

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.7852/Mum./2019
(Assessment Year : 2014-15)

Pawan M. Shah
10, Pinto Building, Hill Road
Bandra (West), Mumbai 400 050
PAN – ABBPS2442J

..... Appellant

v/s

Income Tax Officer – 23(2)(5)
Mumbai

.....Respondent

Assessee by : Shri. Bhavya Sundesha

Revenue by : Smt. Smita Nair,Sr.AR

Date of Hearing – 29/06/2022

Date of Order – 26/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15/10/2019, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals)-48, Mumbai, [*"learned CIT(A)"*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised following grounds:

"1. The learned Commissioner of Income-tax (Appeals)-48, Mumbai (hereinafter referred to as "the Ld. CIT(A)] erred in upholding the action of the learned Income-tax Officer - 23(2)(5), Mumbai (hereinafter referred to as "the Assessing Officer") in determining the Total Income of the appellant at Rs. 18,42,982/- while passing the assessment order under section 143(3) of the Income-tax Act, 1961 (the Act) as against returned income of Rs.1,53,634/-.

Long Term Capital Gains on sale of flat- Rs.1,08,637/-

2. The Ld. CIT(A) erred in upholding the action of the Assessing Officer in making addition of Rs.1,08,637/- on account of Long Term Capital Gains (LTCG) arising on sale of flat without acknowledging the fact that the said flat was jointly owned by the appellant and her son having equal share and considering 50:50 ratio, the resultant LTCG after exemption under section 54 of the Act would be Nil.

3. Without prejudice to what has been stated above, the Ld. CIT(A) failed to appreciate that even if the capital gains is computed based on the appellant's contribution towards the cost of acquiring flat (i.e. Rs.6,00,000/- out of Rs.9,50,000/-), the resultant LTCG after exemption under section 54 of the Act would be Nil.

4. The Ld. CIT(A) erred in holding that since the appellant's son had offered to tax only Rs.14,50,000/- (out of the total consideration of Rs. 1,00,20,000/- pertaining to sale of flat), if the Rs.85,70,000/- is not brought to tax in the appellant's hands, the same will escape assessment.

The appellant submits that in either of the situation the impugned capital gains will not be taxable in the hands of the appellant or her son, since both had jointly sold the flat giving rise to LTCG of Rs.77,26,812/- and both had jointly purchased the new flat for Rs.1,17,60,110/-, eligible for deduction under section 54 of the Act.

Exemption under section 54F of the Act against LTCG on sale of jewellery - Rs.7.23.711/-

5. The Ld. CIT(A) erred in upholding the action of the Assessing Officer in denying exemption under section 54F of the Act against long-term capital gains of Rs.7,23,711/-" arising on sale of gold ornaments/jewellery without appreciating that the appellant had made eligible investment in residential property which was sufficient to cover the long term capital gains arising on sale of flat as well as the sale consideration received on sale of the said gold ornaments/jewellery.

6. The Ld. CIT(A) erred in upholding the action of the Assessing Officer in bringing to tax an amount of Rs.8,57,000/- as Income from Other Sources without acknowledging the fact that the said amount was not the appellant's income as it was neither accrued nor received by the appellant in whatsoever manner, rather the said amount only resulted out of a typographical error on part of the person preparing the

income-tax return, who had instead of feeding in Rs.85,70,000/- (being consideration received on sale of flat which is already brought to tax and is also dealt with in the above Grounds No. 2 to 4) had feed in Rs.8,57,000/-.

7. The Ld. CIT(A) erred in upholding the levy of interest under section 234B of the Act.

8. Each of the above grounds of appeal are independent and without prejudice to each other."

3. The brief facts of the case, as emanating from the record, are: The assessee is an individual. For the year under consideration, assessee e-filed her return of income on 29/03/2015 declaring total income at Rs. 1,53,634. From the details filed during the course of assessment proceedings, it was observed that during the financial year 2013 – 14 the assessee has sold residential flat at Bandra for the total consideration of Rs. 1,00,20,000. The said property was jointly owned by the assessee and her son, Shri Pravin Madanlal Shah. Upon verification of the return filed by assessee's son, it was observed that he has offered under the head 'capital gain', the value of consideration from sale of the said property at Rs. 14,50,000 only against which he has claimed deduction under section 48 the cost of acquisition without indexation at Rs. 7,09,827 and the balance amount of Rs. 7,40,173 is offered for taxation. The bank statement of assessee's son also confirms the amount of Rs. 14,50,000 received by him. The Assessing Officer ('AO') vide order dated 30/11/2016 passed under section 143 (3) of the Act, in the case of assessee, treated the balance amount of Rs. 85,70,000 (Rs. 1,20,00,000 minus Rs. 14,50,000) as sale consideration received by the assessee during the relevant financial year, since the assessee's bank

statement also reflects the credit of said amount from the sale of the above said property at Bandra. Accordingly, the AO computed long term capital gain of Rs. 1,08,637 and added the same to the total income of the assessee. Further, it was observed that assessee has declared full value of consideration, in its return of income, as Rs. 23,72,161. It was submitted by the assessee that she has received Rs. 15,16,161 on sale of gold ornaments. Since, no explanation was offered in respect of the balance amount of Rs. 8,57,000 (Rs. 23,73,161 minus Rs. 15,16,161), the AO added the differential amount as income from other sources. The AO also denied the exemption of Rs. 7,23,711 claimed under section 54F in respect of sale of gold ornaments.

4. In appeal, learned CIT(A) vide impugned order dismissed the appeal filed by the assessee in entirety. Being aggrieved, the assessee is in appeal before us.

5. During the course of hearing, learned Authorised Representative ('learned AR') submitted that assessee along with her son were jointly owning residential flat at Bandra, which was sold during the year under consideration. Further, long term capital gains also arose on account of sale of gold ornaments. Since the capital gains arising from sale of aforesaid 2 long-term capital assets has been invested in purchase of another residential flat at Khar, exemption under section 54 and 54F was claimed by the assessee. Due to error on account of the person who filed the return of income, the consideration i.e 85.53% of sale amount credited in the bank

account of the assessee was treated as long-term capital gains in the hands of the assessee, despite the fact that assessee was only joint owner of the property. Further, due to the error committed while filing the return of income, the consideration for sale of residential flat was declared as Rs. 8,57,000 instead of Rs. 85,70,000 and accordingly the full value of consideration on transfer of two long-term capital asset was disclosed in the return at Rs. 23,73,161 (i.e. Rs. 15,16,161 + Rs. 8,57,000). It was submitted that amount of Rs 8,57,000 is neither received by the assessee nor credited in any of her bank accounts. The learned AR submitted that the lower authorities without appreciating the error committed in filing the return of income made various additions to the total income of the assessee. The learned AR further submitted that out of the total consideration of Rs. 1,00,20,000 upon sale of the residential flat at Bandra, assessee share can either be restricted to 50% being a jointly owned property or proportionate to the cost of contribution. However, the AO considered the entire consideration credited to the assessee's bank account as long term capital gains in the hands of the assessee. The learned AR also submitted that the assessee is also entitled to claim exemption under section 54F in respect of capital gains arising from sale of gold ornaments.

6. On the other hand, learned Departmental Representative vehemently relied upon the orders passed by the lower authorities and submitted that the entire consideration on sale of residential flat is to be taxed and since the assessee's son has only declared partial amount of consideration, which

is received in his account, the balance amount credited in assessee's bank account is to be taxed in assessee's hands only.

7. We have considered the rival submissions and perused the material available on record. Grievance of the assessee, in the present case, can be broadly categorised as under: (i) sale consideration credited to the assessee's bank account should not be the basis of addition of capital gains in her hand; (ii) addition of Rs. 8,57,000 on account of error in filing return of income be deleted and (iii) deduction under section 54F be granted in respect of gains arising from sale of gold ornaments. In the present case, assessee and her son sold jointly owned residential flat at Bandra for a total consideration of Rs. 1,00,20,000. Further, the assessee has also sold gold ornaments for Rs. 15,16,161. It is the claim of the assessee that the entire consideration from aforesaid sale transactions has been invested for purchase of another residential flat at Khar, wherein the assessee and her son are having equal share.

8. Since, an amount of Rs. 85,70,000 was credited in assessee's bank account and assessee's son had only declared Rs. 14,50,000 as capital gains in his hands, the Revenue has considered the entire amount of Rs. 85,70,000 as sale consideration in the hands of the assessee for the purpose of capital gains. It is the plea of the assessee that the flat at Bandra was jointly owned by the assessee and her son and same was purchased in the year 1999 for a total consideration of Rs. 9,50,000. In which, the assessee has made investment of Rs. 6,00,000, while her son had made an

investment of Rs. 3,50,000. Thus, during the course of hearing, it was submitted that what can be brought to tax in the hands of the assessee is only her share in the property i.e. either 63.16% (ratio of contribution during purchase of the said property at Bandra) or 50% being the jointly owned property. In order to support its argument, learned AR placed reliance upon section 45 of Transfer Property Act, 1882. Accordingly, it was submitted that the sale consideration of flat at Bandra received in her bank account should not be the basis of computation of capital gains in her hands. It is further submitted that assessee has transferred Rs. 25,50,000 to the son's account, since extra consideration was deposited in her bank account. From the perusal of the record, we find that there is no attempt on the part of the assessee or her son to rectify the return which is claimed to have been filed with incorrect details. We also find that since the AO is common to both the assessee and her son, therefore, in all fairness AO has not brought any excess amount to tax in the hands of the assessee's son but has accepted the amount of Rs. 14,50,000 offered for taxation in his return. The AO has accordingly brought to tax the amount of Rs. 85,70,000, which was credited in assessee's bank account, for the purpose of computation of capital gains. We are of the considered view that if the plea of the assessee is accepted then it will result in non-taxation of the entire amount of sale consideration of Rs. 1,00,20,000, as in the case of assessee's son amount of sale consideration of Rs. 14,50,000, disclosed in his return of income, has already been accepted by the Department and no direction can be passed to enhance son's income in a concluded assessment. Since, it is the claim of

the assessee that the entire sale consideration of Rs. 1,00,20,000 has further been invested by the assessee and her son in another residential flat at Khar, therefore, we deem it appropriate to direct the AO to examine as to how much of the amount of sale consideration received by the assessee has been invested in a new residential property for the purpose of claiming exemption under section 54 of the Act and to grant the exemption to the assessee under the said section if the other conditions laid down therein are satisfied.

9. As regards sale consideration of Rs. 15,15,161 on sale of gold ornaments, the assessee had claimed exemption of Rs. 7,23,711 under section 54F of the Act. The lower authorities denied the claim of the assessee in absence of any documentary proof of having made investment as per requirement of section 54F. In the present case, the learned AR referred to sale invoices of 2 jewellers, forming part of the paper book at page 83 and 84, to which jewellery weighing about 541.560 gms was sold during the relevant financial year for a total consideration of Rs. 15,15,161. We further find that the sale consideration has duly been credited through cheque on 26/11/2013 in the bank account of the assessee maintained with Bank of India, forming part of the paper book at page 85-92. Since, the lower authorities denied the claim of the assessee merely on the basis that no documentary evidence has been furnished and there is no allegation regarding the genuineness of the transaction, therefore, we deem it appropriate to direct the AO to examine as to how much of the amount of sale consideration received by the assessee from sale of gold ornaments has

been invested in a new residential property for the purpose of claiming exemption under section 54F of the Act and to grant the exemption to the assessee under the said section if the other conditions laid down therein are satisfied.

10. Accordingly, grounds No. 2 – 5, raised in assessee's appeal are allowed for statistical purpose.

11. As regards the addition of Rs. 8,57,000, we find that the addition was made merely on the basis of declaration made by the assessee in her return of income. From the computation of income forming part of the paper book at page 7, we find that the sale consideration of the flat at Bandra is mention as Rs. 8,57,000 and the sale of gold ornaments is mention as Rs. 15,16,161. Accordingly, in schedule CG (B) the full value of consideration (i.e. total of above two amounts) is mention as Rs. 23,73,161. It is the claim of the assessee that the person who filed the return has wrongly mentioned the amount as Rs. 8,57,000 instead of Rs. 85,70,000. The AO vide assessment order, though did not dispute the sale consideration of gold ornaments at Rs 15,16,161, however, added the balance amount of Rs. 8,57,000 by holding that no explanation has been offered by the assessee. In the present case, we find that the Revenue has not disputed the sale consideration of Rs. 1,00,20,000 of the residential property at Bandra and has computed capital gains in the hands of the assessee by considering amount of Rs. 85,70,000 credited in her bank account. Further, the sale consideration of gold ornaments at Rs 15,16,161 has also been reasonably

satisfied, as noted supra. In the present case, there is neither any allegation that the amount of Rs. 8,57,000 has been received by the assessee or credited in her bank account nor any material has been brought on record in this regard. Merely because the assessee could not explain the balance amount of Rs. 8,57,000, as mention in her computation of income and return, the same was added to the total income of the assessee by stating the same as income from other sources. Thus, in view of the above, we find no basis in sustaining the addition of Rs. 8,57,000, which appears to be merely a typographical error on the part of the assessee, while filing the return of income. Accordingly, we direct the AO to delete the addition of Rs. 8,57,000 made to the total income of the assessee. As a result, ground No. 6 raised in assessee's appeal is allowed

12. Ground No. 7 raised in assessee's appeal is pertaining to interest under section 234B of the Act, which is consequential in nature. Accordingly, the same is allowed for statistical purpose.

13. Ground No. 1, raised in assessee's appeal, is general in nature and therefore, need no separate adjudication.

14. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 26/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 26/09/2022

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