

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5966/M/2019  
Assessment Year: 2016-17**

|   |     |  |
|---|-----|--|
| Mrs. Meeta Hasmukh<br>Gandhi,<br>82-A,<br>Residency,<br>Opp. Cine Planet,<br>Kamani Marg,<br>Sion East,<br>Mumbai – 400 022<br><b>PAN: ACRPG0806D</b> | Vs. | Income Tax Officer-<br>26(2)(2),<br>W-26, R.No.402,<br>4 <sup>th</sup> Floor,<br>Earnest House,<br>Nariman Point,<br>Mumbai - 400021 |
| (Appellant)   |     | (Respondent)   |

**Present for:**

Assessee by : Shri C.V. Jain, A.R.  
Revenue by : Shri Pramod Nikalje, D.R.

Date of Hearing : 09 . 11 . 2022  
Date of Pronouncement : 08 . 02 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Mrs. Meeta Hasmukh Gandhi (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 29.05.2019 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2016-17 on the grounds inter-alia that :-

*“1. In View of the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal)(Ld, CIT-A) has erred in upholding the disallowances and additions merely on the*

*basis of doubt, surmises and conjectures without considering the facts and evidences produced before her.*

2. *On the facts, in the circumstances of the case and in law, the Ld. CIT-A has erred in upholding the addition of a sum of Rs.5,09,120/- made w/s 68 by considering cash deposits as cash credits.*

3. *On the facts, in the circumstances of the case and in law, the Ld CIT-A has further erred in upholding the disallowance of indexed cost of improvement consisting of Repairs, renovation, furniture and fixtures amounting to Rs.24,47,045/- while computing capital gain/ loss on sale of house property.*

4. *Alternatively, the Ld. CIT-A has erred in not allowing indexed cost of furniture and fixture as a deduction as the agreement for sale specifically mentioned that the sale of premises was along with furniture and fixtures and consideration included the value of furniture and fixture.*

5. *The appellant therefore prays your honour to be kind enough to -*

*1. Admit the appeal and grant stay against the recovery of demand,*

*2. Set aside the order of A.O.,*

*3. Delete all illegal additions and disallowances made by A.O.*

*Grant justice*

6. *The appellant craves leave to add, amend, alter, delete, change or modify all or any of the above grounds of appeal which are independent & without prejudice to each other.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : return of income filed by the assessee for the year under consideration at the loss of Rs.19,29,473/- was subjected to scrutiny. Notices under section 143(2) and 142(1) along with questionnaire were issued to which the assessee has filed her submissions. Assessing Officer (AO) declined to accept the submissions made by the assessee that she is doing tuition work and job work which are her only source of

income for the last 20 years and has earned a sum of Rs.1,70,880/- from the said business which is mainly in cash and the working of average cash balance of five years starting from F.Y. 2012-13 to 2016-17 at Rs.7,63,455/- is totally unrealistic and also without any corroborative documentary evidence to support the claim of the assessee. Maintaining such huge cash balance in hand against meager income of Rs.1,70,880/- earned by her by doing tuition work on religious books and preparing food is far from real and thereby made addition of Rs.7,04,301/- as unexplained cash credit under section 68 of the Act. The AO also made addition of Rs.5,22,391/- on account of Long Term Capital Gain (LTCG) and income from house property to the tune of (-)Rs.2,00,000/- and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld. A.Rs for the parties to the appeal that case of the assessee's husband namely Mr. Hasmukh Purushottam Gandhi on the identical facts has been remitted back to the AO to decide afresh after

providing opportunity of being heard to the assessee's husband in ITA No.500/M/2021 for A.Y. 2016-17 which are interconnected so far as (LTCG) gains are concerned.

6. Perusal of para 5.3 of the impugned order goes to prove that the addition for cost of improvement at Rs.10,87,891/- was made on failure of the assessee to bring on record any corroborative documentary evidence for verification to substantiate its claim. Para 5.3.4 also shows that on the perusal of revised working of capital gain given by the assessee in her letter dated 20.12.2018 it is seen that the assessee has claimed cost of selling at Rs.10,400/- for which no explanation is furnished neither any documentary evidence produced for verification and as such the case of the assessee is not verifiable and as such disallowed the cost of selling. All these findings given by the AO go to prove that the additions have been confirmed merely because of not filing the documents/explanation to substantiate her claim.

7. The Ld. CIT(A) has passed the order primarily on the line of assessment order passed in this case, may be because of non furnishing of documents and corroborative evidence by the assessee.

8. It has also come on record that the assessee has furnished paper book running into 149 pages wherein the complete detail/documents in the form of summary of cost of improvement with electrification, civil works etc. has been given. The assessee has also filed written submissions before the Ld. CIT(A) but the same has not found mention in the discussion of the impugned order which shows that the documents/evidences brought on record

by the assessee have not been examined in entirety. In these circumstances, impugned order passed by the Ld. CIT(A) is required to be set aside to decide the issue once for all to further avoid the multiplicity of the litigation.

9. In view of what has been discussed above, I am of the considered view that the issue in controversy is required to be decided afresh by the AO along with case of assessee's husband namely Mr. Hasmukh Purushottam Gandhi decided vide order dated 23.05.2022 passed in ITA No.500/M/2021 by examining and furnishing all the documents brought on record by the assessee. Consequently, the appeal filed by the assessee is allowed for statistical purposes directing the AO to decide afresh after providing opportunity of being heard to the assessee.

**Order pronounced in the open court on 08.02.2023.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 08.02.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.