

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 654/M/2023  
Assessment Year: 2008-09**

Smita Yogesh Parekh, 405 B Wingh, Kamal Kunj, Subhash Road, Villege Parle (East), Mumbai, Maharashtra, 400057	Vs.	ITO, Ward-34(3)(2), Mumbai
(Appellant)		(Respondent)
<b>PAN: AAQPP3494H</b>		

**Present for:**

Assessee by : Shri A. N. Shah  
Revenue by : Shri Jogendra Singh, Sr. AR

Date of Hearing : 09.05.2023

Date of Pronouncement : 19.05.2023

**ORDER**

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

Appellant, Smita Yogesh Parekh (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 06.02.2023 passed by the Id CIT(A) passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

1. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the sale value of immovable property at Rs. 6,90,94,500/- adopted by the assessing officer by applying incorrectly section 50C as against the sale consideration of Rs. 80,00,000/- and confirming capital gain of Rs. 30,00,000/- as against long term capital gain Rs. 1,79,600/- as per return of income. The learned CIT (A) has ignored the submissions."*
2. *On the facts and circumstances of the case and in law the learned CIT (A) erred in passing the order u/s 250 of the I T Act without obtaining the valuation report of departmental value and in*

*affording opportunity as prescribed to your appellant as till date no communication or valuation report from the DVO has been received by the appellant.*

3. *On the facts and circumstances of the case and in law the learned CIT (A) erred in not considering ground no. 2 while giving decision of appeal. Ground 2 was as follows:-*

*"On the facts and circumstances of the case and in law the learned assessing officer erred in computing the capital gain at Rs. 2,50,000/- as against Rs. 1,12,250/- as per the return of income filed."*

*The learned CIT (A) has not given any reference of the above ground in the order.*

4. *On the facts and circumstances of the case and in law the learned CIT (A) erred in not considering ground no. 3 while giving decision of appeal. Ground 3, was as follows:-*

*"On the facts and circumstances of the case and in law the learned assessing officer erred in computing the long term capital gain on sale of Vasai flat at Rs. 23,345/- as against loss of Rs. 77,978/- suffered by your appellant after considering indexed cost of acquisition."*

5. *On the facts and circumstances of the case and in law the learned CIT (A) erred in stating in decision of the order u/s 250 that the appellant not submitted proper documents to valuation officer for valuation of property. However the appellant had filed all the required documents to the DVO vide letter dated 9.02.2011 and 26.06.2012 though all the requisite documents which were available were filed.*

6. *The order is unjustifiably passed without considering all the papers available and it is prayed that justice be given."*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are: from the AIR information the AO noticed that the assessee has sold property of Rs. 6,90,94,500/- jointly with 48 other owners out of which the assessee had a 1/20<sup>th</sup> share. The AO noticed that as per agreement brought on record by the assessee the property in question has been sold for Rs. 80 lakhs as against the stamp duty valuation of Rs. 6,90,94,500/- and thereby invoked the provision contained under section 50C of the Income Tax Act, 1961 (for short the Act). Declining the contentions raised by the assessee the AO proceeded to take the value of property in question at Rs. 6,90,94,500/- as adopted by the stamp duty authority. The AO also estimated the amount of

Rs. 82,527/- being assessee's share as on 01.04.1981 for the purpose of computation of capital gain. The AO also made a reference to the Valuation Officer, however, the report was not received and AO proceeded to work out the capital gain at Rs. 30,00,000/-.

3. The AO also noted that the assessee is having one more flat at Vile Parle and Vasai. He was called upon to explain as to why the deemed rent should not be treated in respect of property at Vasai in view of the provision of section 23(3) of the Act. Declining the contentions raised by the assessee the AO proceeded to assess the deemed rent of the house property at Vasari at Rs. 1750/- per month and thereby framed the assessment at the total income of Rs. 33,89,940/- u/s 143(3) of the Act.

4. 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 appeal.

5. 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 to the present case.

6. Bare perusal of the assessment order in this case goes to prove that in para Nos. 4 and 5 of the order of the AO has discussed the fact as to the sale of property in which the assessee is having 1/20<sup>th</sup> share and assessed the capital gain at Rs. 30,00,000/- by taking the value of the property as per stamp duty of Rs. 6,90,94,500/-. However, when we see the

computation of income made by the AO in para 7 of the assessment order he has assessed long term capital gain as under:-

Long term capital gains-		
a) Sale of Vasal flat:		
As per Computation		Rs. 23,345/-
b) Sale of Plot		Rs. 2,50,000/-
e) Sale of plot as discussed in para 5 above..	Rs. 30,00,000/-	Rs. 33,10,721/-
	Total Income	Rs. 33,89,941/-
	Rounded Off	Rs. 33,89,940/-

7. It is difficult to comprehend as to how the amount of Rs. 2,50,000/- for sale of plot has come on record qua which there is no discussion in the assessment order. Perusal of the impugned order passed by the Id CIT(A) also shows that he has also passed cryptic order by confirming the addition of Rs. 30 lakhs made by the AO on account of long term capital gain without giving any reason in the body of the impugned order. The Id CIT(A) has not decided ground No. 2 raised by the assessee as to computing capital gain of Rs. 2,50,000/- as against Rs. 1,12,250/- as per return of income filed by the assessee. The Id CIT(A) has also not decided ground No. 3 as to long term capital gain on sale of Vasai Plot at Rs. 23,345/- as against loss of Rs. 77,978/- claimed by the assessee.

8. Further, on perusal of the order also goes to prove that report of DVO has not been taken on record by the AO as well as the Id CIT(A) when the AO has invoked section 50C, report of DVO was required to be called. It is proved that both the AO as well as Id CIT(A) has decided the issue raised before them in a casual manner by returning cryptic orders without any reasoning. The AO has not discussed a word qua capital gain of Rs. 2,50,000/- regarding sale of property and capital gain of Rs. 23,345/- qua the sale of Vasai plot as there is not are iota of

evidence or discussion in the assessment order as to making these additions.

9. The Id AR for the assessee contended that identical issues qua the same property in case of her husband namely Sh. Paresh C. Parekh qua for AY 2008-09 was decided by the Tribunal vide order dated 29.04.2016 in ITA No. 3842/Mum/2013 wherein, the identical issue has been remanded back to the file of AO to decide afresh. I have perused the order of the coordinate bench in case of Sh. Paresh C. Parekh, assessee's husband which is qua the same property and assessee was having 1/20th share in the same.

10. In view of what has been discussed above, I am of the considered view that there is no option except to restore the case back to AO to decide afresh after taking report of DVO on record. The AO is also directed to decide the issue of capital gain by taking the indexation cost of both the properties. AO is also directed to decide the issue as to claiming loss of the property by the assessee situated at Vasai. Needless to say that AO shall provide adequate opportunity of being heard to the assessee.

11. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 19.05.2023.**

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

Mumbai, Dated: 19.05.2023.

\* Ajay Kumar Keot, 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.

