

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.452/Mum/2019  
(Assessment Year: 2015-16)**

Smt. Jacqueline A.Ubale E-24, Nutan Nagar Turner Road, Bandra(W) Mumbai-400 050	Vs.	ITO-23(2)(1) Room No.111, Matru Mandir, Tardeo Mumbai-400 007
<b>PAN/GIR No.AARPU2038D</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri Ashish Kumar(DR)
Assessee by	Shri K.K.Lalkaka, AR
<b>Date of Hearing</b>	<b>27/01/2020</b>
<b>Date of Pronouncement</b>	<b>05/02/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)–48, Mumbai, dated 14/11/2018 and it pertains to Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law, CIT (Appeals) ought to have filed that the reassessment proceedings are bad in law, illegal, in excess of and/or in want of jurisdiction and/or otherwise void.*

2. *On the facts and in the circumstances of the case and in law. the CIT (Appeals) ought not to have sustained the order of the Assessing Officer having regard to the fact that in fact and in law there was no legal necessity to frame a protective assessment in view of the fact that all material facts were produced before the Assessing Officer that the appellant was not the legal owner of the two properties which were*

*owned by her husband and that her name was only entered for the purpose of convenience in the said documents.*

*3. Without prejudice to Ground No. 2, the CIT (Appeals) erred in sustaining the addition of Rs. 20,81,852/- on inconsequential and irrelevant grounds being the difference between the value of the transaction in the Agreement and the value adopted by the Stamp Duty authority by the appellant in the course of appellate and assessment proceedings.*

3. The brief facts of the case are that the assessee is an individual derives income from salary, income from business and profession being interest on capital and remuneration from partnership firms, filed her return of income for AY 2015-16 on 28/03/2016, declaring total income of Rs. 12,86,230/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that, as per the details available with department in the form of AIR information, it was noticed that the assessee has purchased two properties. Therefore, he called upon the assessee to file necessary details, including copies of sale deed etc, in order to reconcile the return with AIR information. In response, the assessee has furnished details of purchase of property, including copies of sale deed etc. On perusal of details filed by the assessee, the Ld. AO noted that the assessee has purchased two properties along with her husband Mr. Ajay Ubale, for a consideration of Rs. 2.40 crores, whereas the value as per stamp duty authority is at Rs. 2,60,81,852/-. Therefore, he opined that there is a difference in value of the property, as per stamp duty value and value fixed, as per conveyance date and accordingly, by taking note of the fact that the assessee has not disclosed said properties in her individual capacity and also considering the fact that the husband of the assessee has declared said properties in his individual capacity

and also, explained the source of amount invested for purchase of property, has made additions towards difference in value of property, as per registered sale deed and value, as per stamp duty amounting to Rs. 20,81,852/- u/s 56(2)(vii)(b) of the I.T.Act, 1961, on protective basis.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated her submissions made before the Ld. AO and argued that although, her name was included in registered document for purchase of property, but those two properties had been purchased by her husband in his individual capacity and also, the source for purchase of properties has been paid from his individual bank account, therefore, the same has not been disclosed in her income tax returns filed for the year and hence, no additions could be made towards difference in value, as per registered deed and value adopted by the stamp duty authority on protective basis u/s 56(2)(vii)(b) of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant submissions and also taken note of the provisions of section 56(2)(vii)(b) of the I.T.Act, 1961, held that there is nothing on record, either before the Ld. AO or in the appeal proceedings, which indicates that the assessee has filed necessary details to prove that the substantive additions has been made in her husband case. He, further noted that since addition is on protective basis, the same is intrinsically related to the substantive addition, which would have been made in the case of assessee husband Mr. Ajay Ubale. Nothing has been brought before me in the appeal proceedings regarding the status of additions made in the case of Husband of the assessee. Therefore, he opined that there is nothing wrong in

making addition towards difference in value on protective basis u/s 56(2)(vii)(b) of the I.T.Act, 1961 and accordingly, confirmed additions made by the Ld. AO. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirmed protective additions made by the Ld. AO towards difference in value of property, as per registered deed and as per stamp duty value u/s 56(2)(vii)(b) of the I.T.Act, 1961 without appreciating the fact that the assessee has submitted necessary details before the Ld. AO and proved that two properties were acquired by her husband in his individual capacity and the source for purchase of property has been paid and explained by him in his individual capacity. The Ld. AR, further submitted that each and every amount paid towards purchase of property has been explained with corresponding bank statements, which categorically proved that money has been paid by her husband Mr. Ajay Ubale. Therefore, it is incorrect to make additions in the hands of the assessee that too on protective basis, when no addition has been made in the hands of the assessee's husband on substantive basis.

6. The Ld. DR, on the other hand, strongly supporting order of the Ld.AO, as well as the Ld.CIT(A) submitted that since, the addition is made on protective basis, the same is intrinsically related with substantive addition which would have been made in the case of assessee's husband Mr. Ajay Ubale. Since the assessee has brought nothing on record to indicate status of additions made in case of husband of assessee, there is no error in the findings of the

Ld.CIT(A) in confirming additions made towards difference in value of property on protective basis.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is an admitted fact that when, there is no clarity on ownership of any asset or source of income, when two persons claimed ownership or source of income, then the Ld. AO is bound to make additions in one hand on substantive basis and protective addition in another case, but unless, in order to make protective additions, in respect of any income, first the Ld. AO has to make substantive addition in another case, unless substantive addition is made, no protective addition could be made in another hand. In this case, the dispute with regard to ownership of two properties purchased during the year under consideration and difference in value of the properties, as per registered deed and value, as per stamp duty authority. The assessee claims that two properties were acquired by her husband Mr. Ajay Ubale and source of investment has been paid and explained by him in his individual capacity and therefore, she did not disclosed purchase of properties in her income tax returns, filed for the year. For this, she has filed necessary details explaining the transactions with corresponding evidences. The Ld. AO has accepted that the source of investments made for purchase of property by her husband, but made additions towards difference in value of property, as per registered deed and as per stamp duty value in the hands of the assessee on protective basis u/s 56(2)(vii)(b) of the I.T.Act, 1961, without making any substantive addition in the hands of assessee husband. If the purchase of two properties and source of income for purchase of property is

explained or admitted by the husband of the assessee, then there cannot be any additions in the hands of the assessee, in respect of difference in value of property u/s 56(2)(vii)(b) of the I.T.Act, 1961, more particularly, when there is no substantive addition in the hands of husband of assessee Mr. Ajay Ubale. But, fact remains that the Ld.CIT(A) had recorded a clear findings that the assessee has not furnished the facts with regard to the status of additions made in the case of husband of assessee. On the other hand, assessee claims that there is no addition is made in the hands of the husband of assessee, because his returns were processed u/s 143(1) of the I.T.Act, 1961, without making any adjustments towards returned income. Facts are contradicting each other. Therefore, we are of the considered view that to ascertain correct facts with regard to status of assessment in the hands of husband of the assessee Mr. Ajay Ubale, we are of the considered view that the issue needs to go back to the file of the Ld. AO to know addition, if any made in his hand on substantive assessment. If the Ld. AO found that there is no substantive additions in the hands of husband of assessee Mr. Ajay Ubale, then the addition made towards difference in value of property on protective basis in the hands of the assessee u/s 56(2)(vii)(b) of the I.T.Act, 1961 should be deleted.

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

Order pronounced in the open court on this 05/02/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

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

Mumbai; Dated 05/02/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai