

**IN THE INCOME TAX APPELLATE TRIBUNAL, "G" BENCH MUMBAI  
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No. 6178/Mum/2017 for Assessment Years: 2010-11**

Shri Sanjiv Garg 1704-D Wing, Ashoka Garden, Tokarsee Jivraj Road, Sewree, Mumbai-400015. <b>PAN : AABCD7169H</b>	Vs	DCIT Circle-12(2), 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Marg, Mumbai-400020.
(Appellant)		(Respondent)

Appellant by :	Shri Gaurav Kabra (AR)
Respondent by :	Shri Dharm Veer Singh (DR)

**Date of Hearing : 11/09/2019  
Date of Pronouncement: 12/09/2019**

Order under section 254(1) of Income Tax Act

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-28, [CIT(A)], Mumbai dated 12.06.2017 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

- 1) On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in passing the ex-parte order without providing opportunity of being heard to the appellant.
- 2) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs.26,55,435/- as alleged Short Term Capital Gain, without considering the facts and circumstances of the case.
- 3) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in treating the Long Term Capital Gain on account of Sale of flat as alleged Short Term Capital Gain, without considering the facts & circumstances of the case.
- 4) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in

not providing the benefit of indexation of the cost of acquisition and deduction u/s.54 of the Income Tax Act, to the appellant by treating the Capital Gain on account of Sale of property as alleged Short Term Capital Gain, without considering the facts & circumstances of the case.

5) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs.1,34,050/- in Income from House Property as alleged rent received on flat, without considering the facts and circumstances of the case.

6) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Office in disallowing the claim of Interest paid on Housing Loan of Rs.12,629/-, without considering the facts and circumstances of the case.

2. At the outset of hearing, the ld. AR of the assessee submits that notice of hearing issued by ld. CIT(A) was not received by assessee due to change of address, therefore, neither the assessee nor his representative could appear before the ld. CIT(A) to substantiate the grounds of appeal. The ld. CIT(A) passed the ex-parte order dated 12.06.2017. On merit, the ld. AR of the assessee submits that addition was made by Assessing Officer by treating Long Term Capital Gain as Short Term Capital Gain. The Assessing Officer treated the date of acquisition of assets from the date of registration, though the assessee claimed it from the date of booking. The ld. AR submits that he has good case on merit and likely to succeed, if the assessee is given opportunity of hearing on merit. The ld. AR of the assessee prayed that the grounds of appeal raised by assessee may be restored to the file of ld. CIT(A) for adjudication of the issues on merit.
3. On the other hand, the ld. DR for the revenue supported the order of lower authorities. However, on the submission of assessee that matter may be

restored to the file of ld. CIT(A) for adjudication of issues on merit. The ld. DR fairly agreed.

4. We have considered the submission of ld. representatives of the parties and gone through the orders of authorities below. We have noted that the assessee in column-10 of Form No.36 (Appeal Form for filing appeal before Tribunal), has mentioned his address at 1704- D Wing, Ashoka Garden, Tokarsee, Jivraj Road, Sewree, Mumbai-15. However, the address furnished by assessee before Assessing Officer and ld. CIT(A) was of 10-C, Sagar Sangeet, 58, Colaba Road, Mumbai. Instead of considering the merit of the case, we find that the address of assessee was changed and the ld. CIT(A) passed ex-parte order. Therefore, considering the submission of ld. AR of the assessee and totality of fact, the grounds of appeal raised by assessee are restored back to the file of ld. CIT(A) to decide the issues afresh. Needless to order that before deciding the issue, the ld. CIT(A) shall grant fair and property to the assessee. The assessee is also directed to furnish all the necessary evidences and submission before the ld. CIT(A) and not to seek adjournment without any valid reasons.
5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 12/09/2019.

Sd/-

Sd/-

**(PRAMOD KUMAR)**  
**VICE-PRESIDENT**

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Date: 12.09.2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

BY ORDER

Assistant Registrar  
ITAT Mumbai