

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.2123/Mum/2024  
(Assessment Year : 2008-09)**

<b>Asst. Commissioner of Income-tax, Circle-6(1)(1), Mumbai</b> Room No.504, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020	<b>vs</b>	<b>Mr. Ajay Rameshchandra Garg</b> 9, Tirthnagar, Part-2, Memnagar Ahmedabad, Gujarat-380 052 <b>PAN : AAKPG1414A</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Anil Sathe  
Respondent by : Shri Manoj Kumar Sinha(CIT DR)  
  
Date of hearing : 11/07/2024  
Date of pronouncement : 23/ 07/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

The instant appeal of the revenue was filed against the order of the Learned National Faceless Appeal Centre, (in short, 'NFAC'), Delhi[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2008-09, date of order 23.02.2024. The impugned order was emanated from the order of the Learned Income-tax Officer, Ward 2, Rohtak, (in short, 'the A.O.')

passed under section 143(3) read with section 147 of the Act, date of order 22/04/2014.

2. The revenue has taken the following grounds of appeal: -

*“1. Whether on the facts and in circumstances of the case and in law the Ld.CIT(A) erred in deleting the addition of Rs. 7.75 crores made u/s, 64 of the IT. Act, 1961, by clubbing the income of the assessee's wife Ms. Bhumika Garg, in assessee's hands without appreciating the facts of the case?*

*2. The Appellant prays that the order CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

*3. The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary.”*

3. The brief facts of the case are that the assessee, in an individual capacity filed the return of income (in short ROI) under section 139(1) of the Act. During the impugned assessment year, the assessee and his wife, Mrs. Bhumika Ajay Garg bearing PAN AEOPG6852L earned the capital gain by selling shares of MAPE Advisory Group Pvt Ltd, consideration of Rs.7,75,00,000/- each individual. The assessee treated it as capital asset under section 2(14) and declared the capital gain in ROI and offered for tax. The assessment was reopened under section 148 of the Act. The Ld.AO clubbed the capital gain of the wife in the hands of the assessee under section 64 of the Act. The reason of clubbing of income by Id. AO is that the assessee was the director of M/s MAPE Advisory Group Pvt Ltd and he was the commanding authority and eligible for perquisite. The shares allotted to his wife in lieu of his perquisites. The number of shares allotted to her, and sale of shares was taxed in the hands of the assessee for the impugned assessment year

under section 64 of the Act. So, the gain amount to Rs.7.54 crores was clubbed in the assessee's hands. The aggrieved assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) has passed the order in favour of the assessee and deleted the addition. Being aggrieved on the appeal order, the Revenue filed an appeal only to challenge the addition of the amount u/s 64 of the Act before us.

4. The Id.DR argued and relied on the assessment order.

5. The Id.AR argued and filed a written submission which is kept in the record (in short, 'APB'). The Ld.AR challenged both the legal grounds and the merit. In legal ground, assessee challenged that non issuance of notice under section 143(2) of the Act. But in argument, the merit is first discussed by the Ld.AR and proceeded accordingly.

5.1 The Ld.AR placed that the assessee and his wife purchased the share of MAPE Advisory Group Pvt Ltd on dated 22/01/2002, 2500 equity shares. Later, the bonus shares of 1,02,500 were allotted on 31/03/2006. So, the total share works out to Rs.1,05,000/- which was sold by the wife of the assessee, Mrs. Bhumika A Garg and declared tax under the head capital gain in ROI. The addition under section 64 is unjustified and also the Ld.AR placed the copy of the ITR of Mrs.Bhumika A Garg bearing PAN AEOPG6852L date of filing of return 30/04/2008 and the income from capital gain from sales of share is reflected in computation. As per the Ld.AR, the addition cannot be made in two hands of the same amount.

5.2 The Ld.AR relied on the impugned appeal order and the para No.8 is reproduced as below:-

*“8.1) The contention of the appellant is that the appellant nor his wife hold any substantial interest in the company i.e. MAPE Investments Pvt Ltd. The appellant also contended that he had never transferred the shares to his wife and they were subscribed to by her in her own right and she had acquired the shares from her own sources and therefore by no stretch of imagination could this clause of section 64 apply. The appellant further contended that his wife Smt. Bhumika Garg was holding 1,05,000 shares of MAPE Advisory Group Pvt.Ltd (2500 equity shares allotted on 22.1.2002 & 1,02,500 bonus shares allotted on 31.3.2006) and the shares were held by her in her own right purchased from her own sources and not even an iota of evidence was brought on record to establish that monies have been transferred for that purchase by the appellant. The appellant finally submits that the finding of the AO in regard is on account of surmises and deserves to be deleted.*

*8.2) I have gone through the addition made u/s.64 of the Act by the Assessing Officer and the submissions of the appellant. On this account, a remand report was called for. As the same is not received, the issue is decided based on the merits and facts available on record. It is seen that the AO has not made proper verification into the issue of allotment of shares to the appellant’s wife, in as much as, whether the appellant’s wife had made an investment on her own or the company had allotted shares on behalf of the appellant. Further, there is no mention of the appellant’s submissions in the assessment order. It is not known whether the AO has called for details of the appellant’s wife’s investment in shares and her bank account details. It is also seen from the assessment order that there is no mention of filing of Income Tax Return by the appellant’s wife offering the sale of shares under the head capital gains. On this account, the assessment order lacks clarity and the addition made u/s.64 of the Act without making proper inquiries by the AO is not appreciated. Therefore, the addition made u/s.64 of the Act is deleted and ground raised in this regard is allowed.”*

6. We heard the rival submission and considered the documents available in the record. The wife of the assessee had purchased the equity share on 22/01/2002 and the bonus was allotted later. This is the separate income of the wife of the assessee and the same income was duly declared in the ROI U/s 139(1) of the Act. In our considered view, the clubbing of the wife's income in the hands of husband U/s 64 is unjustified and is not warranted. Accordingly, we are not interfering in the impugned appeal order. The ground of the revenue is rejected.

7. As we discussed on merit of the case, the discussion about the legal issue is only remained for the academic purpose.

8. In the result, the appeal of the revenue in **ITA No.2123/Mum/2024** is dismissed.

Order pronounced in the open court on 23<sup>rd</sup> day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 23/07/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai