

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.7393/M/2019  
Assessment Year: 2015-16**

Mr. Deepak Kumar Gupta, 1 <sup>st</sup> Floor, Warden House, Sir P.M. Road, Fort, Mumbai – 400 001 <b>PAN: AAAPG9851D</b>	Vs.	Dy.CIT 2(2)(2), Room No.545, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Arati Sathe, A.R.  
Revenue by : Ms. Neha Thakur, D.R.

Date of Hearing : 05.02.2022  
Date of Pronouncement : 25.02.2022

**O R D E R**

**Per Kuldip Singh, Judicial Member:**

The appellant, Mr. Deepak Kumar Gupta (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 29.10.2019 passed by Ld. Commissioner of Income Tax (Appeal)-5, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2015-16 on the grounds inter alia that :-

***“1. The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer in making an addition of Rs.1,03,00,000/u/s. 68 if the Income Tax Act instead of taxing the same under the***

***head “capital gain” and also denying the benefit of section 654F of the Income Tax Act. The assessee craves leave to add, alter or amend the above ground of appeal.”***

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee being a director in many companies has claimed his income from salary, business and profession and income from other sources, his return was subjected to scrutiny. The Assessing Officer (AO) noticed that in the computation of income assessee has shown nil long term capital gains (LTCG) as per working and deductions given as under:

Particulars	<u>Sales Price/Year</u>	<u>Indexed cost/year</u>	<u>Transfer Expenses</u>	<u>Indexed cost of improve ment</u>	<u>Exempt</u>	<u>Capital Gain</u>
Painting	<u>10000000</u> <u>20/4/2014</u>	<u>0</u> <u>1/4/1981</u>	0	0	100000 00	0
Statue	<u>300000</u> <u>1/5/2014</u>	<u>0</u> <u>1/4/1981</u>	0	0	300000 0	0

3. On the queries raised by the AO qua claim of deductions, the assessee replied that he has declared LTCG from sale of paintings and sculptures which are of personal effects. The assessee claimed himself to be from well off family. The assessee has declared LTCG from painting and sculptures which he has claimed to have sold to Renaissance Paints Pvt. Ltd. who has exported the same to Aurora Trust, 92 Sutherland Drive, Atherton, CA-94027, USA. On failure of the assessee to substantiate the proof of ownership, cost of acquisition, detail of the sellers,

valuation of assets etc. the AO proceeded to make addition of Rs.1,03,00,000 (Rs.1,00,00,000/- from the sale of painting and Rs.3,00,000/- from the sale of statue) under section 68 of the Act and thereby framed the assessment at the total income of Rs.2,26,83,532/- under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved from the impugned order, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Bare perusal of the assessment order as well as the impugned order passed by the Ld. CIT(A) goes to prove that the claim of the assessee seeking deductions on account of LTCG under section 54F of the Act qua one painting by Indian modernist master Vasudev S. Gaitonde (1924-2001) and two prabha bronze statues sold for an amount of Rs.1,03,00,000/- (Rs.1,00,00,000/- from the sale of

painting and Rs.3,00,000/- from the sale of statue) has been declined for lack of evidence on the part of the assessee.

7. At the very outset, the Ld. A.R. for the assessee contended that due to old age the assessee could not putforth his case to his tax advisor nor he could bring on record the relevant evidence and as such moved an application for leading additional evidence under rule 29 of the Appellate Tribunal Rules to prove the ownership, sale and position of the assessee. Application has been opposed by the Ld. D.R. on the ground that when specific queries were raised by the AO no such evidence has come on record and now it is an afterthought on the part of the assessee and prayed for dismissal of the application.

8. We are of the considered view that when the evidence sought to be brought on record by the assessee by way of additional evidence is necessary for complete adjudication of the controversy at hand, the same cannot be disallowed, even if the assessee or his tax advisor have committed mistake or negligence. So the application is allowed.

9. Plethora of evidences now brought on record by the assessee in the form of invoices for sale of painting and statue, bank statements for receiving sale consideration through banking

channel, custom clearance for export of the said painting and statues by the vendee, photograph of the family showing statue hanging in their living room, affidavits of the assessee's etc. need to be examined by the AO to arrive at the logical conclusion.

10. So without entering into the merits of the claim of the assessee and findings returned by the lower revenue authorities in the impugned orders, we are of the considered view that this case is required to be remitted back to the AO to decide de-novo by entertaining additional evidence sought to be led by the assessee by providing an opportunity of being heard to the assessee. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 25<sup>th</sup> Feb.2022.**

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

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 25.02.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.