

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM

ITA No. 102/Mum/2024

(Assessment Year: 2012-13)

Manoj Ishwar Choudhary
601, B Morya House,
A wing, Veera Industrial Estate
Oshiwara Link Road
Andheri West Mumbai-400 053

(Appellant)

Vs.

ACIT 24(2)
Piramal Chambers, Lalbaug,
Mumbai-400 012

(Respondent)**PAN No. ADEPC1565F**

Assessee by : None
Revenue by : Shri Mahita Nair, DR

Date of hearing: 28.05.2024
Date of pronouncement : 31.05.2024

ORDER**PER PRASHANT MAHARISHI, AM:**

01. ITA No.102/Mum/2024 is filed by Manoj Ishwar Choudhary (assessee / appellant) for A.Y. 2012-13, against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 24th November, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 144 read with section 147 of the Income-tax Act, 1961 (the Act), by the

Asst. Commissioner of Income Tax, Central Circle 24(2), Mumbai, dated 14th December, 2016, was dismissed.

02. The assessee is aggrieved with the appellate order has preferred this appeal raising following grounds of appeal:-

"1. Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income Tax Appeals was not justified in confirming the addition made by Assessing Officer u/s 50C of I. Tax Act of Rs 80,55,553/- as Short Term Capital gains.

2. Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income Tax Appeals was not justified in confirming the addition made by Assessing Officer only because Purchase deed of premises was not submitted.

3. Under the facts and in the circumstances of the case & in law, the learned Commissioner of Income Tax Appeals and Assessing Officer ought to have considered that Appellant's Father, Mr. Ishwar Choudhary, expired due to COVID in 2021.

4. Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income tax Appeals and AO ought to have considered that Appellant's Mother, Mrs. Poonam Choudhary, was diagnosed with Brain Hemorrhage in 2022.

5. Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income tax Appeals



and AO ought to have considered that Appellant's younger Brother, Mr. Mukesh Choudhary, was being treated from Stomach Cancer in 2022 and 2023

6. *Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income tax Appeals and AO ought to have considered that Appellant's Accountant, Mr. Devu Poojari, expired in 2022*

7. *Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income tax Appeals and AO ought to have considered that the Office Premises formed part of block of assets and even after sale of office premises, the block of assets had balance of Rs 78,76,312 on 31-3-12.*

8. *Under the facts & in the circumstances of the case & in law, the Ld. Commissioner of Income tax Appeals was not justified in confirming the disallowance of Depreciation of Rs 4,43,635/- claimed on block of Office Premises.”*

03. Brief facts of the case shows that assessee is an individual engaged in the business of trading in plastic gift and articles as proprietor of Jewel products. The assessee filed his return of income on 29th September, 2012, at a total income of ₹23,98,854/-. This return was processed under Section 143(1) of the Income-tax Act, 1961 (the Act). Subsequently, the case was reopened by issue of notice under Section 148 of the Act on 29th March, 2016, for the reason that an information was received through the sale



of immovable property by assessee at a total consideration of ₹1,05,00,000/- of stamp duty valuation of ₹1,89,55,000/-. The assessee has considered the capital gain without considering the stamp duty value. In response to notice under Section 148 of the Act, assessee did not file any return of income but assessee was provided with copy of reason. During the course of reassessment proceedings, the assessee stated that assessee has sold premises at 502 Morya House, Veera Industrial Estate Andheri West, Mumbai-53, where the actual sale consideration is 1,05,00,000/-. Admittedly, the stamp duty value of the above property is ₹1,87,55,000/-. When questioned, Assessee submitted that Provisions of Section 50C of the Act is not applicable in case of the assessee because of it was an assets consisted in block of assets which has not become Nil, but it applies in case of only Long Term Capital Gain asset. The learned Assessing Officer rejected the above contention. Admittedly, the property was pertaining to the block of assets. According to learned Assessing Officer even in the case of sale of property pertaining to the block of assets provisions of Section 50C of the Act applies. Accordingly, the full view of the sale consideration is to be considered at ₹1,87,55,000/-. The learned Assessing Officer further asked the details of the block assets but same was not furnished. Accordingly, the learned Assessing Officer computed the short term capital gain of ₹80,55,553/- considering the opening Written Down Value of the block assets at ₹ 1,06,99,447/-. The assessment order was

passed under Section 144 of the read with section 147 of the Act on 14th December, 2016. Determining total income of the assessee at ₹1,08,98,042/-.

04. The assessee filed the appeal before the learned Commissioner of Income-tax (Appeals). As per Para no.14 of the appellate order, six notices were issued for hearing. Assessee responded with adjournment request once and but filed one written submission Therefore, based on the statement of fact filed before him and submissions, the learned CIT (A) held that the assessee has not brought on record purchase deed to prove the fact that block of the assets is continuing to exits, he sustained the order of the learned Assessing Officer.
05. Assessee is aggrieved preferred the appeal before us. Despite notice, none appeared before us on behalf of the assessee and therefore, the issue is decided as per information available on record. The learned Departmental Representative supported the orders of the lower authorities.
06. We have carefully considered the contentions of the lower authorities and facts laid down before them incorporated in the assessment and appellate orders. The ground no.3 - 6 of the appeal the appeal shows that assessee has lost is father, mother, Younger brother and his accountant during this period and therefore, assessee could not reply the notices of the learned Commissioner of Income-tax (Appeals). We find that the hearings were fixed on 26th February, 2021 to 26th July, 2023, i.e. on six occasions.



During this period only assessee has suffered loss of life of his near and dear. In view of this, without discussing the appeal on merits of the case, we restore the appeal before the learned CIT (A) decides it afresh after giving assessee one more opportunity. We wish that the assessee should avail this opportunity and submit necessary paper book along with relevant submissions within 90 days from the date of receipt of the order or within 7 days from the date of receipt of any notices from the office of learned Commissioner of Income-tax (Appeals). Accordingly, ground no.1, 2 and 8 of the appeal are restored back to the file of the learned CIT (A) for fresh consideration.

07. In the result, the appeal of the assessee is allowed with above directions.

Order pronounced in the open court on 31.05. 2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai