



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA no.5584/Mum./2018  
(Assessment Year : 2002-03)

ITA no.5585/Mum./2018  
(Assessment Year : 2004-05)

ITA no.5586/Mum./2018  
(Assessment Year : 2004-05)

Bhalchandra A. Rakvi (HUF)  
Flat no.704, Nisarg CHS Ltd.  
Dahisar (West), S.M. Road  
Mumbai 400 068 PAN-AADHB9229D

..... Appellant

v/s

Income Tax Officer  
Ward-20(1)(2), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Ashish Kumar

Date of Hearing – 29.01.2020

Date of Order – 21.02.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeals by the assessee arise out of three separate orders, all dated 16<sup>th</sup> April 2018, passed by the learned Commissioner of Income Tax (Appeals)-36, Mumbai, pertaining to the assessment years 2002-03 and 2004-05.

2. When the appeals were called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. As seen from record, on the earlier occasion i.e., 9<sup>th</sup> December 2019, when the appeals were fixed for hearing, no one had appeared on behalf of the assessee. Thus, from the aforesaid facts, it is very much clear that the assessee is neither diligent nor interested in pursuing the appeals. Accordingly, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

**ITA no.5584/Mum./2018**  
**Assessment Year – 2002-03**

3. As could be seen from the grounds raised, they are on the validity of re-opening of the assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*").

4. Brief facts of the case are, the assessee is a Hindu Undivided Family (HUF). For the assessment year under dispute, the assessee filed its return of income on 14<sup>th</sup> May 2004, declaring total income of ₹ 1,17,722, excluding the agricultural income of ₹ 30,618. The assessment in case of the assessee was re-opened under section 147 of the Act, however, the Assessing Officer ultimately completed the

assessment under section 143(3) r/w section 147, accepting the income returned by the assessee. In other words, there was no variation between the income returned by the assessee and income determined by the Assessing Officer. Against the assessment order so passed, the assessee preferred appeal before the first appellate authority, which was dismissed. Aggrieved, the assessee is in appeal before the Tribunal.

5. We have heard the learned Departmental Representative and perused the material available on record. As could be seen from the grounds raised, the assessee has only challenged the validity of re-opening of assessment. There is no ground raised by the assessee disputing any issue on merits. In fact, in the assessment order there is no addition made by the Assessing Officer. Thus, the present appeal is purely academic in nature. Be that as it may, as regards the issue of validity of reopening of assessment, learned Commissioner (Appeals) has observed that at the time of assessment proceedings, the assessee had neither asked for the reasons recorded nor has raised any objections against the re-opening of assessment u/s 147 of the Act. The assessee has participated in the assessment proceedings which is evident from the assessment order, as the Assessing Officer has specifically mentioned that in response to the notices issued, the learned Authorised Representative of the assessee had attended from

time to time and filed the details called for. Ultimately, the Assessing Officer has completed the assessment accepting the returned income. When the assessee has participated in the assessment proceedings and has made compliance from time to time, it has to be presumed that the assessee must be aware of the reasons for re-opening of assessment. Hence, neither it asked for supply of reasons nor objected to the re-assessment proceedings. Ultimately, no prejudice has been caused to the assessee, since, while completing the assessment the Assessing Officer has not made any addition whatsoever. Therefore, we fail to understand the grievance of the assessee in preferring the present appeal. In any case of the matter, the finding recorded by learned Commissioner (Appeals) has remained uncontroverted before us. For the aforesaid reasons, we uphold the order passed by the learned Commissioner (Appeals) by dismissing the ground raised.

6. In the result, appeal stands dismissed.

**ITA no.5586/Mum./2018**  
**Assessment Year : 2004-05**

7. The issue raised in the present appeal is identical to the issue raised in ITA no.5584/Mum./2018. Following our decision in the said appeal, as aforesaid, we uphold the order passed by the learned Commissioner (Appeals). Ground raised is dismissed.

8. In the result, appeal is dismissed.

**ITA no.5585/Mum./2018**  
**Assessment Year : 2004-05**

9. This appeal arises out of consequential order passed in pursuance to the directions of learned Commissioner of Income Tax under section 263 of the Act.

10. The assessment in assessee's case was completed under section 143(3) r/w section 147 of the Act vide order dated 31<sup>st</sup> December 2008, accepting the returned income of ₹ 54,965. Since, while completing the assessment the Assessing Officer had not assessed assessee's 1/5<sup>th</sup> share of ₹ 1,20,000 in the compensation received from Gauri Shankar Todi, who had encroached the land held jointly with others, learned Commissioner of Income Tax invoked his power under section 263 of the Act to revise the assessment order by set it aside to the Assessing Officer for fresh assessment after examining the issue relating to receipt of compensation. In the assessment order passed in pursuance to the directions of learned Commissioner (Appeals), the Assessing Officer added back the amount of ₹ 1,20,000, to the income of the assessee. Against the assessment order so passed, the assessee preferred appeal before the first appellate authority on the ground that when the original assessment order passed under section 143(3) r/w section 147 of the Act is itself invalid,

the assessment order in pursuance to the directions of learned Commissioner of Income Tax cannot be valid. Of course, the assessee also challenged the addition on merit. After considering the submissions of the assessee, learned Commissioner (Appeals) found them unacceptable and accordingly, dismissed the appeal of the assessee.

11. We have heard the learned Departmental Representative and perused the material available on record. As regards the validity of the impugned assessment order, we agree with the learned Commissioner (Appeals) that there cannot be any question regarding the validity of the assessment order as the original assessment order has already been held as valid. As regards the merits of the issue, from the facts on record it is evident that during the year under consideration, the assessee along with other co-owners had received compensation from the person who had encroached their land. In case of other co-owners also similar addition was made. As observed by learned Commissioner (Appeals), in respect of one of the co-owners, the addition made by the Assessing Officer was also confirmed by the first appellate authority. The aforesaid finding of learned Commissioner (Appeals) has not been controverted by the assessee. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals). Accordingly, grounds are dismissed.

12. In the result, appeal stands dismissed.

13. To sum up, all the appeals are dismissed.

Order pronounced in the open Court on 21.02.2020

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

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

**MUMBAI, DATED: 21.02.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai