

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

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5428/MUM/2013  
Assessment Year: 2007-08**

DCIT 7(3)  
R. No. 615, 6<sup>th</sup> Floor  
Aayakar Bhaven, M.K. Marg  
Mumbai - 400020

Vs. Rashna N Talati  
96, D Villa Morden,  
Worli Sea Face, Worli.  
Mumbai - 400018

**PAN No. AACPT0859N**

**(Appellant)**

**(Respondent)**

Revenue by: Mr. Purushottam Kumar, DR  
Assessee by: Mr. J.D. Mistry &  
Mr. B.V. Javeri, AR

Date of Hearing : 20/03/2017  
Date of pronouncement: 31/05/2017

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the revenue. The relevant assessment year is 2007-08. The appeal is directed against the order of the Commissioner (Appeals) - 13, Mumbai and arises out of the order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the 'Act').

2. The grounds raised in this appeal are that (i) the learned CIT(A) has erred on facts and in law in extending the scope of 'change of opinion' to a case where no opinion was formed by the A.O. and therefore presumed deemed formation of opinion, (ii) the learned CIT(A) has erred on facts and in law in not properly interpreting the law on the subject and his decision is contrary to the ratio of Delhi

High Court's decision in *M/s. Usha Engineering Ltd.*, (iii) the learned CIT(A) has erred on facts and in law in deleting the addition of Rs. 1,01,01,666/- as short term capital gains and Rs. 1,77,91,629/- as long term capital gains, without properly appreciating the factual and legal matrix of the case as brought out by the A.O. in the assessment order and (iv) the learned CIT(A) has erred on facts and in law in deleting the addition on account of capital gain holding that the assessee has complied with the provisions of section 50C without appreciating the fact that the Jt. Sub-Registrar, Pune valued the said land at Rs. 18.75 crores as against Rs. 50 lacs mentioned in lease transferred agreement and therefore the sale consideration was correctly taken at Rs. 18.75 crores as per the provisions of section 50C.

3. Briefly stated, the facts of the case are that the assessee filed her return of income for the A.Y. 2007-08 on 31.12.2007 declaring total income of Rs. 5,27,22,438/-. Thereafter, she revised her return of income on 26.11.2008 disclosing total income of Rs. 5,49,76,923/-. The Assessing Officer (A.O.) completed the assessment u/s 143(3) of the Act on 21.04.2009. Thereafter the A.O. issue notice u/s 148 to the assessee on 26.03.2012. The reason given by the A.O. for reopening the assessment is given below:

“In this case, order under section 143(3) of the Income-tax Act, 1961 was passed on 21.04.2009. On perusal of the return of for A.Y. 2007-08 in the case of Smt. Rashna N. Talati, it is seen that the assessee has following incomes:

\*Salary from Benreeza Travel Services Pvt. Ltd. Rs. 60,000/-.

\*Business of 'owning and maintaining of race horses' from where she has reported loss of Rs. 1,24,089/-.

“However, perusal of the records reveal that in the personal balance sheet of the assessee, the following receipts are recorded as ‘liabilities’ as at 31<sup>st</sup> March, 2007:

*Advances received against sale of agricultural / Non-agricultural land	Rs. 64,00,000/-
*Ramjal Industries (advances received against sale of ½ share in bungalow at Koregaon Park, Pune)	Rs. 10,50,000/-
*Deposit received against booking of plot : Kwality Frozen Food Ltd.	Rs. 7,00,000/-
*Total receipts of advances	Rs. 81,50,000/-

Further, the balance sheet as at 31<sup>st</sup> March, 2007, show that the assessee has made investments of Rs. 2,88,62,425/- in shares/debentures. Details on record reveal that the assessee has derived a paltry sum of Rs. 38/- as dividend during the year under review. Considering the huge amount of investments and disproportionate earning of dividend during the year, it is apparent that these investments were made during the year under review. The source and funding of these investments remained to be examined.

It is seen from records, that the assessee has given loans and advances to the tune of Rs. 6,47,34,152/-/. These exorbitant loans should by all reasonable standards, fetch a good amount of interest which should add up to the assessee’s taxable income. Taking a reasonable rate of even 8% could fetch the assessee ‘interest income’ of Rs. 51,78,732/-. Accordingly there is an under assessment of Rs. 51,78,732/-. Further, the source of funds of these loans and advances, extended by the assessee remained to be examined.

A perusal of the records, show that the assessee has two house properties viz:

\*96D Villa Modern, Worli Sea Face, Worli, Mumbai 400018

\*Bungalow at Koregaon Park, Pune

The assessee, has however, not declared any income under the head house property.

On perusal of the return of income for A.Y. 2007-08, it is seen that the assessee alongwith two other assesseees (being lessors) have leased out 63 acres of land at Pune to M/s. Wavy Construction Pvt. Ltd. for 999 years on a lease rent of Rs. 17/- p.a. and lease premium of Rs. 50 lacs vide agreement dated 7.4.2005. As per section 2(47), this kind of lease amounts to ‘transfer’ of asset. Hence, the transaction attracts capital gain. The value of land has been determined at Rs. 18,75,56,000/- by the Sub-Registrar, Pune vide

letter dated 20.04.2009. Accordingly, there is an under assessment of Rs. 18,75,56,000/-.

It is clear that the assessee has understated the income. Thus, it is a case where income chargeable to tax has escaped assessment. The assessee failed to disclose fully and truly all material facts necessary for its assessment for A.Y. 2007-08. I, therefore, have reason to believe that income to the extent of Rs. 18.76 crores has escaped assessment.”

4. The A.O. then assessed the income at Rs. 8,20,84,470/-. Aggrieved by the order of the, the assessee filed an appeal before the learned CIT(A). We find that the learned CIT(A) has held that the reopening was invalid as it was done on the basis of change of opinion.

5. Before us the learned DR supports the order passed by the A.O. On the other hand the learned counsel of the assessee relied on (i) the order of the learned CIT(A) dated 29.05.2013 and (ii) the order of the ITAT 'B' Bench, Mumbai in the case of *DCIT vs. Noshir D Talati* for the A.Y. 2010-11 (ITA No. 5423/Mum/2013).

6. We have heard the rival submissions and perused the relevant material on record. As delineated at para 3 here-in-above, the A.O. has based his reasons for reopening the assessment on (i) the return of income filed on 26.11.2008 and (ii) the audited accounts and other details filed by the assessee during the course of assessment proceedings u/s 143(3) completed on 21.04.2009.

6.1 The basis of the reasons recorded by the A.O. is nothing but a mere change of opinion. In *Calcutta Discount Co. Ltd. vs. ITO* (1961) 41 ITR 191 (SC), the Hon'ble Supreme Court has held that the assessee has responsibility of disclosing all primary facts, but once he has disclosed all the primary facts, his duty ends and it is for the assessing authority to draw the proper conclusions from it. If the wrong

conclusion was drawn, then it is no ground for reopening an assessment. Because the assessing authority previously held another opinion as to the legal effect of certain primary facts, and the assessing authority later on took a different view, there does not exist any ground for such reopening.

It has been held in *Direct Information Pvt. Ltd. vs. ITO* (2011) 203 taxman 70 (Bom) that unless Assessing Officer has tangible material before him on basis of which he comes to conclusion that income has escaped assessment, reopening of an assessment cannot be permitted merely on ground that there is a change in view of Assessing Officer and he subsequently believes that earlier view was incorrect.

In *CIT vs. Kelvinator of India Ltd.* (2010) 320 ITR 561 (SC), it is held that there is a conceptual difference between power to review and power to reassess. Review means taking second view if two views are possible. If Assessing Officer has taken a view in assessment then he cannot change his view under section 147 on the basis of his personal opinions.

In *Business India vs. JCIT* (2015) 54 taxmann.com 70 (Bom), it is held that where the Assessing Officer had allowed deduction in respect of assessee's claim for payment of interest, he, in the absence of any failure on assessee's part to disclose fully and truly all material facts necessary for assessment could not initiate reassessment proceedings merely on basis of change of opinion that interest expenditure in question was capital in nature.

6.2 Similar issue arose before the ITAT 'B' Bench, Mumbai in a case related to the assessee i.e. *Noshir D. Talati* (supra). The grounds of

appeal in both the cases are same. The Tribunal dismissed the appeal filed by the revenue on the basis that it was a case of change of opinion.

7. In view of the foregoing reasons, we hold that the reopening done by the A.O. was a mere change of opinion. Therefore, we uphold the order of the learned CIT(A).

8. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 31/05/2017.**

Sd/-

(JOGINDER SINGH)  
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai:

Dated: 31/05/2017

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**