

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.289/M/2022
Assessment Year: 2011-12**

Mrs. Gayatri Laxman Hattangadi Legal Heir of Late Laxman Hattangadi, 8/8, Saraswat Colony, Talmiki Road, Above SVC Bank, Santacruz (W), Mumbai – 400 054 PAN: AABPH4169G	Vs.	Income Tax Officer, 1 st Floor, Room No.111, Matru Mandir, Grant Road, Mumbai - 400007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vishwas Mehendale, A.R.
Revenue by : Shri Kiran P. Unavekar, D.R.

Date of Hearing : 01 . 06 . 2022
Date of Pronouncement : 21 . 06 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

Appellant Mrs. Gayatri Laxman Hattangadi Legal Heir of Late Laxman Hattangadi (hereinafter referred to as 'assessee') by filing present appeal sought to set aside the impugned order dated 15.12.2021 passed by the National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua assessment year 2011-12 on the grounds inter alia that:

“1. On the facts and circumstances of the case and in law, Hon. NFAC, Delhi has erred in issuing a Draft Order as the Final Appellate Order. In appellants humble view, the same is Bad in Law.

Without Prejudice to the aforesaid Ground of Appeal,

2. On the facts and circumstances of the case and in law, Hon. NFAC, Delhi has erred in passing the Appellate Order in the name of a Deceased Person, which is a Nullity under the Provisions of Law.

Without Prejudice to the aforesaid Grounds of Appeal 1 & 2,

3. On the facts and circumstances of the case and in law, Hon. NFAC, Delhi has erred in Not treating the Consideration received from a Builder / Developer as not a Taxable Income being a Capital Receipt in the hands of the Appellant.

Without Prejudice to the aforesaid Grounds of Appeal 1, 2 & 3,

4. On the facts and circumstances of the case and in law, Hon. NFAC, Delhi has erred in confirming the Consideration received from a Builder / Developer as the Income Taxable under the head Income from Other Sources instead of Capital Gains

The Following Ground of Appeal has been raised for the First Time in these Proceedings, the evidence in support thereof shall be filed during the appeal proceedings before Hon. ITAT.

5. On the facts and circumstances of the case and in law, Hon. NFAC, Delhi has erred in not granting a relief u/s 54 EC in respect of the Investment made in the specified assets.

6. Appellant craves leave to add, alter, amend or withdraw the aforesaid grounds of appeal.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee Lakshman Athangni since died was member of a MIG Co-operative Housing Society (Bandra East) Group IV Ltd. The assessee being one of the members of the said society as a shareholder received an amount of Rs.6,20,500/- being consideration for surrender of his old flat. Assessing Officer (AO) noticed that the said amount was never routed through the books of account of the society nor the receipt has been generated by the society out of its regular activities. So the activity of entering into agreement for redevelopment of the property and receipt of consideration by the society and awarding the same to the

individual member is a purely commercial activity. Consequently, AO treated the receipt of Rs.6,20,500/- as revenue receipt in the form of dividend under the head “income from other sources” and made the addition thereof to the total income of the assessee. AO also made addition of Rs.493/- being the interest received under section 244A of the Income Tax Act, 1961 (for short ‘the Act’) and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the same. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorized 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.

5. At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the assessee that the impugned order passed by the Ld. CIT(A) in the name of dead persons namely Laxman Shivbhat Hattangadi is a nullity despite the fact that appeal was filed by Ms. Gayatri Hattangadi being legal heir of late Lakshman Hattangadi. This factual position has not been controverted by the Ld. D.R. for the Revenue.

6. We are of the considered view that when assessment order has been passed in this case in the name of Ms. Gayatri Hattangadi

being legal heir of late Lakshman Hattangadi passing the impugned order in the name of Laxman Shivbhat Hattangadi, a dead person is a nullity and as such no order in the eyes of law. When it is proved on the file that the appeal was filed before Ld. CIT(A) in form 35 by Ms. Gayatri Hattangadi being legal heir, holding PAN : AABPH4169G, deciding the same in the name of dead person is a factual and legal perversity. So to substantiate the cause of justice impugned order passed by Ld. CIT(A) is set aside and file is remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee Ms. Gayatri Hattangadi being legal heir of Laxman Shivbhat Hattangadi. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.06.2022.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 21.06.2022.

* 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.