

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No. 3024/Mum/2022
(निर्धारण वर्ष / Assessment Year: 2010-11)

Seema Gulzari Gulati Ramkunj Yashwant Colony, Aurangabad Road, Ahmednagar-414001.	बनाम/ Vs.	ACIT-25(3) C-10, 11, 12 & 13, Bandra-Kurla Complex, Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AARPG9005A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Abhishek Jhunjhunwala	
Revenue by:	Shri Aditya M. Rai (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 19/01/2023
घोषणा की तारीख /Date of Pronouncement: 31/01/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 10.11.2022 for assessment year 2010-11.

2. The main grievance of the assessee (legal heir) is against the action of the Ld. CIT(A)/NFAC in confirming the addition of Rs.50 Lakhs made by the AO disallowing the municipal taxes paid by the assessee.

3. Brief facts as noted by the AO is that the assessee an individual did not file any return of income in this relevant assessment year. Later, he received an information from the NMS Portal of the ITD System that during the relevant AY 2010-11, the assessee had received rental income and interest income and since the assessee did not file any return of income, the AO reopened the assessment for AY 2010-11 by issuing notice u/s 148 of the Income Tax Act, 1961 (hereinafter



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“the Act”) on 30.03.2017. Pursuant to which the assessee e-filed return of income on 19.10.2017 declaring total income of Rs.64,71,370/-. Thereafter, the AO issued scrutiny notice u/s 143(2) of the Act and noted from the copy of computation of income, that the assessee had offered rental income of Rs.1,32,42,925/- from property situated at 135, Continental Building, Worli, Mumbai-400018. On this income, the assessee had claimed expenditure of Rs.50,00,000/- as municipal taxes paid and claimed deduction of Repair and Maintenance @ 30% of Rs.24,72,878/-. Thus, assessee offered an income of Rs.57,70,047/- for taxation under the head income *from house property*. However, the AO on perusal of the challan evidencing incurring of municipal taxes found that it was in the name of Shri Gulzarilal Manoharlal Gulati. Therefore, he issued show cause notice to the assessee to show cause as to why in absence of any documentary evidence in respect of municipal taxes paid by the assessee the deduction claimed of Rs.50,00,000/- should be accepted. The assessee replied that Shri Gulzarilal Manoharlal Gulati whose name was seen in the municipal tax challan was the original owner of the property and was her husband; and that he unfortunately passed away on 21.10.2003. And since the name of the assessee (Smt. Seema Gulati) has not been substituted/registered with the municipal authority (as the owner of the property) in place of her late husband, tax remitted challan still shows the name of late Shri Gulzarilal Manoharlal Gulati. It was also pointed out that property under consideration is situated at Maruti Chambers, S. No. 41 (Part), Plot No. A-3, Chalta No. 50, Village Oshiwara,



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Andheri (W) and the jurisdiction of the said property for payment of tax comes under the Ward “K”. Therefore, it was pleaded that the municipal tax of Rs.50,00,000/- may be allowed as deduction. However, the AO did not accept the contention of the assessee. According to him, the assessee neither filed death certificate of Shri Gulzarilal Manoharlal Gulati or nor file any “will” showing that the property has been transferred/inherited in the name of the assessee. According to the AO only after show cause, assessee has stated that the property is situated at “Oshiwara”, Andheri (W) and not as reflected in the computation of income where the address of the property is shown to be situated at 135, Continental Building Worli, Mumbai-400018. And only during the scrutiny proceedings she brought to his notice that the property was situated at Andheri and not Worli. This omission on the part of assessee, according to the AO clearly implies that the reply of the assessee is an after thought and to evade the tax. Therefore, he disallowed the claim of deduction of the municipal taxes to the tune of Rs.50,00,000/- and added it to the income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who noted that despite several opportunities given to the assessee, she did not upload the written submission along with supporting documents. Thereafter, the Ld. CIT(A) after discussing the action of the AO confirmed it. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. At the outset the Ld. AR of the assessee submitted that the assessee could not



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appear before/represent before the Ld. CIT(A) due to the Covid-19 Pandemic and that she was a widow and since there was dispute with her married daughter had to shift from her residence at Mumbai. And therefore, she did not receive the notice of hearing which address was of Mumbai apartment. For supporting the aforesaid facts, the assessee has filed a sworn affidavit dated 17.01.2023. In the affidavit, she has stated that her late husband Shri Gulzarilal Manoharlal Gulati died on 21.10.2003; and she had made the payment of Municipal Tax of Rs. 50,00,000/- during F.Y. 2009-10 for the property which was let-out and that it was situated at Maruti Chambers, Andheri, Mumbai. The assessee has filed death certificate of her husband and Municipal Tax receipt. It was pointed out by the Ld. AR that in the computation/return of income, the address of the let-out property was incorrectly disclosed at 135, Continental Building Worli, Mumbai-400018 whereas the correct building was at Oshiwara, Andheri (W). We note that the AO has not allowed the deduction of Rs.50,00,000/- (Municipal Tax) on the ground that the assessee did not file death certificate of the original owner Shri Gulzarilal Manoharlal Gulati and the challan evidencing payment of municipal tax shows that it pertain to Ward "K" and since the jurisdiction of "K" Ward pertains to property situated at Andheri and not Worli as reflected by the assessee in her return of income (which assessee contending to be incorrect address as stated supra). We note that the assessee has now filed before us, the Municipal Tax receipt which is found placed at page no. 4 to 8 of PB and the bank statement evidencing payment from her account at



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Oriental Bank of Commerce and the death certificate of the Shri Gulzarilal Manoharlal Gulati evidencing that he died on 21.10.2003 which is found placed at on page no.10 PB. Therefore, it is noted that now before us the assessee has filed the documents which assessee could not file at the time of assessment proceedings. Therefore, for interest of justice and fair play we set aside the impugned order of the Ld. CIT(A) and restore the assessment back to the file of the AO with a direction to denovo examine the expenditure claimed by the assessee regarding payment of Municipal taxes in the light of the evidences filed (supra) and to pass order in accordance to law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 31/01/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2023.
Vijay Pal Singh, (Sr. PS)



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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