

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.53/MUM/2024
Assessment Year: 2016-17**

Mr. Sameer Esmail Mohiyudin, 3 rd Floor, Flat No. 8, B Wing, Shamiana Apt, Village Ward, Fr Peter Pereira Rd, Kurla W, Mumbai - 400070 PAN: APLPM5774R (Appellant)	Vs.	ITO Ward – 35(3)(1), Kautilya Bhawan, Avenue 3, Near Videsh Bhavan, G Block BKC, Bandra Kurla Complex, Bandra (East) Mumbai - 400051 (Respondent)
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Present for:

Assessee by : Shri Ajay Singh, A.R.
Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 29. 05 . 2024
Date of Pronouncement : 28. 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 16.11.2023, 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. 2016-17.

2. In the instant case, the case of the assessee was selected for limited scrutiny qua capital gain/loss on sale of property. On

perusing the details filed, it was observed by the Assessing Officer (AO) that the assessee has sold a property and declared the sale value at Rs. 10 lakhs, whereas the market value of the same, as per the ready reckoner, was Rs.40 lakhs. However, the Assessee failed to substantiate his claim and therefore the AO by using the provisions of section 144 of the Act passed best judgment assessment order and by holding *“that no evidences towards cost of acquisition, improvement and expenditure in connection with transfer has been furnished. It is not possible to actually verify as to the veracity of cost of acquisition/amount eligible for deduction while computing the capital gains and in absence of any details from the assessee there will not be any alternative but to treat the asset as short term”*, ultimately treated the capital gain as short term to the tune of Rs.40 lakhs.

3. The Assessee being aggrieved challenged the said addition of Rs.40 lakhs before the Ld. Commissioner but could not get succeeded as the Ld. Commissioner affirmed the aforesaid addition.

4. The Assessee, being aggrieved, is in appeal before us.

5. Heard the parties and perused the material available on record. No doubt the Assessee before the Ld. Commissioner though produced the relevant sale deed of the property, on which the long term capital gain was claimed by the Assessee, however failed to satisfy the clauses/parameters enshrines in Rule 46A of the Income Tax Rules 1962(in short “the Rules”) and therefore the Ld. Commissioner did not entertain the sale deed furnished by the assessee. However, according to our considered opinion, the sale deed is very important, essential and relevant for adjudication of the issue under consideration and therefore for

the just decision of the case, we are inclined to entertain the documents/sale deed etc. as produced by the assessee before us, which claimed to have also produced before the Ld. Commissioner.

Coming to the sale deed dated 30.10.2015, we observe that the assessee along with other three family members, have acquired the property under consideration as legal heirs of the deceased person (mother of the Assessee). Since the deceased owner had acquired the said property on 17.04.2002 and continued to be in possession and enjoyment of the property and on demise of her, the assessee along with other legal heirs became owners of the property through legal heirship certificate issued by Tehsildar dated 09.06.2015. The assessee and other legal heirs subsequently on 30.10.2015 sold the said property by executing registered sale deed on total sale consideration of Rs.40 lakhs and consequently the assessee has received Rs.10 lakhs as 1/4th share and therefore we are in agreement with the claim of the Ld. A.R. that consideration amount if any requires consideration for computation of capital gain would be Rs.10 lakhs only but not the entire amount of Rs.40 lakhs, which infact has been received collectively by all the 4 co-owners of the property but not exclusively by the assessee herein. Hence, we deem it appropriate to direct the AO to re-examine the issue by taking into consideration the sale deed and other relevant documents to be produced by the assessee before him and recompute the liability, by considering the amount of Rs.10 lakhs received by the Assessee by virtue of aforesaid sale deed.

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

Order pronounced in the open court on 28.06.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

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

* 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.