

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

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 7022/MUM/2019  
(Assessment Year: 2006-07)

Mr. Pirthipal Singh Walia,  
Though Legal Heir Guneet Singh Walia  
B-001/01, BhagtaniKrishang,  
Dattatraya Road, Santacruz,  
Mumbai - 400054  
[PAN: ABDPS4446A]

..... Appellant

Vs

ACIT-23(2), Mumbai,  
124, 1<sup>st</sup> Floor, Matrumandir,  
Tardev Road, Mumbai - 400007

..... Respondent

Appearances

For the Appellant/Assessee : Shri Piyush Chavan  
For the Respondent/Department : Shri Senthil Kumaran

Date of conclusion of hearing : 05.09.2022  
Date of pronouncement of order : 25.11.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee had challenged the order, dated 25.08.2019, passed by the Ld. Commissioner of Income Tax (Appeals) 33, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2006-07, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 30.03.2013, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeals:

- “1. The learned Commissioner of Income Tax (Appeal)-33, Mumbai erred in confirming the Long Term Capital Gain at Rs. 26,13,793/- as against Rs. 18,20,250/- as declared by the appellant in computation of income. The appellant respectfully submits that the additions on this account may kindly be deleted.*
- 2. The learned CIT(A)-33, Mumbai erred in confirming addition of Rs. 34,98,200 u/s 68 of the Income Tax Act 1961 considering the same as unexplained cash credit/liability. Without considering the submission of the appellant the same should be deleted. ”*
3. The relevant facts in brief are that the appellant, a resident individual, did not file return of income for the Assessment Year 2006-07. The Assessing Officer received information from the ITO-19(3(2), Mumbai, that the Appellant had, along with his two brothers, (namely, Sh. Bhupinder Pal Walia and Sh. Jagjitpaul Singh Ahluwalia), sold a property at Krishna Nagar, Delhi resulting in huge amount of Long Term Capital Gains. Since no return was filed, notice, dated 29.03.2012, under Section 148 of the Act was issued to the Appellant initiating proceedings under Section 147 of the Act. Appellant filed return of income on 28.01.2013 declaring income of INR 18,21,464/-. The Assessing Officer computed the assessment under Section 147 read with Section 143(3) of the Act vide Assessment Order, dated 30.03.2013. The Assessing Officer made addition of (i) INR 34,98,200/- under Section 68 of the Act in respect of cash deposited in the bank account, and (ii) addition of INR 7,93,543/- (INR 26,13,793/- Less INR 18,20,250/-) for Appellant’s one-third share of Long Term Capital Gains arising from transfer/sale of property at Krishna Nagar, Delhi taking registered sale deed value of INR 79,45,450/- as full value of

consideration. In addition the Assessing Officer also made addition of INR 1,13,62,290/- on protective basis in respect of Long Term Capital Gains assessed in the hands of the Appellant on substantive basis for the Assessment Year 2005-06 taking INR 3.44 Crores as the Sale Consideration.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the Assessment Order for the Assessment Year 2006-07. Since the Appellant did not file any documents supporting his claim and failed appear in compliance with the notice of hearing, the Appellant was proceeded ex-parte. CIT(A) disposed off the appeals for the Assessment Year 2005-06 and 2006-07 vide common order, dated 25.08.2019. The CIT(A) allowed the appeal for the Assessment Year 2005-06 and deleted the addition made on account of Long Term Capital Gains holding that the transfer took place in the Assessment Year 2006-07. For the Assessment Year 2006-07, the CIT(A) confirmed the addition of Long Term Capital Gains of INR 7,93,543/- and the addition of INR 34,98,200/- under Section 68 of the Act. CIT(A), however, granted relief to the Appellant by deleting the protective addition of INR 1,13,62,290/- holding that the Assessing Officer was not justified in making two additions in respect of the same transaction of sale of property at Krishna, Nagar, Delhi.
5. Being aggrieved the Appellant is in appeal before us against the order of CIT(A) for the Assessment Year 2006-07.
6. When the matter was taken up for hearing, the Ld. Authorised Representative initially sought time, however, in response to the query from the Bench he submitted that the Appellant in

the present case has passed away on 31.01.2021, and an affidavit of the legal heir drawn on 24.01.2022 along with death certificate of the Appellant was placed on record along with adjournment application, dated 21.01.2022. He further submitted that in appeal before CIT(A) the Appellant was proceeded ex-parte and therefore, made requested for remand of the matter to get another opportunity to make good his case. He submits that no prejudice would be caused to the Revenue. Responding to the aforesaid submission, the Ld. Departmental Representative invited our attention to the fact that Assessee was neither filed return of income nor submitted any document/details to support his case before the Assessing Officer and CIT(A).

7. We have considered the submission recorded hereinabove and perused the material on record. We note that the assessment order as well as order passed by the CIT(A) in the case of the Appellant are based upon the assessment/appellate order passed in the case of brother of the appellant as proper details/documents have not been filed during the proceedings. The appellant has since passed away after the filing of the present appeal. In the order impugned, the Appellant was proceeded ex-parte. The legal heir is seeking an opportunity to make good the case set up before the authorities by providing necessary documents and details. In the aforesaid facts and circumstances, we deem it appropriate and in the interest of justice to remand the two issues raised in the present appeal back to the file of CIT(A) for fresh adjudication after giving legal heir of the deceased Appellant a reasonable opportunity of being heard. Ground No.1 and 2 are allowed for statistical purposes.

8. In the result, the present appeal is allowed for statistical purposes.

Order pronounced on 25.11.2022.

*Sd/-*  
(B.R. Baskaran)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.11.2022  
*Alindra, 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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