

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 2812/Mum/2023  
(Assessment Year: 2018-19)**

<b>Mukta Ganpat Karnale</b> A-701, Deepjyot CHS Ltd., Opp. Orbit Tower, S.L. Matkar Marg, Elphiston Road, Mumbai- 400025 <b>PAN : AJLPK3849B</b>	Vs.	<b>Deputy Commissioner of Income Tax, Circle-22(1),</b> Piramal Chambers, Lalbaug, Parel, Mumbai-400012
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Mr. Mahendra Pasthe, CA  
**Revenue/Respondent by** : Shri Mahita Nair, Sr. DR

**Date of Hearing** : 25.01.2024  
**Date of Pronouncement** : 02.02.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal is against the order of Commissioner of Income Tax, Appeals, / National Faceless Appeal Centre [in short ‘the CIT(A)’] dated 20.06.2023 for Assessment Year (AY) 2018-19. The assessee raised the following grounds of appeal:

*“1. The learned Officer has erred in passing the order under section 144 read with section 144B of the Income Tax Act, 1961 and Disallowed Deduction U/s 48 of the Income Tax Act.*

*2. The learned officer has erred in making addition of Indexed Cost of acquisition of House Property sold in total income of the assessee.*

*3. The learned officer has erred in not giving sufficient time to prove the genuineness of transactions.*

*4. The learned officer has erred in initiating penalty proceedings u/s. 270 A of Income tax act, 1961.”*

2. The assessee is an individual and filed the return of income for AY 2018-19 on 28.08.2019 declaring a total income of Rs. 43,24,820/- which included a Long Term Capital Gain (LTCG) of Rs. 40,95,796/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) issued notices under section 142(1) subsequently on 19.01.2021 and 24.03.2021. The assessee did not respond to the notices issued and therefore the AO concluded the assessment by denying the deduction claimed by the assessee as index cost of acquisition under section 48 to the tune of Rs. 31,29,204/-. The reason for the AO to deny the deduction under section 48 is that the assessee has not furnished any documentary evidences supporting the claim of the deduction.

3. Aggrieved the assessee filed the further appeal before the CIT(A). Before the CIT(A), the assessee submitted the documentary evidences in support of the claim of cost of acquisition and made an application for admission of additional evidence under section 46A of the Income Tax Rules. The CIT(A) did not admit the additional evidence and upheld the disallowance made by the AO. The relevant observations of the CIT(A) in this regard is extracted as below:

**“8.6 During the appellate proceedings, the appellant filed her written submission with documents. The relevant part of the written submission is as under:-**

*"In the given case the assessee has sold House property at No.35, 1st Floor, Bombay Dyeing Building, Prabhadevi Nagar, Shivkrupa cooperative Housing society Ltd., F.P. No 1060, TPS IV, Mahim Division, New Prabhadevi Road, Mumbai-400025 on 01/03/2018 at the sales consideration of Rs. 72,25,000. The Assessee has purchased said House property for Rs. 13,00,000 in the F.Y.2004-05. The Assessee has offered such Sales Consideration Under the Head of Income From Capital Gains and Claim Deduction U/s 48 of Income Tax Act (i.e. Indexed Cost of Acquisition of House Property Purchase in F. Y. 2004-05).*

*Calculation of Income From capital gains is As Follows.*

<b>Particulars</b>	<b>Amount</b>	<b>Amount</b>
<i>Sales Consideration Resi. House Property</i>		<i>72,25,000</i>
<i>Less: Indexed Cost of Acquisition (Rs. 13,00,000*271/113)</i>	<i>13,00,000 (Year of purchase 2004-05)</i>	<i>31,29,204</i>
	<b>Long Term Capital Gain</b>	<b>40,95,796</b>

*Since Assessee has offered correct Income under the head of Income From Capital Gains as calculated above. There is no violation of Section 48 of The Income Tax Act. Due to Covid-19 Pandemic & Lock down in the state of Maharashtra, Assessee could not be able to reply notices issued by Income Tax Officer in timely manner.*

*8.7 In view of the above discussion, I have come to the conclusion that the assessment by the AO cannot be faulted with. The AO has duly issued notices seeking the details from appellant with respect to deduction claimed u/s 48. These have been sent to the registered email of the appellant more than once. The AO has duly noted that the "assessee is receiving the notices regularly but not complied with the same". Since, the AO has dutifully given an opportunity to the appellant to submit the details and in the absence of any details with respect to the cost of property sold; the AO was forced to complete the assessment by denying the claim made.*

*8.8 The details which have been e-filed now at the appellate stage could also have been fled at the assessment stage online. In the current situation, since*

*the appellant does not fall under any of the conditions listed out for admission of additional evidence under rule 46A; the details cannot be admitted at this stage. The assessment of the AO is accordingly upheld and the ground of appeal in this respect is dismissed.”*

4. Aggrieved, the assessee is in appeal before the Tribunal.
5. The ld. AR submitted that the assessee could not appear before the AO for the reason that the notices were issued during the Covid period. The ld. AR further submitted that before the CIT(A), the assessee has submitted all the relevant documents in support of the cost of acquisition and that the CIT(A) has denied the claim of the assessee without admitting the additional evidences. The ld. AR also submitted that the assessee's reasons for not appearing before the AO were bonafide and that the CIT(A) ought to have admitted the additional evidence for adjudicating the issue of merits. The ld. AR submitted the relevant documents in the form of a Paper Book which were submitted as additional evidence before the CIT(A). The ld. AR with regard to the cost of acquisition submitted that the assessee has acquired the property for Rs. 13,00,000/- during the FY 2004-05 and has claimed deduction of the indexed cost of acquisition against the sale consideration. It is also brought to our notice that the assessee has offered the difference between the sale consideration and indexed cost of acquisition to tax under the head "LTCG". The ld. AR accordingly prayed that the claim of the assessee is genuine which is supported by documentary evidences and therefore, the deduction be allowed.
6. The ld. DR relied on the order of the lower authorities.
7. We have heard the parties and perused the material available on record. The AO has denied the indexed cost of acquisition claimed by the assessee for the

reason that no documentary evidence in support of the claim was submitted before him. From the perusal of the assessment order, we noticed that the AO has issued notice under section 142(1) calling for various details on 19.01.2021 and 24.03.2021. The AO has also issued a letter for non-response to the said notice dated 06.04.2021. The claim of the AO was that the assessee was receiving the notices but has not complied with the same. The CIT(A) did not admit the additional evidence stating that the assessee's case does not fall under the conditions listed out for admission of additional evidence under Rule 46A. From the perusal of the dates on which the notices were issued it is observed that the same are issued during the Covid period and therefore, in our considered view there is a reasonable cause for the assessee for not appearing before the AO. From the perusal of the Paper Book submitted before us, we noticed that the assessee has submitted before the CIT(A) an affidavit from the seller of the property to the assessee, copy of receipt acknowledging the consideration received from the assessee by the seller, copy of society transfer documents in favour of the assessee, copy of letter of transfer of tenement issued by MHADA in favour of the assessee, and the share certificate issued by the Society in favour of the assessee. The assessee has submitted these documents before the CIT(A) in order to substantiate the claim of the indexed cost of acquisition. However, the CIT(A) has denied admitting the additional evidence stating that the same should have submitted before the AO. Considering the fact that the notices were issued by the AO during Covid period and that the assessee has submitted all the relevant documents to substantiate the claim of deduction, in our considered view it is just and proper to give one more opportunity to the assessee to evidence the claim made before the AO. Therefore, in the interest of natural justice and fair play we remit the issue back to the AO with a direction to verify the documentary evidences submitted by

the assessee in support of the claim of indexed cost of acquisition and allow the claim in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

8. In the result, appeal of the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 02-02-2024.*

*Sd/-*  
**(NARENDER KUMAR CHOUDHRY)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(MS. PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**