

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

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

ITA NO. 296/MUM/2023 (A.Y: 2013-14)

Shrikant Ghanshyam Shah C/o. Ghanshyam T. Shah D-501-2 Dun Apartment 225/227, J.D. Road Tardeo Road, Mumbai - 400007 PAN: BJKPS5638A (Appellant)	v.	Int. Tax Ward – 4(2)(1) 17 th Floor, Air India Building Nariman Point Mumbai - 400021 (Respondent)
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Assessee Represented by	:	Shri. Bhupendra Shah
Department Represented by	:	Shri Soumendu Kumar Dash
Date of conclusion of Hearing	:	05.04.2023
Date of Pronouncement	:	04.07.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (DRP-2), Mumbai – 3 [hereinafter in short "Ld. DRP"] dated 13.12.2022 for the A.Y.2013-14.

2. Brief facts of the case are, assessee filed its original return of income on 28.01.2014 declaring total income of ₹.3,09,96,140/-. Subsequently the Assessing Officer received information from Income Tax Officer, Ward – 5(2)(3), Ahmedabad that assessee has sold two immovable properties during the year under consideration amounting to ₹.1,33,40,000/- and ₹.2,32,18,150/-. He observed that assessee has offered capital gain tax on transaction of ₹.2,32,18,150/- but did not offered the transactions of ₹.1,33,40,000/- in his return of income. Accordingly, he issued notice u/s.148 of Income-tax Act, 1961 (in short "Act") on 08.03.2021 and served on the assessee through ITBA portal. The Assessing Officer has reproduced the reasons for reopening in Assessment Order, it is on Page No. 1 to 3 of the Assessment Order. In response assessee has filed his return of income on 20.04.2021 declaring the total income of ₹.3,09,96,140/-. Accordingly, notices u/s. 143(2) and 142(1) were served on the assessee.

3. In response to the above notices assessee had stated that due to some error while submitting the return of income, one of the property sold by the assessee has been declared in his wife return and all the relevant taxes were paid in her account. After considering the above reply the Assessing Officer issued show cause notice on 15.03.2022. In

response assessee had continued to make the submissions that assessee has failed to declare the same in his return of income, however, the same source of income was already declared in his wife account and paid all the relevant taxes, therefore, there is no loss to the revenue by relying on certain judicial pronouncements. After considering the submissions of the assessee, Assessing Officer rejected the submissions made by the assessee and proceeded to make the addition in the hand of the assessee and accordingly, passed the draft Assessment Order u/s. 144C(1) of the Act.

4. Aggrieved with the above order, assessee filed objections before Ld.DRP and before Ld. DRP assessee had filed detailed submissions. After considering the detailed submissions, Ld. DRP dismissed the ground raised by the assessee and also discussed the issue of who has to sign the objections for filing the objection before Ld. Ld. DRP, since assessee has not signed the objections but the same was signed by the authorised representative. Apart from that Ld. DRP has rejected the submissions made by the assessee that there is no loss to the revenue and all the due taxes were paid by wife of the assessee and whatever case laws relied by the assessee were distinguished by the Ld. DRP and Ld. DRP has relied on decision of the Hon'ble Supreme Court and by distinguished the case

law relied by the assessee in the case of Dhansukh Rawajibhai patel v. ACIT in ITA.No. 2802/Mum/2017 dated 16.11.2017, wherein Ld. DRP has sustained the addition made by the Assessing Officer with the observation that the tax has to be levied on the right person on whom the tax is leviable.

5. Aggrieved, assessee is in appeal before us raising following grounds in its appeal: -

"1. The learned ITO Int Tax Ward-4(2)(1), Mumbai erred in passing order dated 2-1-2023 w/s 147 r.w.s 144C[13] and adding ₹.1,17,02,181 - in respect of Long Term Capital Gains on the sale of property.

2. In the facts and the circumstances of the case and in law, the Honorable DRP erred in confirming the addition proposed by the AO amounting to Rs. 1.17.02.181/-in respect of Long Term Capital Gains on the sale of property.

3. In the facts and the circumstances of the case and in law, the learned ITO Int Tax Ward- 4(2)(1), Mumbai erred in reopening the assessment u/s 148

a. Only on the basis of borrowed satisfaction based on the information received from ITO Ward 5(2)(3), Ahmedabad.

b. Even though return was not processed us 143(1) as mentioned in Para no. 1 at page no. 1 of the Draft Assessment Order.

4. In the facts and the circumstances of the case and in law, the learned ITO Int Tax Ward- 4(2)(1), Mumbai erred in making the addition of LTCG amounting to Rs. 1,17,02,181/-in respect of property sold vide Sale deed no. 355 of 2013 registered with Sub-Registrar, Sanand (Gujarat) by Overlooking the fact that

a. the same LTCG amounting to Rs. 1,17,02,181/- in respect of property sold vide Sale deed no. 355 of 2013 registered with Sub-Registrar, Sanand (Gujarat) was already offered for tax in the hands of Mrs. Purnima Shrikant Shah, wife of the Appellant for AY 2013-14.

b. same tax is paid in the hands of the wife of the Appellant as was payable in the hands of the Appellant

c. there is no loss to the revenue since same tax is paid in the hands of the wife of the Appellant.

d. The said addition tantamount to double addition of same income in the hands of the Appellant even though the same is already taxed in the hands of the wife of the Appellant.

e. Neither the Appellant nor his wife has claimed any tax benefit us 54F, 54EC etc

f. Rate of tax on LTCG is a flat rate applicable to the Appellant as well as to his wife and thereby works out to exactly identical figure.

g. The time limit for revising return of the wife of the Appellant had already lapsed by the time the reassessment was initiated by the ITO Int Tax Ward 4(2)(1), Mumbai.

h. This was inadvertent error committed by the erstwhile common CA of the Appellant and his wife without any intention to save the taxes.

i. The assessee & the wife are Non-Residents for more than 20 years & has no knowledge of Indian Tax Laws.

5. In the facts and the circumstances of the case and in law, the learned ITO Int Tax Ward- 4(2)(1), Mumbai erred in passing assessment order u/s 147 rws 144C[13] even though section 144C(15)(b) clearly postulates twin conditions, viz, variation proposed by TPO under Transfer pricing and non-resident/foreign company and in this case no variation in Transfer Pricing was proposed.

General: -

- *The Appellant reserve rights to add alter or delete any portion of this objections to appeal before its conclusion.*
- *This appeal is filed in time and may please be allowed in full.*
- *A detailed paper book will be filed at the time of hearing.”*

6. At the time of hearing, Ld. AR of the assessee submitted that both assessee and his wife are NRI and while filing the return of income of both the assesseees, tax consultant by mistake declared the capital gain income in the hands of assessee's wife instead of assessee's return of income. He submitted that both the parties fall under the same tax bracket and he also brought to our notice the relevant return of income filed by assessee's wife which is placed on record at Page No. 63 of the Paper Book and he also brought to our notice assessee has filed an affidavit in this regard. Further, he brought to our notice Page No. 293 of the Paper Book which is the show cause notice issued by the Assessing Officer. He submitted that the Assessing Officer has come to know of this transaction with the information received from the Income Tax Officer, Ward – 5(2)(3), Ahmedabad and in this regard he relied on the case of Mahaver Kumar Jain v. CIT in Civil Appeal No. 4166 of 2006 dated 19.04.2018 he submitted that as per the above decision the Hon'ble Supreme Court held that there cannot be double taxation on the assessee.

7. On the other hand, Ld. DR relied on the findings of the lower authorities.

8. Considered the rival submissions and material placed on record, we observe from the records submitted before us that due to mistake assessee has not declared one transaction involving capital gain on sale of the property which was in the name of the assessee and it is fact on record that the same was declared by wife of the assessee in her return of income and duly paid the relevant tax on record. It is also fact on record that both the assessee as well as assessee's wife are falling under same tax bracket. We observe that the Assessing Officer has come to know that assessee has failed to declare the above said transaction in his return of income, however, he is aware of the fact the same income was declared by wife of the assessee, even though the property was not in the name of the assessee's wife and the same was duly accepted by the revenue and assessed to tax. At the same time, it is also fact on record that assessee has failed to declare the same in his return of income and as per the opinion of the tax authorities that the income has to be declared and assessed in the right person. Accordingly, the income has to be assessed in the hands of the assessee only.

9. It is a peculiar case wherein the income has been declared and rightfully paid the due tax but in the hands of the wrong person. In order to do the right thing assessee has to revise his return of income at the same time even wife of the assessee has to revise her return of income, we observe that at this point of time this is not possible considering the fact that the issue involved relating to A.Y. 2013-14. Since the assessee has brought on record that the assessee's wife has paid the relevant tax in her return of income it shows that even though by mistake the assessee has remitted the relevant tax on this transaction. However, we observe that the income was not declared by the original person and paid the relevant tax by the proper person. We are of the view that the same transaction cannot be charged to tax twice. Therefore, in our considered view in order keep the record straight and also agreeing the line of argument put forth by the tax authorities, we are directing the Assessing Officer who is aware of the fact that assessee has declared the relevant transaction in the hands of the assessee's wife, therefore we direct the Assessing Officer to intimate the Assessing Officer [Income Tax Officer – Ward – 16(2)(4)] of the assessee's wife i.e. Purnima Shrikant Shah [PAN BJKPS 6068J] to revise the assessment in case assessment has been already completed or initiate the proceeding of re-assessment and reject the capital gain declared by her in her return of income and initiate the

refund along with interest till this date and as soon as the refund is initiated the present Assessing Officer may initiate the recovery of demand arising out of the assessment in the present case.

10. In summary, the issue has to be dealt only by the tax authorities and the credit in the hands of the assessee's wife has to be refunded are adjusted against the demand raised in the hands of the assessee. The method by which it has to be carried out left to the tax authorities without there being any burden on the assessee. Since the assessee has paid the due tax on this transaction. The legislature intention is not to tax twice on the same transaction. Therefore, we partly allowed the grounds of appeal raised by the assessee. Accordingly, Ground No. 1 to 4 are partly allowed and with regard to Ground No. 3 on reopening of assessment u/s. 148 of the Act we observe that the submissions of the assessee and the grounds of appeal raised by the assessee are not proper considering the fact that the return of income filed by the assessee is defective, therefore the finding given by the Ld. DRP, in our view, are proper on record. Accordingly, Ground No. 3 raised by the assessee is dismissed. At the same time, we direct the Assessing Officer to follow the directions given in above paragraph.

11. With Extra Caution, we direct the Assessing Officer to make sure that there should not be any burden on the assessee in collecting the due tax along with interest considering the fact that the relevant taxes were already paid by the assessee's wife properly on time, the relevant amount of tax was with the revenue. Therefore, there is absolutely no loss to the revenue in this case.

12. In the result, appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 04th July, 2023

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 04/07/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum