

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

BEFORE SHRI PRASHANT MAHARISHI, AM

**ITA No. 1669/MUM/2022**

(Assessment Year 2011-12)

MUMTAZ ABDUL AZIZ  
THAKUR Room No. 01,  
Zubeida Bai Chawl,  
Nityanand Nagar,  
Ghatkopar(W), Mumbai-400  
086

Vs.

ITO,WD(2)(3)  
Vashi Rly St.Complex,  
Navi Mumbai-400 703

**(Appellant)**

**(Respondent)**

**PAN No. AGAPT6288R**

**Assessee by** : None

**Revenue by** : Shri. Ujjawal Chavan, SR AR

**Date of hearing:** 22-09-2022

**Date of pronouncement :** 21-12-2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the assessee against the appellate order passed by the National Faceless Appeal Centre, Delhi, Dated 28<sup>th</sup> April, 2022 for A.Y. 2011-12, wherein the appeal filed by the assessee against the assessment order dated 11<sup>th</sup> December, 2018 passed by the Income Tax Officer, Ward 27(2) (3), Mumbai under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act), was dismissed. Therefore, assessee aggrieved with the above appellate order is in appeal before us.

02. Despite notice to the assessee on last two occasions, none appeared and therefore, the appeal is decided on the merits as per information available on record.
03. The assessee has raised the following grounds of appeal:-

*"1) On the facts of the case and in law, the learned CIT(A) erred in upholding the order of learned AO who failed to consider the submissions and erred in adding Rs. 10.75 lac without ascertaining the facts of the matter that Appellant's son solely owns 100% share in ownership of flat and is the only beneficial owner and appellant have no share of ownership in this flat and appellant's name and PAN was included in the purchase deed along with son only for convenience sake as a precautionary measure in order to retain ownership or smooth transfer of ownership/succession in the case of any undesirable eventuality.*

*2) The learned CIT(A) erred in upholding the order of learned AO who erred in not considering appellant's and her son's bank statements; home loan documents on this flat, whereby it is established fact that neither a single penny is invested into the said flat by appellant nor had any liability towards the loan taken for the same nor a single penny is received in bank account of appellant from the sale proceeds of the said fiat. Also that no contribution is made by appellant in the purchase consideration, its stamp duty, registration fees nor EMI for repayment of the home loan.*



3) *The learned CIT(A) erred in upholding the order of learned AO who erred in not considering the fact that the respective share of the co-owners in the property, should be in the ratio in which they have actually contributed towards the cost of the property.*

*From Income tax perspective, the owner of a property is the person who has purchased the property by contributing to its cost. Since appellant have not contributed anything towards the purchase consideration, shall not be treated as a co-owner of the property for income tax purposes, even though her name appears in the agreement as a buyer of the property.*

4) *The learned CIT(A) erred in upholding the order of learned AO who erred in not considering the case of CIT v. Ravinder Kumar Arora 342 ITR 38, wherein Delhi High Court pronounced that though the residential house was purchased jointly by assessee and his wife, assessee had paid stamp duty. Registration charges, not even a single penny had been contributed by the wife and that the property was purchased jointly with his wife to avoid any litigation after his death. All the funds invested in the house were of assessee as was evident from his bank statement. Therefore assessee was the only real owner of the house. Thus, in the present case, the assessee is not the real owner of the said flat.*

5) *The learned CIT(A) erred in upholding the order of learned AO who erred in not considering the ITR and computation of appellant's son with supporting proofs*

*submitted wherein it can be seen that the benefit of home loan interest payments has been fully claimed by son and that the capital gain from sale of the said flat is fully computed in his hands. Thus same transaction cannot be repeated for computation of income and taxed in other person's hands which will lead to duplication.*

*6) The learned CIT (A) erred in upholding the order of learned AO who erred in not applying natural law of justice and thereby unduly harassing an uneducated senior citizen women. He erred in raising notice of demand of Rs. 5 lac from an 59 years old women having no source of income who lives in chawl that too rented, who is staying alone with aged husband and away from her son, who did not receive a single rupee from flat sold by her son. AO erroneously treated receipts in the hands of a different person having different PAN as receipts in the hands of the assessee. If AO is of the opinion that any loss has been incurred to the revenue then AO shall scrutinize the return of correct PAN.*

*7) The appellant requests the appellate authority to allow to submit any additional evidence that may be required by the appellate authority to ascertain the case.*

*8) Without prejudice to above, the appellant craves to add, alter, amend, delete any word, phrase, clause, sentence or any grounds of appeal."*



04. The fact of the case shows that assessee is not filing return of income for the A.Y. 2011-12, however, the information is available that assessee has entered transaction of immovable property of ₹34,25,000/-. Therefore, notice under Section 147 read with section 148 of the Act was issue don 26<sup>th</sup> March, 2018. The assessee filed her return of income at ₹120/- on 10<sup>th</sup> September, 2018. The learned Assessing Officer on the basis of information issued notice under Section 133(6) of the Act on 19<sup>th</sup> July, 2018 to the Joint Sub-Registrar Panvel-3, wherein it was confirmed that there is purchase of a flat no.102 at 1<sup>st</sup> floor, G-Wing, Premier Residences, Premier Road, L.B.S. Marg, Kurla(W), Mumbai vide registration no. 6273/10. Accordingly, a show cause notice was issued to the assessee to show capital gain on sale of property of ₹34,25,000/-. The assessee submitted that as the entire funds at the time of purchase of property was paid by his son the entire sale consideration is also received by her son. Her name was only included for convenience. The return of income of the son was verified by the learned Assessing Officer for impugned assessment year and found that no short term or long-term capital gain is disclosed. Accordingly, the learned Assessing Officer noted that the flat no.102 was purchased in the name of the assessee on 20<sup>th</sup> March, 2009 for ₹23,50,000/- and same was sold on 12<sup>th</sup> October, 2010 for ₹34,25,000/- and therefore, there is a short term capital gain earned by the assessee of ₹10,75,000/- which is required to be added. Show cause notice was issued which was required by the assessee

stating the same reason. The learned Assessing Officer made an addition of ₹10,75,000/- by passing an order dated 11<sup>th</sup> December 2018.

05. The assessment order was challenged before the learned CIT (A). Before him, assessee furnished the bank statement of her son to show that he received the sale proceeds partly and partly was deposited in his loan account with LIC housing Finance Limited. It was stated that no sale proceeds was received by her to demonstrate this; she also furnished the bank account along with other details of his son. Accordingly, her contention was that the house property was purchased by his son and sold by his son by using her name only for convenience, no consideration was received and therefore, capital gain cannot be taxed in her hand. The learned CIT (A) rejected the contention of the assessee because purchase deed and sale deed were executed in the name of the assessee and the return of the son of the assessee did not show any capital gain. The learned CIT (A) confirmed the addition in the hands of the assessee.
06. The learned Departmental Representative supported the orders of the lower authorities.
07. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case, the sale of property was made for ₹34.24 lacs in the name of the assessee which was also purchased in the name of the assessee. Therefore, assessee is the legal owner of the



above property and in absence of any other evidence same is required to be taxed under the head capital gain in the hands of the assessee. There is no evidence that son of the assessee has declared any capital gain on the above transactions. Further, merely because interest of housing loan is claimed by the son of the assessee in his computation it is not make him the owner of the property. In this case, the legal owner of the property is assessee who has transferred the property by registering sale deed. Therefore, we do not find any infirmity in the orders of the lower authorities. Accordingly, the appeal of the assessee is dismissed.

08. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21.12.2022.

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.12.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai