

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1391/M/2023  
Assessment Year: 2009-10**

Ms. Bhavana Baban Vaity, 4/15, Vaity House, Govandi Station Road, Deonar Village, Mumbai <b>PAN: AHJPV6396C</b>	Vs.	Income Tax Officer, Ward 27(1)(2), Room No.417, 4 <sup>th</sup> Floor, Vashi Railway Station Complex, Vashi, Navi Mumbai – 400 703
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri S.M. Kapoor, A.R.  
Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 11 . 07 . 2023  
Date of Pronouncement : 20 . 07 . 2023

**O R D E R**

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

The appellant, Ms. Bhavana Baban Vaity (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 29.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2009-10 on the grounds inter-alia that :-

“1. The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the re-opening u/s. 147 of the Act.

2. *The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer completing the assessment on a total income of Rs. 33,63,330/-.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessment of the assessee was reopened by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short ‘the Act’). Necessary notices under section 143(2) of the Act was issued but nobody responded. Thereafter notices under section 142(1) of the Act were issued which again gone unreplied. Assessing Officer (AO) on the basis of information available noticed that the assessee along with five other co-owners has sold the property for a consideration of Rs.2,01,80,000/- during the year under consideration. The share of the assessee in the total value of the immovable property amounting to Rs.2,01,80,000/- comes to Rs.33,63,333/- i.e. 1/6<sup>th</sup> share. On failure of the assessee to furnish the detail/explanation the AO proceeded to make addition of Rs.33,63,333/- as assessee’s undisclosed income under section 144 read with section 147 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 disallowing the deduction claimed by the assessee 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 the present appeal.

4. The assessee by moving an application sought to raise additional ground to the effect that:

*“The learned CIT (Appeals) has erred in law and on the facts of the case in not appreciating the fact that there was no transfer of property since the provisions of section 53A of the Transfer of Property Act was not satisfied and hence the transaction cannot fall within the scope of deemed transfer u/s. 2(47)(v).”*

on the ground that the same is a legal ground and could not be raised due to inadvertence on the part of the tax advisor of the assessee. Keeping in view the mandate of the law that legal ground can be raised by the appellant at any stage of the proceedings qua which no evidence is required to be furnished, I hereby allow the additional ground raised by the assessee.

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 thereto.

6. Sole issue raised in this appeal by the assessee to be decided by the Bench is :

*“As to whether the assessee is entitled for deduction under section 54 of the Act qua her share of the sale consideration to the tune of Rs.33,63,333/- out of the property sold during the year under consideration.”*

To decide this issue the Ld. CIT(A) denied the deduction by returning following findings:

*“5.1 I have gone through the Assessment Order and submissions of the appellant. The learned AO carried out addition of Rs.33,63,333/- on account of income from other sources.*

*5.2 The appellant along with five other joint owners has sold property worth Rs.2,01,80,000/- and accordingly her share of sale consideration was Rs.33,63,333/-. The learned AO has sent multiple notices to verify the nature of income however the appellant did not furnish any supporting documents.*

*5.3 During the appellate proceedings the appellant claimed that capital gain arising out of sale of property was already invested to buy another property and deduction u/s 54 was claimed. However the appellant has not submitted any supporting documents to verify if there is any investment being made in a new property. Therefore, the deduction claimed by the appellant cannot be allowed.*

*5.4 Accordingly, the appeal of the appellant is dismissed.”*

7. Bare perusal of the impugned order passed by the Ld. CIT(A) particularly findings extracted above, goes to prove that the Ld. CIT(A) has passed a cryptic order without deciding the issue raised by the assessee as per submissions extracted at page 5, para 2b of the impugned order to decide, “whether there was any transfer of capital assets as per section 2(47)(v) of the Act as the transferee has not performed his part of the contract by not giving possession of the three flats in question as agreed in the agreement entered into between the parties in the light of the decision rendered by Hon’ble Bombay High Court in case of Chaturbhuj Dwarkadas Kapadia vs. CIT 260 ITR 491”. This issue was specifically raised by the assessee by filing the comprehensive submissions but not decided by the Ld. CIT(A). No doubt the assessee has not raised specific ground in this regard but when the issue is legal the Ld. CIT(A) was required to decide the same as per submissions uploaded by the assessee as extracted in para 2(b) of the impugned order.

8. However, I am of the considered view that since the assessee has not appeared before the AO during the assessment proceedings it would be in the interest of justice to remit the case back to the AO to decide afresh in view of the plea raised by the assessee in the grounds of appeal as well as as per additional ground. So case is

remanded back to the AO to decide afresh after providing opportunity of being heard to the assessee.

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

**Order pronounced in the open court on 20.07.2023.**

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

Mumbai, Dated: 20.07.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench  
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.