

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1040/M/2024  
Assessment Year: 2021-22**

Ms. Shaila Noronha, A-202, Rustomjee Seasons, Bandra Kurla Complex, Bandra (East), S.O., Mumbai, Maharashtra-400 051 <b>PAN: ACIPN6458P</b>	Vs.	Income Tax Officer- 22(3)(1), Piramal Chambers, Lalbuag, Mumbai, Maharashtra – 400 012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Madhur Agarwal, A.R. &  
Shri Krishnakumar, A.R.

Revenue by : Dr. Kishor Dhule, CIT D.R.

Date of Hearing : 25 . 04. 2024

Date of Pronouncement : 30 . 04. 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 26.02.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2021-22.

**2.** In the instant case, the assessee by filing her return of income on 15.09.2021 declared a total income of Rs.84,950/- and also claimed a deduction under section 54F of the Act to the tune of Rs.3,84,28,393/- qua long term capital gain on account of shares sold during the year under consideration. The Assessing Officer (AO) ultimately completed the assessment proceedings by passing an assessment order dated 29.12.2022 under section 143(3) read with section 144B of the Act, whereby the AO made the addition of Rs.8,70,41,590/- and added the same to the income of the assessee assessed at Rs.8,71,26,540/-.

**3.** The assessee, being aggrieved, against the assessment order, preferred first appeal before the Ld. Commissioner and raised the issue for not allowing the claim of cost of shares as per the provisions of section 55(2)(ac) of the Act while computing long term capital gain under section 112A of the Act, non granting of deduction under section 54F of the Act, incorrect levy of surcharge, excess levy of interest under section 234A of the Act and computing the difference between amount of taxable income and the computation sheet attached with the order. The Ld. Commissioner dismissed the appeal of the assessee, against which the assessee is in appeal before us.

**4.** We have given thoughtful considerations to the peculiar facts and circumstances of the case. As demonstrated by the Ld. A.R. and not refuted by Ld. D.R. that in the impugned order the AO considered the gift of 50,000 shares of Avenue

Supermart Ltd. to the assessee by her **mother**, whereas as per certificate dated 05.01.2023 as reproduced at page No.12 of the impugned order by the Ld. Commissioner, it clearly appears that the 50,000 shares of Avenue Supermart Ltd. were in fact gifted by **brother in law of the assessee** but not the **mother** of the assessee and on the basis of wrong facts as quoted in the impugned order, dismissed the appeal of the assessee on this aspect only and without deciding other grounds raised before him , which goes to show that the Ld. Commissioner neither applied his mind properly nor considered the peculiar facts and circumstances of the case correctly and therefore it would be appropriate to remand the instant case to the file of the Ld. Commissioner for proper and just decision of the case, hence in the interest of substantial justice and for just decision of the case, the case is accordingly remanded to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the assessee.

The assessee is also directed to comply with the notices and cooperate with the appellate proceedings before the Ld. Commissioner and file the relevant reply/submission/documents as would be essential/required for proper adjudication of the appeal of the assessee by the Ld. Commissioner. In case of further default, the assessee shall not be entitled for any leniency.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 30.04.2024.**

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 30.04.2024.

\* 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.