

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.105/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2015-16)

Mangala Aher 1001, Manisha Annex, Tata Colony, Mulund (E), Mumbai-400081.	बनाम/ Vs.	ACIT-29(2) Room No.202, C-10, 2 nd Floor, Prathashakar Bhavan, BKC, Bandra (E), Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOPA2257M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Sanjiv Brahme & Jayant Bhatt
Revenue by:	Shri Ram Krishn Kedia

सुनवाई की तारीख / Date of Hearing: 30/05/2022

घोषणा की तारीख /Date of Pronouncement: 14/06/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee individual against the order of the Ld. Commissioner of Income Tax (Appeals/(NFAC), Delhi dated 27.10.2021 for the assessment year 2015-16.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the disallowance of expenditure of Rs.30 Lakhs claimed by the assessee on account/in connection with the transfer of immovable property.

3. Brief facts of the case is that the assessee is a lady who had filed her return of income for A.Y.2015-16 on 27.07.2015 declaring total income of Rs.11,50,900/-. Later, the case of assessee was selected for scrutiny and the AO issued notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter "the Act") and noted the fact that the assessee had



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transferred an immovable property situated at Gangapur Road, Nashik at Rs.3,05,00,000/- and showed/computed the capital gain (LTCG) at Rs.68,85,117/-. The AO noted from the computation made by assessee that the assessee had claimed deduction of Rs.30 Lakhs which was paid to a third party (*compensation paid to Mrs. Malhari Salve and his son*). According to the AO, even though the assessee claimed that this deduction was allowable u/s 48 of the Act by citing few case laws according to the AO, he found that the same was not tenable because this Rs. 30 Lakh was paid to third party based on some settlement (i.e. out of Court Settlement at Nashik). According to the AO, the assessee failed to produce any evidence to suggest that this expense was having nexus for the transfer of immovable property in question and since there was no evidences worth looking at, he did not allow the claim of the assessee and disallowed the expenditure claimed to the tune of Rs.30 Lakhs. Aggrieved by the action of AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to uphold the action of the AO disallowing expenditure to the tune of Rs.30 Lakhs. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

4. We have heard both the parties and perused the records. We note that the assessee had purchased an agriculture land (40 gundas) at Nashik from Mr. Suresh Wagle and Mohan D. Wagle vide conveyance deed dated **19.08.1992** for a total consideration of Rs.70,000/- (refer exhibit-1). Even though, the assessee had purchased the aforesaid land



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for constructing a house after retirement of her husband who was working in Mumbai, and where they were staying together. But later on she was diagnosed with cancer and required treatment at Mumbai. Therefore, she wanted to sell the immovable property in question. However, then she found to her astonishment that there was some court cases regarding this immovable property (*Lis-pendence*). According to assessee, then only she came to know that before transfer/conveying the immovable property to assessee by the owners through the conveyance deed dated 19.08.1992 (Exhibit-1) which was made between the original owner Mr. Suresh Wagle and Mohan D. Wagle, the original owners (i.e, Shri Suresh Wagle and Mohan D. Wagle) had a separate agreement to sell the same property with another person Mr. Malhari Salve vide agreement date **18.07.1992** (i.e. one month prior to the conveyance deed with the assessee). According to the assessee, the agreement to sell with Mr. Malhari Salve was an un-registered document and she (assessee) was not aware of the existence of such an agreement with Mr. Malhari Salve while entering into contract/conveyance deed with the owners on 19.08.1992; and she was totally kept in the dark about the existence of such an agreement of sale with Mr. Malhari Salve. Later on only she came to know that Mr. Malhari Salve and his legal heirs had filed suit regarding the immovable property before the City Civil Senior Judge at Nasik Court for *specific performance* of the agreement of sale executed between the original owners Mr. Suresh Wagle & Mohan D. Wagle on



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18.07.1992 arraying as defendants the original owner Mr. Suresh Wagle, Mohan D. Wagle as well as the assessee. Since the aforesaid civil suit was pending in respect of the immovable property in question, even though, the assessee wanted to sell the property for a good price there was no willing buyer for the same because of the *lis-pendence* regarding the property by the legal heirs Late. Malhari Salve (Shri Kusum Salve, Pradeep Salve and Manoj Salve) who later joined as plaintiff's and contested the suit, so the assessee could not sell the immovable property in question; and since she was suffering from cancer had to get urgent fund for her cancer treatment taking into consideration the encumbrance in the property another person also tried to create trouble for the assessee in respect of this property. He was Mr. Prabhakar Raut who also tried to take possession of the property as if it is his property by forging the signature of the assessee which fact, when the assessee came to know about it she filed police complaint before the Senior Police Inspector Gangapur road Police Station, Nashik (refer exhibit-6). It was also brought to our notice that Mr. Kanhayya Prabhakar Raut even tried to sell the property by giving advertisement in the local newspaper on 29.11.2012 (refer exhibit -3 & 4) and when the assessee came to know about it, she immediately served Lawyers notice to Mr. Kanhayya Prabhakar Raut and also rebutted it by publishing newspaper notification asserting her ownership (refer exhibit-5). Thus, it was brought to our notice that since the assessee and her husband were residing in Mumbai and was undergoing treatment of cancer, they could not look after the property



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at Nashik and which resulted in Mr. Prabhakar Raut's trying to take adverse possession of property as well as the suit for specific performance of the agreement to sale dated 18.07.1992 i.e. (one month prior to the sales of the property to the assessee) was pending before the Court. In such a scenario, there was no willing purchasers for the property because of these problems/lis-pendens. In the aforesaid background, she approached several persons and finally she was able to get willing buyers viz Shri Rahul Shantaram Sawale, Kailash Punjabi & Kusum Malhari Salve who were ready to take the property despite the aforesaid encumbrance. And as per the agreement, the total consideration was fixed at Rs.3,05,00,000/- and for the purpose of removal of encumbrance in the property viz withdrawal of the suit filed for specific performance by legal heirs of late Shri Malhari Salve (Pradeep Salve, Kusum Salve & Manoj Salve), the Assessee negotiated with them and it was agreed that these three parties would be paid a total amount of Rs.30 Lakhs from the total consideration which she would receive from the buyers ie, Rs.3.05 crores and thus Shri Pradeep Salve was given by RTGS dated 09.10.2014 through United Bank of Rs.15,00,00/-, Kusum Salve was given Rs.5,00,000/- by cheque no. 206642 of United Bank and Shri Manoj Salve was given cheque no. 206641 dated 10.10.2014 of United Bank of Rs.10,00,000/- . Thus total amount of Rs.30,00,000/- was paid to the legal heirs of late Shri Malhari Salve and thereafter they withdrew the suit which was filed before the City Civil Judge Senior Division at Nashik case No.131/2014. This fact of the payment of Rs.30 Lakhs towards them is



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evident from clause no.8 of sale deed between the assessee and the new buyers of the property viz Shri Rahul Shantaram Sawale and Kailash Punjabi (refer exhibit-11).

5. From a perusal of exhibit-12, it is found that Kusum Salve and her sons had withdrawn the case no. 131/2014 dated 09.10.2014 wherein it is clearly mentioned that they have received Rs.30,00,000/- (total) from the assessee. And this fact was taken note by the Ld. City Civil Judge on 16.10.2014 and allowed them to withdraw the suit. We also take note of payment to them from copy of bank statement of the assessee highlighting the payment received from Rahul Sawale along with the ledger extract of assessee in the books of Rahul Sawale (refer exhibit 13 to 14. From the aforesaid discussion, we find as a fact that assessee in order to clear the immovable property from the encumbrances/Lis pendens had made the payment of Rs.30 Lakhs to the legal heirs of Late Mr. Malhari Salve, which was a condition precedent for the new buyers to buy the property. So Rs.30 Lakhs paid for withdrawal of suit in respect of the property in question is deductible u/s 48 of the Act. Genuineness of payment has been proved and the assessee would not have been able to sell the property without removing the legal impediment by paying Rs.30 Lakhs. So even though AO had knowledge about the aforesaid facts, he could not bring anything to contradict the facts stated hereinabove. Therefore, we find that the assessee has discharged the onus on her in respect of the payment/expenditure in question i.e, Rs.30 Lakhs and has been able to prove the nexus of expenditure with the immovable property in



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question. Therefore, the AO's action of disallowing of Rs. 30 Lakhs is untenable and the Ld. CIT(A) erred in confirming the same. Therefore, we are inclined to direct the AO to allow Rs.30 Lakhs which he disallowed and the assessee thus succeeds.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 14/06/2022.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 14/06/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai