

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

**MS. PADMAVATHY S, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4426/MUM/2023  
(Assessment Year: 2016-17)**

**Mala Ashok Khaitan,**

Flat No. 01, Margdeep Building, Tarun Bharat

Soc.,Chakala, Andheri (East)

Mumbai - 400099

[PAN: ARIPK1391F]

..... **Appellant**

Vs

**Income Tax Officer, Ward 23(2)(2)**

Matru Mandir, Tradeo Road,

Mumbai - 400007

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Anil Topiwala

For the Respondent/Department : Shri R.R. Makwana

**Date**

Conclusion of hearing : 15.07.2024

Pronouncement of order : 29.07.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order dated 16/10/2023, passed by the Learned Commissioner of Income Tax, Appeals - CIT (A)-57 Mumbai, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 30/12/2018, passed by the Income Tax Officer Ward 23(2)(2), Mumbai under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').

2. The Assessee has raised following ground of appeal:

*"1. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in confirming the disallowance of total renovation expenses of Rs. 35,18,500 by the learned Assessing Officer."*

3. The relevant facts in brief are that the Appellant had purchased tenancy rights in a flat at Santacruz, Mumbai, alongwith her brother, Shri Ashok Lalwani. After carrying out improvements in the flats, the tenancy rights in the said flat were sold for aggregate consideration of INR 2,66,00,000/-. The share of the Appellant in sale proceeds stood at INR 1,33,00,000/- being 50% of sale consideration. The Appellant offered to tax the short term capital gain of INR 12,81,500/- after, inter alia, claiming cost of improvement of INR 35,18,000/- paid in cash to M/s Jai Shiv Shankar Constructions. The Assessing Officer denied the Appellant's claim of cost of improvement holding that the Appellant was not able to substantiate the genuineness of the expenses, inter alia, on the ground that the notice issued under Section 133(6) of the Act to M/s. Jai Shiv Shankar Construction were not responded to. The Assessing Officer also found some discrepancies in the supporting bills/invoices submitted by the Appellant. According to the Assessing Officer, the payments were made in cash and no linkage was found between the bills and cash withdrawal. Therefore, the Assessing Officer rejected the Appellants claim of cost of improvement INR 35,18,500/-.

4. The Appellant carried the issue in appeal before the CIT(A). Before the CIT(A) the Appellant filled affidavit of her brother to support her claim that she had withdrawn cash from her bank account which was given to her brother for renovation of the flat. The aforesaid money was utilized by her brother for purchasing materials, and for making payment of contractor & labour

charges. In support the Appellant also filed copy of bank statement and bills for purchase of material issued by Hindustan Plumbing Works, R S Painting and Jagroop Sharma and invoices issued by the contractor (M/s. Jai Shiv Shankar Construction). However, the CIT(A) was not convinced. The CIT(A) observed that from the bills/invoices it could not be ascertained whether payments were made in respect of the said bills/invoices. According to the CIT(A) there was no proof that renovation work was actually carried out. Taking note of the finding returned by the Assessing Officer that the notice issued under Section 133(6) of the Act to the contractor was also not complied with, the CIT(A) declined to grant any relief to the Appellant.

5. Being aggrieved, the Appellant is now in appeal before us on this issue.
6. We have heard both the sides, perused the material on record and analysed the legal position.
7. We note that the Appellant is a non-resident individual. It is admitted position that tenancy rights in a flat at Santacruz, Mumbai were purchased for INR 75,00,000/- and after a gap of 7 months were sold at INR 2,66,00,000/-. The authorities below have accepted the purchase price as well as the sale consideration. The difference in the purchase and sale price over a short period of 7 months supports the submission of the Appellant that renovation was carried out before making sale. Be that as it may, we proceed to examine the claim of the Appellant. The Appellant has claimed that around INR 35,18,500/- were incurred in cash for renovation. The Appellant had provided all the relevant details/documents, being the bank statements of the Appellant, to the authorities below to establish the source of cash payments. The Appellant had even filed affidavit of her brother to

support her contention that the Appellant had withdrawn cash from her bank account which was given to her brother who utilized the same to make cash payments towards renovation expenses including purchase of material, contractor charges and labour charges. Neither the Assessing Officer nor the CIT(A) have doubted the explanation offered by the Appellant in relation to the source of cash for making payments of renovation expenses. The stand taken by the authorities below was that the Appellant had not been able to establish link between the bills/invoices and cash payments. However, we note that apart from pointing out some discrepancies in the invoices, the authorities below have failed to bring on record any material to doubt the veracity of the bills or invoices. Except for issuing notice under Section 133(6) of the Act to contractor M/s. Jai Shiv Shankar Construction, no inquiry/verification has been carried out by the Assessing Officer. In this regard, we note that the Appellant has placed on record, as additional evidence, reply (dated 05/02/2024) to application filed by the Appellant under Right to Information Act seeking details of service of notice issued under Section 133(6) of the Act upon the M/s. Jai Shiv Shankar Construction. A perusal of the same shows that the notice was not served upon M/s. Jai Shiv Shankar Construction and was returned un-delivered. Even if the additional evidence filed by the Appellant is not taken into consideration, we note that the Assessing Officer has in paragraph 6.2 of the Assessment Order has recorded that notice was not delivered in the following manner – *"However, till date no reply is received from the contractor nor the notice was delivered till date on the address mentioned on voucher."* In our view, the question of reply being received from the contractor does not arise since the notice under Section 133(6) was not served upon the contractor in the first place. Thus, no adverse inference can be drawn against the Appellant on account of

failure of the contractor to file reply to 133(6) notice. In paragraph 10.4 of the submission, dated 12/07/2024, filed before the Tribunal, it has been contended on behalf of the Appellant that had the Assessing Officer informed/confronted the Appellant, the Appellant could have made efforts to ensure attendance of contractors/sub-contractors in the assessment proceedings. In our view, the Assessing Officer had rejected the details/documents furnished by the Appellant without carrying out any inquiry/investigation. Therefore, given the facts and circumstances of the present case, we are inclined to accept the request of the Appellant to remand this issue back to the file of the Assessing Officer. Accordingly, order passed by the Assessing Officer and the CIT(A) are set aside and the issue is remanded back to the file of Assessing Officer for de novo adjudication as per law and shall grant the Appellant reasonable opportunity of being heard. We note that the Assessing Officer had rejected the bills or invoices pertaining to renovation cost furnished by the Appellant as being non-genuine merely for the reason that the same did not contain valid service tax registration number or correct serial numbers. In our view, the bills/invoices filed by the Appellant cannot be rejected for the aforesaid reasons unless the inquiry/verification carried out by the Assessing Officer results in unearthing facts/material which create a doubt about the veracity of such bills/invoices. Accordingly, the Assessing Officer is directed to bring the aforesaid facts/material on record before rejecting the bills/invoices of the Appellant as not genuine. The Appellant is also directed to co-operate during the proceedings and produce all documents/details including affidavits from contractors/sub-contractors, if any, on which the Appellant wishes to place reliance to support claim of cost of improvement of INR 35,18,500/-. Thus, in terms of the aforesaid, Ground No. 1 raised by the Appellant is allowed for statistical purposes.

8. In result, in terms of paragraph 7 above, appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 29.07.2024.

**Sd/-**  
**(Ms. Padmavathy S)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 29.07.2024  
Poonam Mirashi,  
Stenographer

**आदेश की प्रतिलिपि ३ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai