

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.3113/Mum/2024
Assessment Year: 2012-13**

<p>Naina Bhalchandra Baswat</p> <p>B/403, Building No. 18, Dattakrupa Co-op Housing Society, Vrundavan Road, Near Old Police Station, Shailendra Nagar, Dahisar East, Maharashtra-400068.</p> <p>PAN: ASSPB 3460 D</p>	Vs.	<p>The Income tax officer Ward-2(1), Quereshi mansion Gokhale Road Naupada Thane Maharashtra</p>
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharmesh Shah & Ms. Jigna Shah
Revenue by : Shri Ashok Kumar Ambastha, SR. DR

Date of Hearing : 01.08.2024
Date of Pronouncement : 20.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

- 1) ITA 3113/Mum/2024 is filed by Naina Bhalchandra Baswat [Assessee/ Appellant] for A.Y. 2012-13 against the appellate order passed by the National Faceless Appeal Centre, Delhi ('Id. CIT(A)') dated 15.03.2024 wherein the appeal filed by the assessee against re-assessment order passed u/s 147 r.w.s. 144 of the Income-tax Act, 1961 dated 09.12.2019 by the ITO, Ward-2(1), Thane ('Id. Assessing Officer') was dismissed.
- 2) The assessee aggrieved and preferred this appeal raising following grounds:

“i. The ld. CIT(A) has erred in law and in facts in passing order u/s 250 of the Act and confirming the addition made by ld. AO.

ii. The ld. CIT(A) has erred in law and in facts in not appreciating that the reopening of the assessment u/s 147 of the Act and issue of notice u/s 148 of the Act is invalid and bad in law.

iii. The ld. CIT(A) has erred in law and in facts in confirming the assessment order passed by ld. AO in gross violation of principles of natural justice.

iv. The ld. CIT(A) has erred in law and in facts in confirming the addition made by ld. AO on account of Long-Term Capital Gain on sale of immovable property amounting to Rs. 97,56,625/-.

v. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”

- 3) The brief fact of the case is that assessee is an individual who did not file the return of income. Information was received from the Joint Director of Income Tax (I&CI), Unit-1, Mumbai that during the F.Y. 2011-12, assessee has entered into transaction of sale of immovable property but has not filed any return of income for A.Y. 2012-13. The AO noted that assessee along with 7 other co-owners has sold the immovable property on 22.11.2012 for Rs. 6,26,29,344/- having a market value of Rs. 7,80,53,000/-. Thus, the capital gain on sale of immovable property remains undisclosed. The reasons were recorded and notice u/s 148 was issued on 25.03.2019. The assessee did not file any return of

income. Notice u/s 142(1) of the Act along with questionnaire were issued but no response was received.

- 4) A notice u/s 133(6) was issued to the sub-registrars asking for a copy of sale agreement which was provided. As per agreement, assessee has entered into the above transaction for which no reply was received. Accordingly, show cause notice was issued for charging 1/8th share of capital gain taxable in the hands of the assessee amounting to Rs. 97,56,625/-. This notice was also not responded to.
- 5) The Assessing Officer passed an order u/s 144 of the Act on 09.12.2019 treating the Long Term Capital Gain of Rs. 97,56,625/- as income of the assessee.
- 6) Assessee, aggrieved with the same preferred appeal before the Id. CIT(A). The Id. CIT(A) provided four opportunities of hearing to the assessee wherein assessee responded stating that assessee has not received notice u/s 148 of the Act, copy of reasons recorded for reopening of assessment and approval granted by the higher authorities and some other information. This request was made to the Id. Assessing Officer on 11.08.2021 as the appeal was to be decided before the Id. CIT(A). The Id. CIT(A) held that as assessee is not filing her return of income, there is no infirmity in the reopening of the assessment and further with respect to the addition on the merit as assessee did not furnish any evidence before the AO or before the Id. CIT(A), addition was also confirmed. Accordingly, appeal of the assessee was dismissed.

- 7) Aggrieved with the above appellate order, assessee preferred appeal before us. The ld. Authorized Representative, Mr. Dharmesh Shah, CA submitted that assessee has neither been served with the notice u/s 148 of the Act and has also not been provided any information as requested. The submitted that the notices sent by the Assessing Officer are without any e-mail ID and therefore, same are not served. With respect to the notice issued by ld. CIT(A) was addressed at the wrong e-mail address. He submitted that there is a spelling error in the notices sent by the ld. CIT(A) compared to e-mail address mentioned in Form No. 35 in some of the last notices and therefore assessee could not respond to that. Because of the wrong spelling of the e-mail ID, subsequent notice was issued by the ld. CIT(A) on 22.09.2023 was not received by the assessee. Even otherwise on the merits of the case, he submitted that assessee is one of the 8 joint co-owners of the property. In case of all 7 co-owners, the status of the income tax proceedings is not available. He further referred to a glaring error made by the ld. Assessing Officer therein the total sale consideration is considered as capital gain earned by the assessee without granting deduction of cost of acquisition as well as indexation. Thus, he submitted that if a proper opportunity of hearing is given, the necessary explanation can be furnished.
- 8) The ld. Departmental Representative vehemently supported the orders of the ld. Lower authorities.
- 9) We have carefully considered the rival contentions and perused the orders of the ld. lower authorities. We find that assessee, during the course of appellate proceedings after filing of the

appeal has asked from the Assessing Officer for a copy of notice issued u/s 148, reasons recorded and some other information along with the approval. Same is not yet provided to the assessee. Further, the ld. Assessing Officer has made a glaring error by taking whole consideration as capital gain and has not granted any deduction of the cost of acquisition with indexation benefit. On appeal before the ld. CIT(A), the last notices were addressed at the wrong e-mail ID. Thus, some notices in the appellate proceedings were not received by the assessee.

- 10) In view of the above facts and in the interest of justice, we restore the whole issue back to the file of the ld. Assessing Officer with the direction to the assessee to comply with the necessary notices of the ld. Assessing Officer and also seek necessary information. The ld. AO is directed to first provide the necessary details as asked for by the assessee to defend herself and then decide the issue on the merits of the case.
- 11) In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.08.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Dated: 20.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:

3. The CIT,

4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai