been treated as undisclosed income whereas during the A.Y. 2008-09 the assessee has shown the same as capital gain. The assessee's contention is that the sale proceeds of paintings received as gift from his late father Shri M.F.Husain. However, the assessee has not produced any evidence to show that he has received any gift from his late father. In fact, the assessee has sold some of his father's unsold paintings. Therefore, the entire sale proceeds have been added to the total income of the assessee as undisclosed income.

The issue involved in the present assessment year is identical for A.Y. 2006-07 & 2007-08. Therefore, I have reason to believe that income Chargeable to tax has been escaped assessment to the extent of Rs.38,00,000/-.

.....”

The Ld. AR has stressed upon the fact that income of Rs.38 Lacs was already disclosed in the return of income filed on 22/10/2010 and therefore, the same could not be termed as undisclosed income. However, as noted by us in para 2.2, the return filed by the assessee on 22/10/2010 was non-



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

est return and not a valid return in the eyes of law as per Section 139(4) of the Act. In this situation, Clause (a) of Explanation 2 would squarely apply which provide that income would be deemed to have escaped assessment in case no return was furnished by the assessee although his income exceeded the maximum amount which is not chargeable to income tax.

Even otherwise, taking cognizance of the return filed by the assessee on 22/10/2010, we find that the income was disclosed by the assessee as *capital gains* as against the observation of Ld. AO that the income was to be assessed as undisclosed income which would attract higher rate of tax. Therefore, this situation would also lead us to same conclusion that there was escapement of income in terms of statutory provisions of Section 147. No arguments have been advanced in respect of ground no. 1(ii). Therefore, finding no substance in the legal pleadings, we hold that reassessment proceedings were validly initiated against the assessee and the order of Ld. first appellate authority, in this regard, would not require any interference. In result, Ground No. 1 stands dismissed.

5.3 So far as the addition of notional rental income from two flats situated at Mumbai is concerned, we find that the issue is recurring in nature. The same has already been delved into by the co-ordinate bench of this Tribunal in assessee's own case for AY 2006-07 ITA No. 4320/Mum/2016 order dated 11/05/2018, wherein the bench at para 18, relying upon the decision of Hon'ble Bombay High Court in **CIT V/s Tip Top Typography 368 ITR 330** directed Ld. AO to adopt the deemed rent as per Municipal Rateable value and assess the income accordingly. This decision has



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

subsequently been followed by Tribunal in AY 2007-08 ITA No.6989/Mum/2016 order dated 29/06/2018. Therefore, facts being *pari-materia* the same, we direct Ld. AO to compute the deemed rent on similar lines. Ground No.2 stands partly allowed.

5.4 In the last ground of appeal, Ld. AR has advanced arguments to submit that gains arose out of sale of painting acquired by the assessee from his late father and therefore, the same has rightly been offered as *Capital Gains*. Upon due consideration, we find that painting to the extent of Rs.38 Lacs are stated to have been sold through art gallery *Art Musings, Colaba, Mumbai*. The confirmation of account of this party for the period 01/04/2005 to 31/03/2010 has been placed on record on page no. 47 of the paper-book. The said confirmation contains the details of cheque issued by the said entity to the assessee against sale of paintings. The same cheque appears in the assessee's bank account as evident from bank statement placed on page no. 33 & 40 of the paper-book. The Ld. AO has disbelieved the transactions merely by observing that PAN of M/s Art Musings was not valid. However, we find that the assessee has placed on record correct PAN of the party which is *AAFFA5038D* as supported by extracts taken from the website of the department. It appears that the PAN has inadvertently been mentioned in the confirmation of account as *AAFA5038D* which has led Ld. AO to doubt the genuineness of the transactions. There was no other reason to doubt the genuineness of the transaction. Nothing adverse is available on record. Therefore, since the evidence on record in the shape of confirmation of account, assessee's



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

bank statement, details of PAN etc. has been placed on record and the same corroborates each other, there could no occasion now to doubt the genuineness of the transactions. Therefore, we hold that sale of painting to the extent of Rs.38 Lacs has rightly been offered under the head *Capital Gains*. The ground of assessee's appeal stands allowed to that extent.

5.5 So far as the balance addition of Rs.42.75 Lacs is concerned, Ld. AR has pleaded for restoration of matter back to the file of Ld. AO to place on record sufficient documentary evidences in support of the claim, as done by the Tribunal in earlier years. Concurring with the same, the matter stands remitted back to the file of Ld. AO with a direction to the assessee to substantiate his claim, in this regard. Needless to add that sufficient opportunity of being heard shall be provided to the assessee and upon failure of assessee to substantiate his claim, Ld. AO shall be at liberty to dispose-off the matter on the basis of material on record. The ground stand allowed for statistical purposes to that extent.

6. In result, the appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 30th July, 2019.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 30/07/2019
Sr.PS:-Jaisy Varghese



ITA No.7066/Mum/2017
Shri Owais M. Husain
Assessment Year-2008-09

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**