

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकरअपील सं./ I.T.A. No.1239/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Smt. Laxmiben Manji Patel</b> 01, YogeshwarKrupa, Dongripul At Post, Mahad-402301	<b>बनाम/</b> Vs.	<b>ITO Ward-2</b> R. No. 29, B-Wing, 6 <sup>th</sup> floor, Ashar IT Park, Wagle Industrial Estate, Thane-400 604
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AEJPP-2824-A</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Bimlendu Bhushan – Ld AR
<b>Revenue by</b>	:	Shri Brajendra Kumar- Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	14/09/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	14/09/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the common order of learned Commissioner of Income-Tax (Appeals)-2, Thane [CIT(A)], dated 29/12/2016 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s 147 on 30/03/2016. The impugned order is common order for AYs 2010-11 in respect to 4 assessees i.e. (i)Laxmiben Manji Patel (assessee); (ii) Manji Bhanji Patel; (iii) Narottam Manji Patel; (iv) Vanita Manji Patel.

2. During the course of hearing, both the representatives converged on the point that the matter may be restored back to the file of Ld. AO with similar directions as given by the coordinate bench of Pune Tribunal in ITA Nos. 1242/Mum/2017 dated 21/02/2020 passed in case of other co-owner for AY 2010-11 as well as in the case of assessee for AY 2011-12. The copy of the order has been placed on record.

3. The perusal of case records would show that the assessee along with other co-owners sold certain pieces of land during the year but no capital gain was reflected in the return of income. The Ld. AO computed Business income of Rs.165.52 Lacs on sale of land and added the same to the income of the assessee. The Ld. CIT(A), vide common order dated 29/12/2016, following appellate order of one co-owner namely Narottam Patel for AY 2011-12, confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

4. We find that impugned order, in the case of one of the co-owner i.e. Manji Bhanji Patel, came up for challenge by the assessee before Pune Tribunal vide ITA No.1242/Mum/2017 & ors. Common order dated 21/02/2020. During hearing, it was submitted that the assessee had not transferred any piece of land willingly but the transferee companies got the land transferred in their name by fraud and misguiding the assessee. The assessee did not receive any consideration and filed suit before court for revocation and cancellation of the sale agreements / deeds. After considering the same, the bench held as under: -

9. We have heard the rival contentions and perused the material available on record. The issue raised in the present appeal is with respect to the alleged profit received on sale of land. It is the assessee's contention that the assessee has never received any sale consideration and has filed Suit before the Court of Alibaug for revocation and cancellation of the sale agreement/deeds. In the revenue records, the name of the original owner has also been registered which is evident from the copy of revenue records which is placed by the Assessee in the paper book. We find

these developments were not available before the Lower Authorities at the time of dealing with the issue. Therefore, in view of the above facts and circumstances, we are of the opinion that the matter needs to be re-verified & re-adjudicated by the Assessing Officer after considering the factual position and we, therefore, restore the issue back to the file of Assessing Officer to decide the matter afresh after considering the submissions of the Assessee. Needless to say, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee in accordance with law. The assessee is also directed to produce relevant documents before the Assessing Officer. Thus, grounds raised by the assessee in the appeal are allowed for statistical purposes.

Since similar plea has been made by Ld. AR before us, we restore the matter back to the file of Ld. Assessing Officer after considering the factual position and decide the matter afresh after considering the submissions of the Assessee. Needless to say, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee in accordance with law. The assessee is also directed to produce relevant documents before the Assessing Officer. Thus, grounds raised by the assessee in the appeal are allowed for statistical purposes.

5. The appeal stand allowed for statistical purposes.

*Order pronounced on 14<sup>th</sup> September, 2021.*

**Sd/-  
(Mahavir Singh)**

**उपाध्यक्ष / Vice President**

**Sd/-  
(Manoj Kumar Aggarwal)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 14/09/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/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/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.