

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

BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
 AND
 OM PRAKASH KANT (ACCOUNTANT MEMBER)

I.T.A No.4375 /Mum/2014 - A.Y. 1993-94
 I.T.A No.4556 /Mum/2010 - A.Y. 1993-94
 I.T.A No.4557 /Mum/2010 - A.Y. 1998-99
 I.T.A No.4376 /Mum/2014 - A.Y. 1998-99

Shri Chetan H Daiya 15, Khushnuma Apartment, 29A, Carmichel Road, Mumbai- 400 026 PAN : AAAPD5792J	vs	Income-tax Officer-16(1)(2), Matru Mandir, Mumbai
APPELLANT		RESPONDENT

Present for Appellant	None
Present for Respondent	Shri K.C. Selvamani, CIT DR

Date of hearing	05/04/2023
Date of pronouncement	18/04/2023

ORDER

PER : OM PRAKASH KANT

These appeals by the assessee are directed against the separate orders passed by the Ld.Commissioner of Income-tax (Appeals)-27,

Mumbai [in short, the Ld.CIT(A)] for Assessment Years 1993-94 & 1998-99, respectively.

2. Common issues are involved in these appeals, therefore, the same were heard together and disposed off by way of this consolidated order for convenience.

3. At the outset, it is mentioned that despite notifying for the hearing, neither any one attended on behalf of the assessee nor any adjournment was sought. On the past few occasions, i.e. on 20th February, 2023; 30th November, 2021; 10th October, 2022; 11th October, 2021, etc. also none attended on behalf of the assessee. In the circumstances, we were of the opinion that the assessee is not interested in prosecuting the appeal and, therefore, same were heard *ex parte* qua the assessee after hearing the Id.departmental representative.

4. In the appeal in ITA No.4375/Mum/2014 for A.Y. 1993-94, the assessee is aggrieved that the income arising from capital gain / money received on liquidation of the company, M/s Mulji V Narsi Pvt Ltd and Hercules Engg. Works Pvt Ltd which has been assessed under section 46(2) of the Act. The Assessing Officer has passed the impugned assessment order in compliance to the direction of the Ld.Commissioner of Income-tax-16, Mumbai vide order dated 30th March, 2020 passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act').

5. The assessee is legal heir of Shri Hariram Daiya and Late Smt. Velabai Daiya who were shareholders in the private limited company, i.e. M/s Mulji V Narsi Pvt Ltd and M/s Hercules Engg.Works Pvt Ltd. Due to liquidation of the concerned companies, the money was distributed in the previous year relevant to A.Ys.1993-94 & 1998-99. Though the assessee offered the money distributed on liquidation in the return of income filed and computed capital gain under section 46(2) of the Act; however, he contested the taxability to the assessment proceedings and matter was carried to the ITAT. The ITAT set aside the matter to the Assessing Officer. The assessment order passed by the Assessing Officer under section 143(3) read with section 254 was subjected to revision proceedings by the CIT-16, Mumbai, who set aside the assessment order with the direction to treat the money received on liquidation of the companies as taxable under section 46(2) of the Act as the word "registered shareholder" was not used in the section and, therefore, capital gain shall be charged in the hands of the assessee. The Assessing Officer accordingly assessed the relevant income in the hands of the assessee. On further appeal, Ld.CIT(A) in a detailed finding after discussing decisions of the various Hon'ble High Courts and Hon'ble Supreme Court in paras 2.4.10 to 2.4.33, dismissed the appeal of the assessee by observing as under:-

*"2.4.34 Keeping in view the above factual and legal analysis and in view of the decision of Patna High Court in the case of **D.M. Murarilqal Budhia 139 ITR 410 (Pat)**, the issue has to be decided against the appellant. A similar view was taken by the Hon'ble Supreme Court in the case of **CIT vs. R.M. Amin 106 ITR 68 (SC)** where it was held that but for*

*section 46(2), it would not have been possible to charge tax under the head 'capital gains' on the money or other assets of the company received by its shareholder on its liquidation. Accordingly, grounds raised are **dismissed.**"*

6. Before us, no submission has been filed by the assessee to rebut the finding of the Ld.CIT(A). In facts and circumstances of the case we do not find any infirmity in the finding of the Ld.CIT(A) on the issue in dispute and accordingly, we uphold the same. The grounds raised by the assessee are accordingly dismissed.

7. The identical question of taxability of capital gain under section 46(2) has been raised in other appeals and, therefore, to have consistency in our finding for A.Y 1993-94 in ITA No.4375/Mum/2014, the grounds raised in other appeals are also dismissed.

8. In the result, all the appeals of the assessee are dismissed.

Order pronounced in the open court on 18/04/2023.

Sd/-

(ABY T VARKEY)
 JUDICIAL MEMBER

Mumbai, Dt : 18/04/2023

Pavanan

Copy of the Order forwarded to :

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

//True Copy//

sd/-

(OM PRAKASH KANT)
 ACCOUNTANT MEMBER

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai