

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

BEFORE SHRI PRASHANT MAHARISHI, AM

ITA No. 1462/MUM/2022

(Assessment Year 2010-11)

Mrunal Nilesh Desai
12/D, Cedar Co-Op Housing
Society, Edenwoods Cross
Pokhram 2,
Thane (W) - 400 610

ACIT,CIRCLE 19(2)
2nd Floor, Matru Mandir
Vs. Bldg, Tardeo, Grant Road,
Mumbai-400 007

(Appellant)

(Respondent)

PAN No. AFEPD5715N

Assessee by : Shri. Tanmay Phadke
Revenue by : Shri. Ujjawal Chavan SR AR

Date of hearing: 19.09.2022

Date of pronouncement :
15/12/2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the appellate order passed by the learned Commissioner of Income-tax (Appeals)-30, Mumbai [the learned CIT (A)] dated 20th May, 2019 for A.Y. 2010-11, wherein the appeal filed by the assessee against the assessment order passed under Section 144 read with section 147 of the Income-tax Act, 1961 (the Act) by the learned Asst. Commissioner of Income Tax 19(2), Mumbai (the learned Assessing Officer) was dismissed by the learned Commissioner of Income-tax (Appeals). Assessee aggrieved by the appellate order is in appeal before us raising following grounds:-

"1. The notices issued by the learned Commissioner (Appeals)-30, Mumbai were not received by the Appellant and remained to be unattended. The Appellant with folded hands begs for one more opportunity and requests the Hon'ble ITAT to remand the matter back to the file of either the learned Commissioner (Appeals) or the learned assessing officer as the case may be.

2. The learned Assessing Officer treated the entire sale consideration of ₹ 15,00,000/- as income of the Appellant and added the same in the assessment order dated 26.12.2017 passed under Section 147 r.w.s. 148 of the Act. The said addition has been confirmed by the learned Commissioner (Appeals)-30, Mumbai. The addition of ₹ 15,00,000/- being contrary to the facts and law may be deleted."

02. The appeal of the assessee is delayed by 1033 days. The assessee has filed an application for condonation of delay stating that the reason for delay is that the assessee is unaware about the order passed by the learned CIT (A) because there was change in the address of the assessee. Assessee came to know about the appellate order when her locker with the ICCI bank was attached by the Income Tax Department for the outstanding dues. This came to the knowledge of the assessee on 17th May, 2022, whereas the order passed by the learned CIT (A) was passed on 20th May, 2019. Therefore, there was a delay caused due to sufficient reason. On coming to know about the attachment on 17th May, 2022, the assessee contacted

one Chartered Accountant and sought his advice, who advised the assessee to file the appeal. Therefore, delay in filing of the appeal was requested to be condoned. The assessee placed reliance on the decision of the Hon'ble Supreme Court in case of Collector, Land Acquisition Vs. MST. Katiji & Ors. 167 ITR 471 (Supreme Court). The learned Authorized Representative also took us to the affidavit as well as the petition for condonation of delay.

03. The learned Departmental Representative vehemently opposed the above condonation petition stating that the delay is not caused for valid reason.
04. We have carefully considered the rival contentions. We find that there is a change in the address of the assessee. Therefore, because of the failure of service of notice and orders, the assessee could not remain present before the learned Assessing Officer. Secondly, the order of the learned CIT (A), was also passed stating the old address despite mentioning this fact in form no.35, though there is an error committed by the assessee of mentioning the same address in form no.35. The order of the learned CIT (A) was also sent at the old address. The assessee came to know about such order only on 17th May 2022 as her locker with ICCI bank is attached. The assessee immediately sought advice of the Chartered Accountant and filed appeal on 30th May, 2022. The assessee is not gaining anything by filing appeal late. The reasons are also sufficiently explaining the delay. Therefore, delay in filing of appeal is condoned and appeal is admitted.

05. On the merits of the case, we find that the assessee is a non-filer of returns. The information is available that assessee has transferred of property of ₹15 lacs on 14th January 2010 and no capital gain is declared, therefore, the notice under Section 148 of the Act was issued on 30th March, 2017 which remained uncomplied with. The show cause notice was issued on 12th December, 2017, nobody turned up and therefore, the order was passed under Section 144 read with section 147 of the Act on 26th December, 2017 determining the total income of ₹15 lacs. The assessment order contained the address of the assessee at 103, Mahavir Arcade, Opp Ghanta Vishnu Nagar, Thane.
06. Assessee preferred appeal before the learned CIT (A) wherein the assessee submitted that all notices were served at the above[old] residential address and assessee does not reside there, therefore, assessment order passed without hearing the assessee is not proper. However, the assessee in form no. 35 mentioned the same address. The learned CIT (A) also issued the notices at the same address mentioned in form no.35. None appeared and therefore, he dismissed the appeal of the assessee. Aggrieved by that appellate order, assessee is in appeal before us.
07. Before us, assessee has given the correct address now, 12/D, Cedar Co-operative Housing Society, Edenwoods Cross Pokhran 2, Thane (West), 400610.



08. The learned Authorized Representative reiterated the fact stating that due to change in the residential address of the assessee, notices were not served and therefore, at both the lower levels there is a non-compliance by the assessee for sufficient reasons.
09. The learned Departmental Representative vehemently opposed the above statement and submitted that when the assessee filed appeal before the learned CIT (A) proper address was not provided in form no.35 and therefore, no fault can be found in the orders of the lower authorities.
010. I have carefully considered the rival contentions and find that assessee is an individual, non-filer of the return of income. The notices were issued to the assessee on the basis of address available to the learned Assessing Officer from the transaction of the sale of the property. There is a change in the address of the assessee after that. No doubt, the assessee has committed an error by mentioning the same address in form no.35. However, because of this error on part of the assessee that tax liability cannot be fastened on her without giving an opportunity of hearing. Therefore, I find that the assessee deserves one more opportunity before the lower authorities. Even otherwise, the whole of the sale consideration of the property cannot be taxed in the hands of the assessee only capital gain deserves to be taxed. The learned Authorized Representative has categorically stated that the sale consideration of ₹15 lacs has indexed cost of acquisition



of the property at ₹14,04,787/- and therefore, only capital gain of ₹95,213/- can be taxed as long term capital gain. We find that this is also required to be examined. In view of this, we set aside the whole issue back to the file of the learned Assessing Officer with a direction to the assessee to submit all the relevant details before him within 90 days from the date of this order. Thereafter, the learned Assessing Officer may examine the issue on the merits of the case and after giving proper opportunity of hearing decide it afresh.

011. In the result, appeal filed by the assessee is party allowed with above direction.

Order pronounced in the open court on 15.12.2022.

-

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:15.12.2022

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