

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 4702/MUM/2023
Assessment Year: 2017-18**

Mr. Mehul Nisar,
Amrut Tower, 247, Telang Road,
Matunga,
Mumbai-400019.

**PAN NO. AADPN 9622 Q
Appellant**

ACIT-Circle-20(2),
Piramal Chambers,
Mumbai-400012.
Vs.

Respondent

Assessee by : Mr. K. Gopal,
Ms. Neha Paranjpe
Revenue by : Mrs. Mahita Nair, Sr. DR

Date of Hearing : 06/08/2024
Date of pronouncement : 27/09/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 26.10.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:



1. On the facts and circumstances of the case and in Law, the Ld. Commissioner of the Income-tax (Appeals) has erred in confirming the total assessed income at Rs. 93,48,513/- against returned income of Rs. 50,93,390/-:

2. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate that expenses incurred were exclusive towards the capital assets and has erred in disregarding the calculation of the actual cost of acquisition by the assessee and apportioning the purchase price and the stamp duty paid for both the flats equally among all the four sellers.

3. On the facts and circumstances of the case and in Law, the Ld. Commissioner of the Income-tax (Appeals) has erred in sustaining the aggregate disallowance of the expenses amounting to Rs. 42,55,123/- against Short Term Capital Gains claimed by the assessee in his return of income.

3.1. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in restricted the assessee's share in cost of acquisition of the flat sold at Rs. 3,02,65,840/- instead of the actual cost of acquisition of Rs. 3,15,43,588/- incurred by the assessee, leading to disallowance of Rs 12,77,748/-:

3.2. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in confirming the disallowance on account of payment of interest on housing loan to nationalized bank amounting to Rs. 8,77,375/-:

3.3. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in confirming the disallowance related to the payment of transfer fees to the developers amounting Rs. 17,50,000/-:

3.4. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in restricting the claim of brokerage paid to Rs. 3,50,000/- against actual brokerage payment amounting Rs 7,00,000/-.

2. Briefly stated, facts of the case are that the assessee filed its return of income on 30.10.2017 declaring total income at Rs.50,93,390/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During the course of assessment proceedings, the Assessing Officer noticed the short term capital gain of Rs.21,54,037/-



declared by the assessee on sale of ½ share of property. The Assessing Officer noticed that assessee had sold flat No. 601 along with flat No.602 which was owned by other individuals. The assessee accordingly apportioned the total sale consideration in four equal parts and computed the short term capital gain after reducing the cost of acquisition of the 1½ part of the flat No. 601. The Assessing Officer however was not convinced with the cost of acquisition declared by the assessee, which included interest on borrowed capital, transfer fee, brokerage paid etc. According to the Assessing Officer, the cost of acquisition should also have been divided equally among the four owners of the property. Accordingly, the Assessing Officer computed the cost of acquisition per co-owner at Rs.3,02,65,840/- as against cost of acquisition shown by the assessee at Rs.3,48,70,963/- and made addition of Rs.42,55,123/- and assessed the short term capital gain of Rs.64,68,09,160/- in his order dated 30.11.2019 passed u/s 143(3) of the Act. Aggrieved, the assessee filed further appeal before the Ld. CIT(A) but could not succeed. The Ld. CIT(A) upheld the decisions made by the AO observing as under:

“7. Findings:

I have carefully considered the submissions of the appellant, grounds of appeal and perused the assessment order of the AO. The grounds of appeal are effectively directed against disallowances of expenses claim against short term capital gain. Since the grounds of appeal are interrelated, it is taken together as one and adjudicated as under.

7.1 As outlined in para 6.6. the AO contended that as the appellant has



apportioned the entire sales consideration of two flats among four owners equally the cost should also be apportioned among all the owners equally and sales should be taken in the ratio of the cost of acquisition. As the appellant has not given any explanation, AO adopted the cost of acquisition at Rs. 3,02,65,840/- instead of Rs.3,15,43,588/- as claimed by the appellant. During the present appellate proceeding the appellant has just reproduced his calculation of short term capital gain as already furnished during the assessment proceeding. He has not furnished any satisfactory explanation as to why cost of acquisition should not be apportioned between four owners when sales consideration has been apportioned between four owners. In view of the above, it is held that the appellant has no explanation whatsoever and the AO has rightly apportioned the cost of acquisition between four owners and has rightly made addition of Rs. 12,77,748/-.

7.2 In the same para 6.6 it has been discussed how the AO disallowed claim of interest paid on borrowed capital of Rs. 8,77,375/- by holding that interest on borrowed capital for acquisition for the property is allowable only against the income from house property or against business income if the loan is taken for the business purpose. Further he held that there is no provision in the Act to allow the deduction of interest on borrowed capital for acquisition of house property against the income from capital gains. During the assessment proceeding the appellant furnished only proof of interest paid. However, during the appellate proceeding, it is seen that the appellant has not even furnished any submission or explanation on this issue. In view of the above, I upheld the decision of the AO as the appellant has failed to provide satisfactory explanation as well as prove whether interest has been paid for loan taken for purchase of the same property sold. Further, the appellant has not furnished any evidence whether the same or part of it has been claimed in any earlier years. Therefore, in absence of any clarity on the claim, I hold that the AO has rightly disallowed claim of interest on borrowed capital of Rs. 8,77,375/-.

7.3 Furthermore in the same para 6.6. the AO held that there was no mention of any transfer fee by the buyers as seen from the purchase agreement with the Developers. AO also mentioned that the Govt. of Maharashtra ruled in August 2006 that Developer has no right to charge transfer fees at the time of sale of a flat by the investor until a co-operative society is formed. The appellant in reply has only submitted that transfer fees paid of Rs. 17.5 lakh appeared in related party disclosure in Developer Company's Audit Report. In this regards, I find force in the contention of the AO as there is no mention of transfer fees in the purchase agreement. Further, the transfer fees paid is to a developer and not a cooperative society. Therefore, I am of the view that the AO here has rightly disallowed claim of transfer fees paid of Rs.17,50,000/-.

7.4 The AO has taken Rs.3,50,000/- as brokerage allowable as brokerage claim was paid for flat no 601 jointly held with Mr Rohit Dedhia. The appellant has not given any explanation but only furnished proof of brokerage paid. Considering the facts of the case, I hold that the



action of the AO in apportioning the brokerage paid between him and Rohit Dedhia is correct and I hold that only Rs.3,50,000/- is allowable.”

3. We have heard rival submission of the parties and perused the relevant material on record including the Paper Book in two volumes filed by the assessee containing pages 1 to 25 and 26 to 439. The ground Nos. 1 and 2 of the appeal relate to total disallowance of cost acquisition of Rs. 42,55,123/-, whereas the ground No. 3.1 to 3.4 relate to four components of said disallowance of Rs. Rs. 42,55,123/-, therefore, we are not required to adjudicate the ground No. and 2 separately.

3.1 Brief facts qua the issue in dispute are that on 01.09.2015, the assessee namely Shri Mehul Nisar along with Mr. Rohit Dedhia purchased a flat having Flat No. 601 in XCZAR building at Ville Parle admeasuring area of 159.16 sq. mtrs for total consideration of Rs.6 crores, wherein the assessee had invested 50% i.e. Rs. 3 crores. This property was purchased from M/s Rodium Properties, a division of Rodium Realty Ltd. along with four confirming party including Shri Deepak Dugrshi Chheda, Shri Harish Nisar, Shri Rohit Dedhia and Shri Shailesh Shah. It is to be noted that Shri Harish Nisar is father of the assessee and one of the Director of Rodium Realty Ltd. Further, Shri Rohit Dedhia is appearing as confirming party as well as purchaser along with the assessee.

3.2 On same date i.e. 01.09.2015, another flat No. 602 of that building admeasuring area of 159.29 sq. mtrs was purchased by



Shri Deepak Dungrshi Chheda and Ms. Kuupa Deepak Chheda from the same seller M/s Rodium Realty Ltd. along with four confirming parties namely Shri Deepak Dungrshi Chheda, Shri Harish Nisar, Shri Rohit Dedhia and Shri Shailesh Shah.

3.3 Both these flats i.e. Flat No. 601 and 602 admeasuring 315.56 sq. mtrs. were sold on 24.05.2016 by way of a common sale agreement to Ms. Urmila Ganpatrao Hule for a total consideration of Rs.14,21,00,00,000/-. In the said deed of transfer, the four individuals namely Mehul Harish Nisar, Rohit Keshavji Dedhia, Krupa Deepak Chheda and Deepak Dungarshi Chheda are appearing as transferors along with M/s Rodium Realty Ltd. as confirming party.

3.4 The assessee in its return of income computed the short term capital gain on transfer of his share in flat No. 601. The assessee took $\frac{1}{4}$ amount of the total consideration of Rs.14,21,00,00,000/- as sale consideration received, which were worked out to Rs.3,55,25,000/- as part of sale consideration on transfer of his share of the property. He further added the portion of the stamp duty refunded to him amounting to Rs.15,00,000/-. In this manner the assessee computed total sale consideration at Rs.3,70,25,000/-. Out of above sale consideration, the assessee reduced the cost of acquisition of the property at Rs.3,48,70,963/-. The computation of short term capital gain submitted by the assessee and reproduced



by the Assessing Officer in para 6 of the impugned order is extracted as under:

<i>Sale consideration (142100000 / 4)</i>	35525000
<i>Add : Refund of stamp duty</i>	1500000
<i>Total consideration</i>	37025000
<i>'Less : Purchase Cost</i>	-30000000
<i>Less : Stamp duty and Registration</i>	-1543588
<i>Cost of flat</i>	-31543588
<u><i>Deductions</i></u>	
<i>Less : Interest on borrowed capital upto 31.03.2016</i>	-571877
<i>Less : Interest on borrowed capital</i>	-305498
<i>Less: Transfer fees</i>	-1750000
<i>Less ; Brokerage paid</i>	-700000
<i>Total Deduction claimed</i>	-34870963
<i>STC gain</i>	2154031

3.5 The Assessing Officer disputed the cost of acquisition claimed by the assessee. According to the Assessing Officer since the assessee had divided the sale consideration in four portions therefore, the combined cost of acquisition of both the flats should also be divided equally into four parts or the assessee should divide the sale consideration in the ratio of the cost of acquisition incurred in purchase for the flats. In absence of no explanation, the Assessing Officer divided the combined cost of acquisition of both the flats in four equal parts which was worked out to Rs.3,02,65,840/- as under:

<i>Cost of flat No. 601 (area 118.19 sq mt)</i>	60000000
<i>Stamp duty & registration</i>	3031680
<i>Cost of flat No. 602 (area 121.42 sq ft)</i>	55000000
<i>Stamp duty & registration</i>	3031680
<i>Total cost</i>	121063360

Cost per co-owner (121063360 /4)

Rs. 302658



3.6 Further, the assessee also rejected the claim of the assessee of interest on the money borrowed amounting to Rs.5,71,877/- and Rs.3,05,498/- totaling to Rs. 8,77,365/-, on the ground that there is no provision in the Act to allow the deduction of interest on borrowed capital while computing capital gain. The Assessing Officer further reduced $\frac{1}{2}$ of the claim of the brokerage amounting to Rs.7 crores on the grounds that the brokerage pertains to the entire property and therefore, only $\frac{1}{2}$ of the brokerage amount, which was worked out to Rs.3,50,000/-, was disallowed. Further the claim of Rs.17,50,000/- towards transfer fee to the developers was also rejected on the ground that same was paid to the another co-owner Shri Rohit Dedhia and the director of the company i.e. the assessee.

4. In ground No. 3.1 , the assessee has challenged equal division of cost of acquisition leading to disallowance of Rs. 12,77,748/-.

4.1 Before us, the Ld. counsel for the assessee referred to the deed of registration for purchase of the property and submitted that assessee had paid Rs. 3 crores. In the said purchase deed share of the two co-owners was not specifically mentioned and no detail of the payments made except total consideration of Rs.6 crores. The relevant part of the purchase deed available on Paper Book page 44 to 45 is reproduced as under:

“5. The Promoters shall sell and transfer to the Purchaser subject to the provisions of these presents, the Flat No. 601 admeasuring 118.19 sq.



meters carpet area exclusive of 11.95 Sq mts area covere service ducts, air conditioning units (the said Flat.) shown by red boundary line on the floor plan being Annexure 'D' hereto on the 6th floor of the said building "XCZAR" (the said Building)r being constructed by the Promoter on the said property more particularly described in the first schedule hereunder written and as incidental thereto an exclusive right of use 2 car parking in stack arrangement in the podium 1st level, all of which is more particularly described in the second schedule hereunder written TOGETHER WITH the proportionate undivided share, right title and interest in the common area amenities and facilities of the said buildings, which are more particularly described in the third schedule hereunder written which common areas, amenities and facilities are intended to be used in common with the promoters and/or the nominee/s/allotee/s/ Transferee/s of the promoter (all of which are hereinafter collectively referred to as "the said Premises") at or for total consideration of Rs.6,00,00,000/- (Rupees Six Crores Only) consideration shall be paid in the manner following :

a. Rs.6,00,00,000/- (Rs. Six Crore Only) to be paid on or before 15th September 2015.

The Purchaser/s declares and confirms that he/she has agreed to pay the price for the said premises in installments as mentioned above, taking into consideration the present stage of construction of the said Building, the proportion of costs involved in the execution of the different stages of work, the location of the said premises in the Building and expenses to be incurred by the Promoter in getting ready the said premises. Under no circumstances, the Purchaser/s shall get possession of the said premises without first paying to the Promoter all amounts due hereunder; if however the Promoter does give possession of the said premises to the Purchaser/s before recovery of the full price therefore, it shall have a lien on the same for the balance of the unpaid price and interest due on account of delayed payments and other amounts dues.

(6) The Promoter shall intimate to the Purchaser/s, demanding payment of the installments of the purchase price payable by the Purchaser/s within the period mentioned in such intimation, which intimation shall be sent to the Purchaser/s by the Promoters when the same falls due as per clause 5 hereinabove. It is expressly agreed by the Purchaser/s that the time for payment of each of the aforesaid installments of the purchase price as stated in the intimation to be sent to the Purchaser/s as mentioned hereinabove and in respect of all amounts payable under these presents by the Purchaser/s to the Promoter shall be "ESSENCE OF THE CONTRACT".

4.2 The Ld. counsel accordingly submitted that cost of acquisition of the 50% share works out to Rs.3,00,00,000/-. Further, he submitted that stamp duty and other charges worked out to



Rs.15,42,588/-. According to him this is the actual cost of acquisition of the assessee for the 50% portion of the flat No. 601 and therefore, the cost of acquisition worked out by the Assessing Officer apportioning the purchase price and stamp duty paid for both the flats equally among all the four sellers is not justified.

4.3 The Ld. Departmental Representative (DR) on the other hand, submitted that assessee did not file any objections against the apportioning of total purchase price and stamp duty of both the flats equally among all the four sellers and therefore, the Assessing Officer has mainly computed the cost of acquisition, otherwise the sale consideration should be apportioned in the ration of the cost of acquisition of the each co-owners and the short term capital gain should be computed, accordingly as there is no specific division of the sale consideration among four co-owners has been provided into the sale deed dated 24.05.2016.

4.4 We have heard rival submission of the parties and perused the relevant material on record. As far as division of the sale consideration among the four co-owners is considered, it has been specifically prescribed in the deed of transfer dated 24.05.2016 that each of the transfer has undivided 25% share interest in the premises and therefore, the consideration and each installment thereof should be divided, distributed and paid between the transfer equally 25% per portion and thus the assessee has correctly worked out to $\frac{1}{4}$ of the sale consideration and the amount of stamp duty



refund as his sale consideration. The Assessing Officer has also not disturbed quantum of sale consideration shown by the assessee. The assessee has only disputed the cost of acquisition shown by the assessee. In our opinion, the actual cost which has been paid by the assessee for acquiring its share of the property has to be considered as both the flats i.e. 601 and 602 have been purchased separately and not by way of combined registered deed therefore, the action of the Assessing Officer of considering the total purchase cost and stamp duty and thereafter apportioning equally among the four co-owners is not justified. The co-owners of the both the parties i.e. 601 and 602 flats must have negotiated with the seller and there are many other factors which decide the price of the property. However, while sale all four parties agreed for equal division of the sale consideration. Therefore, both the sale consideration as well as cost of acquisition has to be allowed according to actual payment. The ground No. 3.1 of the appeal of the assessee is accordingly allowed.

5. In ground No. 3.2 the assessee has challenged disallowance of interest paid on capital borrowed from nationalized bank amounting to Rs.8,77,375/-.

5.1 Before us, the Ld. counsel for the assessee referred to the decision of the Co-ordinate Bench of the Tribunal in the case of Parwati Devi Totlani in ITA No. 120/JP/2019 for assessment year 2010-11, wherein the Tribunal has allowed interest expenses on the



loan for acquiring the house property as part of the cost of acquisition. The relevant part of the Tribunal is reproduced as under:

"11. We have heard the rival contentions and perused the material available on record. The Coordinate Bench in case of Gayatri Maheshwari vs. ITO (supra) has considered the decision of Hon'ble Delhi High Court in case of CIT vs. Mithilesh Kumari (1973) 92 ITR 9 and also the decision of Hon'ble Karnataka High Court in case of CIT vs. Shri Hariram Hotels (Purchase) Ltd. (2010) 188 taxman 170 (Kar) and has held as under:-

" 9. We have perused the case records, analysed the facts and circumstances of the case and considered the judicial pronouncements, which was placed before us. In the case of CIT Vs. Mithilesh Kumari (supra), the Hon'ble High Court has held as under:-

"(13) We are in respectful agreement with the observations of the Calcutta and the Bombay High Court in the decisions referred to above. In the present case, we find that the assessed in order to purchase the land had not only to borrow the amount of Rs. 95,000.00 which was the consideration for the purchase of the land but also had to pay interest of Rs. 16, 878.00 on the amount borrowed by her. The amount of Rs. 95,000.00 plus the interest paid by the assessed constitutes the actual cost to the assessed M/s Parwati Devi Totlani vs. ITO of the land. The fact that the amount of Rs. 95,000.00 was paid by the assessed to the vendor and the amount of interest of Rs. 16,878.00 was paid to a different person, namely, her mother-in-law, does not make any difference so far as the assessed is concerned in respect of the actual cost of the land to her. It will not also make any difference whether the interest was paid on the date of the purchase or whether it is paid subsequently. To exclude the interest amount from the actual cost of the assets would lead to anomalous results. Supposing she had purchased the land for Rs. 1,00,000.00 by raising a loan of that amount and had paid interest of Rs. 20,000.00 on the said loan and had sold the land for Rs. 1,20,000.00. It would be unreasonable to hold under such circumstances by excluding the interest amount from the actual cost of the land that she had made a capital gain of Rs. 20,000.00 when, as a matter of fact, she had not made any profit at all by the transaction. Applying the said observations of the Calcutta and the Bombay High Courts to the present case, we hold that the Tribunal was right in adding the interest amount of Rs. 16,878.00 towards the actual cost of the land."

In the case of CIT Vs. Sri Hariram Hotels (Purchase) Ltd. (2010) 188 Taxman 170 (Kar), the Hon'ble Karnataka High Court has held as under:-



"7. We are unable to agree with the arguments advanced by the learned counsel for the revenue for the simple reason on facts that even the Commissioner of Income-tax (Appeals) has held that interest had accrued as on 31/3/2003 and therefore, the M/s Parwati Devi Totlani vs. ITO Tribunal is justified in granting the relief to the assessee since the property has been purchased out of the loan borrowed from the Directors and any interest paid thereon is to be included while calculating the cost of acquisition of the asset. Therefore, question No. 1 has to be answered against the revenue."

In the case of ACIT Vs C.Ramabrahmam, the ITAT Chennai Bench 'C' in ITA No. 943/Mds/2012 has held that the assessee had purchased house property, availing loan. The house property was subsequently sold and assessee included interest paid on housing loan while computing capital gains u/s 48.

The Assessing Officer was of opinion that since interest in question on housing loan, had already been claimed as deduction u/s 24(b), the same could not be taken into consideration for computation u/s 48 and interest amount was added to income of assessee. The CIT(A) reversed the findings of A and held deduction u/s. 24(b) and computation of capital gains u/s 48 were altogether covered by different heads of income i.e., income from 'house property' and 'capital gains'. None of them excludes operative of the other. The interest in question was indeed expenditure in acquiring asset. Since both provisions were altogether different, assessee was entitled to include interest paid on housing loan for computation of capital gains u/s 48 despite the fact that same had been claimed u/s 24(b) while computing income from house property. The revenue's appeal was dismissed by the ITAT, Chennai Bench and the order of the ld. CIT(A) was upheld. From these judicial pronouncements, it is very much clear M/s Parwati Devi Totlani vs. ITO that if the property is purchased from borrowed funds then consideration for the purchased amount, the interest on borrowed fund also has to be paid. The amount of interest paid by the assessee constitutes the actual cost to the assessee for that property. To exclude the interest amount from the actual cost of the assets/property would lead anomalous result. The interest amount should be definitely added to the actual cost of the property.

Respectfully following these legal propositions and on basis of our observations as held herein, we reverse the findings of the ld. CIT(A) and hold that the interest paid to bank for acquiring capital asset would be eligible as part of cost of acquisition. We hold accordingly. The grounds No. 1 to 4 of the assessee's appeal are allowed."

12. We therefore find that there is a consistent view among various Hon'ble High Courts and which has been consistently followed by the various Benches of the Tribunal that the assessee is entitled to include interest as part of the cost of the assets while computing the capital gains U/s 48 of the Act. In the absence of any contrary authority brought to our notice, the Assessing Officer is directed to allow the interest expenses of



Rs.3,93,898/- paid to LIC Housing Finance Ltd. subject to appropriate indexation while computing capital gains u/s 48 of the Act.”

5.3 Before us, the Ld. DR could not brought on record any decision of higher appellate forum in favour of the Revenue and therefore, accordingly following the finding of the Tribunal in the case of Parwati Devi Totlani (supra,) we set aside the finding of the lower authorities and direct the Assessing Officer to allow the interest cost of Rs.8,77,375/- as part of the cost of acquisition.

6. The ground No. 3.3 of the appeal relates to disallowance of transfer fee amounting to Rs.17,50,000/-. The assessee claimed that payment of same is appearing in the bank statement of the assessee and which has been actually paid. However, the Ld. DR on the other hand, submitted that there was no responsibility of the assessee for making payment for the transfer charges to the company in which sellers are related. According to him, normally, it is the responsibility of the purchaser to pay the transfer fee and not the seller and therefore, according to him, this was not a genuine payment. The Ld. DR further referred to the finding of the Assessing Officer that Government of Maharashtra has ruled in 2016 that developer has no right to charge transfer fee at the time of sale of flat by an investor until a co-operative society is formed.

6.1 We have heard rival submission of the parties and perused the relevant material on record. No doubt that the assessee has shown that said payment is appearing in the bank statement of the



assessee. However, the onus is on the assessee to justify whether it was wholly and exclusively necessary in relation to transfer of the property particularly when the Ld. Assessing Officer pointed out that the developer was not authorized to charge such fee and that too was paid to the related person. In such a case, there is higher onus on the assessee to demonstrate genuineness of the expenditure. In the facts and circumstances in our opinion this amount of the transfer fee does not appear to be genuine and therefore, we decline to allow the same as expenses incurred in relation to transfer of the property. The ground No. 3.3 of the appeal of the assessee is accordingly dismissed.

7. In ground No. 3.4, the assessee has challenged 50% of the brokerage fee i.e. amounting to Rs.3,50,000/- which has been disallowed by the Assessing Officer and sustained by the Ld. CIT(A).

7.1 Before us, the Ld. counsel for the assessee referred to Paper Book page 12 and 13, which is an invoice submitted by the broker namely Shri Haresh Hansraj Bhatia HUF and his PAN Card and submitted that entire amount of Rs.7,00,000/- was pertaining to the transfer of the share of the property of the assessee. The Ld. DR on the other hand, submitted that in the bill raised it has not been specified whether it was 50% share of the assessee or entire amount pertaining to the brokerage of the flat No. 601. The Ld. DR further submitted that in the bill neither the detail of the property has been mentioned nor assessee had justified what kind of the services



which were rendered by Shri Haresh Hansraj Bhatia HUF while transfer of the property.

7.2 We have heard rival submission of the parties and perused the relevant material on record. The relevant part of the invoice raised by Shri Haresh Hansraj Bhatia HUF is reproduced as under:

Sr. No.	Particulars	Tax rate	Amount
1.	Brokerage for Sale of Flat Customer Name : Ms. Urmila Ule Project Name: X'Czar, Juhu Flat No.: 601 Brokerage Amount :-		7,00,000.00
	Total		7,00,000.00

7.3 It is evident from the above invoice the details of the property is not mentioned in said bill. It is also not evident that what services, Shri Haresh Hansraj Bhatia HUF performed in relation to transaction of the transfer of the property. In our opinion, further verification is required from Shri Haresh Hansraj Bhatia HUF regarding role played him for transfer of the property. Accordingly, we restore this issue in dispute to the file of the Assessing Officer with the direction to the assessee to produce said broker before the Assessing Officer to support the contention that the entire brokerage amount of Rs.7,00,000/- was pertaining to $\frac{1}{2}$ share of the assessee in flat. The ground No. 3.4 of the appeal is accordingly allowed for statistical purposes.



8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 27/09/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/09/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai