

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

BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER

AND

SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

**ITA No.2770/M/2023
Assessment Year: 2011-12**

Kamal Rane Thru. Legal Heir Indu Rane B-0004, Khargaon, Pakhadi, Shri Krishna Darshan CHS, Kalwa, Maharashtra- 400605. PAN: AGWPR5826M	Vs.	Ward 22(2)(1), Piramal Chamber, Dr. S. S. Rao Marg, Parel, Mumbai- 400012.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri B. N. Rao, CA

Revenue by : Shri R. R. Makwana - SR. D.R.

Date of Hearing : 23.07.2024

Date of Pronouncement : 08.08.2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld.

CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1053452883(1)

Dated 01/06/2023 for the Assessment Year 2011-12.

2. Following grounds of appeal have been raised by the appellant:

1. *“Ld CIT Appeals erred in upholding the order of the Assessing Officer.*
2. *Ld CIT Appeals ought to have given reasonable opportunity to the appellant.*
3. *Ld CIT Appeals erred in considering the Long Term Capital Gain at Rs.2683020/- without considering the cost of acquisition as on 1st April, 2001 since the property is bought earlier to 1st April 2001.”*

3. The facts of the case, in brief, are that the Ld. AO received information from AIR and CIB data that the assessee has sold immovable property amounting to Rs.2,10,00,000/- and Time Deposit amounting to Rs.5,00,000/-. It was also found that the assessee has not filed any return of income for the assessment year under consideration i.e. A.Y 2011-12. Hence, the notice for non- filing of return was issued to the assessee on 15/09/2014. However, the assessee did not file the return of income. The AO, therefore, initiated action u/s. 147 of the Act and case was reopened by issue of notice u/s. 148 of the Act by recording reasons and by getting prior approval of the Pr. CIT- 22, Mumbai. The statutory notices, thereafter, were issued and served on the assessee from time to time. In response to that, the assessee submitted the details of the property along with sale deed which was registered on 21/08/2010 for a sale consideration of Rs.42,00,000/- The assessee purchased another property

vide agreement dated 26/11/2010 for a cost of Rs.16,00,000/-. However, the assessee did not submit any details of the purchase of the property so that the cost of acquisition could be worked out. The property was, therefore, referred to the valuation sale. However, the AO didn't wait for the valuation report and completed the assessment u/s. 144 of the Income Tax Act and worked out Long Term Capital Gain (LTCG) of Rs.26,83,020/- with a rider that the rectification/revision order will be passed when valuation report is received from the District Valuation Officer, Mumbai. The Long Term Capital Gain (LTCG) was computed as under:

Sale consideration actual received as per agreement		42,00,000/-
Less: Indexed cost of acquisition		NIL
Taxable long term capital gain		42,00,000/-
Less: Deduction u/s.54	16,00,000	
Add: Stamp Duty paid	<u>16,980</u>	16,16,980/-
Taxable Long Term Capital Gain		26,83,020/-

4. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT (A). The Ld. CIT(A) vide the impugned order confirmed the additions made by the Ld. AO on the ground that the appellant has not submitted any details of the purchase of the property both before the AO and CIT (A).

5. The present appeal has been filed before us against the order of the Ld. CIT (A). During the appellant proceedings before us, it was submitted by the appellant that no reasonable opportunity was given to him by the Ld. CIT (A) to explain its case and Long Term Capital Gain was calculated without considering the cost of acquisition on 01/04/2001 since the property was purchased before this date.
6. We have considered the above submission and we think it proper to remand the matter back to the file of the Ld. AO to confirm whether the valuation report has been received from the District Valuation Officer and if yes, then consider that report and work out the LTCG accordingly. The Ld. AO is also directed to provide adequate opportunity of being heard to the appellant before deciding the issue on merit.
7. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 08.08.2024.

Sd/-
MS KAVITHA RAJAGOPAL
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 08.08.2024.

Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.