आयकर अपीलीय अधिकरण "फ़" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
सर्वश्री नरेन्द्र कुमार बिल्लैय्या, लेखा सदस्य एवं विवेक वर्मा, न्यायिक सदस्य के समक्ष
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER,
AND SHRI VIVEK VARMA, JUDICIAL MEMBER

आयकर अपील सं./**ITA No. : 4863/Mum/2011**
(निर्धारण वर्ष /**Assessment year: 2006-07**)

Ms. Virmati H Dalal (Deceased) by LH Gita Choksi, Deve Ratan, 1st Floor, Amersi Road, Malad (West), Mumbai -400 064 PAN: **AIWPD 3023 G**	Vs	Income Tax Officer-Ward 24(2)(4), Bandra Kurla Complex, C-13, 8th Floor, Bandra (East), Mumbai -400 051
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री फिरोज अंध्यारुजीना Shri Froze Andhyarujina
Respondent by	:	श्री आखिलेद्र यादव Shri Akhilendra Yadav

सुनवाई की तारीख /Date of Hearing : 23-12-2014
घोषणा की तारीख /Date of Pronouncement : 23-12-2014

आदेश
ORDER

श्री विवेक वर्मा, न्या स:
PER VIVEK VARMA, JM:

The appeal is filed by the assessee against the order of CIT(A) 34, Mumbai, dated 29.03.2011, wherein the following grounds have been raised:

> *"1. On the facts and circumstances of the case the learned CIT Appeal erred in confirming the order of the learned ITO on the ground that by executing Power of attorney in favour of Mr. Laxman Pagare to retain 40% of sale proceeds cannot be said to an expenditure incurred wholly and exclusively in connection with the "Impugned transfer". In spite of the fact that it is a charge on property for obtaining the marketable title to sale of property.*
> *2. The appellant submits that the payment to Shri Laxman Pagare be treated as expenditure incurred wholly and exclusively in connection with such transfer and otherwise as the cost of acquisition of the asset to claim i.e. marketable title for the sale of land as the payment is for services rendered by him are to obtain the marketable title for transfer of property.*
> *3. The appellant also submits that it is a case where the property was unsaleable due to encroachment of other persons and there was no marketable title to the property.*

4. The appellant also submits that consideration received by the appellant be treated as capital gain and there is charge on the property by Mr. Laxman Pagare before the consideration is received from the sale of property and only actual income received be taxed as Capital Gain.

5. The appellant therefore submits that only30% sale consideration be treated as income and not 50% as worked out by the learned ITO".

2. The AR, at the time of hearing submitted that grounds no. 4 & 5 are only effective grounds and, he, therefore, delved on the two grounds only as grounds no. 1, 2 & 3 were general and argumentative.

3. The facts are that the assessee is a widow of Mr. Harkishandas Dalal, who acquired large parcels of land in Kalyan in 1940/1950s, which were put on small rentals. In the passing years, besides authorized tenants, the lands were encroached by nearby residents. Mr. Harkishandas Dalal assisted by Mr. Laxman A Pagare (LP) instituted legal proceedings on encroachers and some of the tenants who were not paying rent on regular basis, for their eviction and / or compromise.

4. In 1992, Mr. Harkishandas Dalal expired leaving behind his natural legal heirs, i.e. his wife Mrs. Virmati H Dalal and his daughter Ms. Geeta Choksi. Being the two ladies, living in Mumbai, could not attend to or give time to the issues and legal proceedings initiated by the Late Mr. Harkishandas Dalal, decided to give irrecoverable power of attorney (POA) in favour of Mr. LP to look after the interests of the two ladies in the suits and other negotiations with tenants and encroachers. As an incentive it was agreed between the two ladies and Mr. LP that in case of sale of land from parcels held by the family 60% of the proceeds shall be paid to the two ladies and 40% shall be retained by Mr. Laxman A Pagare.

5. Consequent to this agreement of POA two plots were sold, one for Rs. 28,22,000/- of which Rs. 16,93,200/- came to the

ladies and Rs. 11,28,800/- was retained by Mr. LP. The other plot was sold for Rs. 2,46,900/-, of which Rs. 1,48,140/- came to the two ladies and Rs. 98,760/- was retained by Mr. LP.

6. The assessee filed her return declaring capital gains of 50% of the proceeds that came to her i.e. 60% of total value and the other 50% was shown by the daughter. The assessee, therefore, declared capital gains of Rs. 9,20,670/- and invested the same in Bonds as per section 54EC (as per the AR, the assessee invested a higher amount in Bonds).

7. In the assessment proceedings, the AO called for all the details, which were provided for by the assessee and claimed that the capital gains were rightly computed by the assessee.

8. The AO, after considering the explanation of the assessee came to the view that the capital gain had to be computed on the gross figures of Rs. 28,22,000/- and Rs. 2,46,900/- of which the two legal heirs shares would be computed at 50% each.

9. Against this order of the AO, the assessee approached the CIT(A), who after considering the submissions and incorporating the facts and details in his orders, sustained the view of the AO, that the capital gains had to be computed on gross figures and not on the figures/sale proceeds actually received by the assessee.

10. Against this order of the CIT(A), the assessee is now before the ITAT.

11. In the integram, the assessee Mrs. Virmati H Dalal also expired, leaving the only legal heir, Ms Geeta Choksi, who is now pursuing the appeal.

12. At the time of hearing before us, the AR reiterated the entire sequence of events and submitted that the course adopted by the

revenue authorities was against tenets of law and that the assessee could only be charged to tax, on the income that has accrued to her.

13. The AR submitted that by virtue of the POA, LP received 40% of the sale proceeds and the remaining 60% was divided at 30% each by the two ladies. This fact remains uncontroverted.

14. The AR, therefore, submitted that under no circumstances the assessee could have been saddled with the income, which never accrued or received by her. The AR, therefore, pleaded that the addition, thus made be deleted.

15. On the other hand the DR vehemently supported the orders of the revenue authorities and pleaded that there is no infirmity in the orders of the revenue authorities.

16. We have heard the arguments and have pursued the orders of the revenue authorities and the papers and case laws relied upon by the AR. One basic fact that has been completely ignored by the revenue authorities, while framing the assessment of the assessee was to ascertain the status of the return and assessments in the case of Mr. Geeta Choksi and Mr. LP.

17. We find that the address of LP has been mentioned by the CIT(A) in his order and which was also supplied to the AO, but the revenue authorities ignored to ascertain his assessment status. We cannot accept the submissions of the DR that the case be restored to the AO to find out the details of assessment in the case of Mr. LP and/or Ms. Geeta Choksi. According to us, the revenue authorities missed the bus long back.

18. We also find from the APB, the assessment status of Ms. Geeta Choksi, recipient of the other 50% of 60%, whose return of income was accepted by the AO and in the subsequent year, on

the same facts, assessment was framed u/s 143(3) accepting the returned income.

19. Under these factual circumstances, we are of the opinion that the revenue authorities erred in adding back remaining 20% to equate the figure of 50% of gross sale proceeds. Not only, this was factually incorrect, because, the quantum had been the result of a legal document executed between the ladies and LP and more then that the other parties declared their share, which was accepted by the department.

20. We cannot accept the argument of the DR for restoration of the case to the file of the AO, because, the revenue authorities have accepted the return of other co-owner, despite the fact that they were under full and complete knowledge of the sequence of events.

21. We, therefore, set aside the order of the CIT(A) and direct the AO to delete the addition, as made by him and compute the LTCG as declared by the assessee.

22. Since grounds no. 4 and 5 are linked to each other, both the grounds are treated as allowed.

23. In the result, the appeal as field by the assessee is allowed.

Order pronounced in the Open court on 23rd December, 2014.

Sd/-
(नरेन्द्र कुमार बिल्लैय्या)
लेखा सदस्य
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(विवेक वर्मा)
न्याईक सदस्य
(VIVEK VARMA)
JUDICIAL MEMBER

Mumbai, Date: 23rd December, 2014

प्रति/Copy to:-

1) अपीलार्थी /The Appellant.
2) प्रत्यर्थी /The Respondent.
3) The CIT(A)-34, Mumbai.
4) The CIT- 24, Mumbai.
5) विभागीय प्रतिनिधि "फ़", आयकर अपीलीय अधिकरण, मुंबई/
   The D.R. "F" Bench, Mumbai.
6) गार्ड फाईल
   Copy to Guard File.

आदेशानुसार/By Order

/ / True Copy / /

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स
*Chavan, Sr.PS