

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2921/Mum./2024

(Assessment Year : 2018-19)

Shanana Riyaz Khan

Flat No. 4, "A" Wing Vali Apartment,
Opp Nooran Masjid, Pathan Wadi,
Malad (E), Mumbai-400097
PAN – AUVPK4423C

..... Appellant

v/s

ITO-41(3)(4)

Kautilya Bhavan, Mumbai.

..... Respondent

Assessee by : Shri Shyam Agrawal

Revenue by : Shri Ashok Kumar Ambastha, Sr. AR

Date of Hearing – 24/07/2024

Date of Order – 05/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 31/03/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2018-19.

2. In its appeal, the assessee has raised the following grounds:-

"Ground No.1

1 In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) has erred in dismissing the appeal without appreciating the fact that: -

a the appellant vide its letter dated 09/10/2023 has submitted the details through e-proceedings response having acknowledgment number - 400250631111023.

b the appellant has submitted paper book containing pages 01-91.

Ground No.2

In the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the addition of Rs.51,54,000/- without appreciating the fact that: -

a The appellant has purchased residential Flat on 25/09/2014 for a consideration of Rs.44,12,620/- and the appellant share is 50% Rs.22,06,310/-.

B The AO has erred in treating the same as Short Term Capital Gain. The AO has erred in not allowing the Index Cost.

c. The AO has erred in treating the Cost of Acquisition at 1 (zero), instead of Rs.22,06,310/- as stated above in (a).

d Cost of Rs.22,06,310/- is shown in the Balance Sheet of the appellant and her husband each.

Ground No. 3

The learned CIT(A) has erred in not considering the fact that, in her husband's case Riyaz Kitabullah Khan, his PAN- AUVPK4498F has treated the same as Long Term Capital Gain and held that "assessee is eligible for claiming indexed cost of acquisition."

3. Brief facts of the case are that the assessee is an individual and for the year under consideration filed her original return of income on 31/08/2018 declaring total income at Rs.6,37,416/-. Thereafter, the assessee e-filed the revised return of income on 30/03/2019 declaring total income at Rs.9,37,130/-. In the present case, the information was received from the DIT, (I&C), Mumbai regarding the immovable property transaction, when it was found that the assessee has sold immovable property at Rs.46,00,000/-, while the Stamp Valuation Authority ("SVA") has assessed the stamp duty

value at Rs.51,54,000/-. Accordingly, the return filed by the assessee was selected for scrutiny and statutory notices u/s 143(3) as well as 142(1) of the Act were issued and served through registered email address of the assessee. However, despite sufficient opportunity being granted, the assessee failed to furnish any details of cost of acquisition or cost of improvement of the property, if any. Accordingly, the Assessing Officer ("AO") proceeded to complete the assessment on best judgment basis on the basis of material available on record. In the present case, the assessee also failed to respond to the show cause notice. Vide order dated 27/04/2021 passed u/s 144 r.w.s 144B of the Act, the AO treated the value of Rs.51,54,000/- adopted by the SVA for computing the full value of the consideration and added the same to the total income of the assessee u/s 50C of the Act.

4. The learned CIT(A) vide ex parte order dated 31/03/2024, dismissed the appeal filed by the assessee and upheld the addition made by the AO. Being aggrieved, the assessee is an appeal before us.

5. During the hearing, the learned Authorised Representative ("AR") submitted that in the Appellate Proceedings before the learned CIT(A), the assessee filed details submissions on 11/10/2023 along with necessary supporting documents/evidences in support of its claim. The learned AR further submitted that the assessee also filed an application for seeking admission of additional evidences under Rule 46A of the Income Tax Rules, 1961 ("*the Rules*") before the learned CIT(A). It was further submitted that in response to the aforesaid application seeking admission of the additional evidences, the learned CIT(A) also sought remand report from the AO.

However, without considering any of the aforesaid documents, the learned CIT(A) dismissed the appeal filed by the assessee vide ex-parte order.

6. Having considered submissions and perused the material available on record, we find that the learned CIT(A) has passed the order an ex parte on the basis that the assessee has failed to respond at multiple occasions and did not provide any explanation or evidences in support of the grounds of appeal despite grant of time. From the factual paper book filed by the assessee, we find that in response to the notice dated 05/10/2023 issued by the learned CIT(A), the assessee filed its written submissions on 11/10/2023 along with necessary supporting documents. We further find that on 09/10/2023, the assessee filed an application seeking admission of the additional evidences under Rule 46A of the Rules. We find that the learned CIT(A) accordingly sought remand report from the AO in respect of the additional evidences filed by the assessee. Vide letter dated 08/10/2023, the AO furnished its remand report in respect of additional evidences filed by the assessee under Rule 46A of the Rules, and accepted the contention of the assessee that he is entitled for indexed cost of acquisition of the property. However, surprisingly while deciding the assessee's appeal, the learned CIT(A) did not consider any of the aforesaid submissions, the additional evidences and remand report filed by the AO, and appears to have proceeded in haste while dismissing the appeal filed by the assessee vide ex-parte order. Accordingly, in view of the facts and circumstances as noted above, we deem it appropriate to set aside the impugned order and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after considering the written

submissions, additional evidences and remand report filed by the AO. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is also directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05/08/2024.

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

MUMBAI, DATED: 05/08/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

By Order

Assistant Registrar
ITAT, Mumbai