IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE

BEFORE SHRI I.C. SUDHIR, JM
AND SHRI R.C. SHARMA, AM

I.T.A. No. 491/PN/2008: A.Y. 2004-05

Asstt. CIT Cir. 2, Nasik Appellant

Vs.

Shri Kisanlal Bastiram Sarda
L/H of late Smt Rampyarbai B Sarda
Sarda House, Godavari Kinara
Old Gangapur Naka,
Gangapur Road,
Nasik.
PAN ANPPS 0182 B Respondent

Appellant by : Smt. Manju Ajawani
Respondent by: Shri B.V. Zaveri

ORDER

Per I.C. Sudhir, JM

The revenue has questioned the first appellate order mainly on the ground that the learned CIT(A) has erred in deleting the addition made by the A.O accepting the explanation of the assessee with regards to his separation of ownership of house property between the assessee and her grand daughters.

2. We have heard and considered the arguments advanced by the parties in view of the orders of lower authorities.

3. The relevant facts are that during the year, the assessee had shown income from house property in her return at Rs. 15,54,000/- whereas the A.O had computed the same at Rs. 30,71,000/-. The rental income has been derived from letting out office premises in Nirmal Building at Bombay to SICOM Ltd. The learned CIT(A) has deleted the addition accepting the submissions of the assessee in this regard. The case of the assessee remained that she had purchased 200 shares of M/s. Shri Nirmal Commercial Pvt. Ltd., for Rs. 100/- each way back on 20-10-1961. Out of the said 200 shares, 100 shares were purchased by the assessee for the benefit of her minor grand daughter Miss. Kalpana Devikisan Sarda and Miss. Sangeeta Devikisan Sarda. Pursuant to the aforesaid purchase of 200 shares, M/s. Shri Nirmal Commercial Pvt. Ltd., allotted 2000 sq.ft. area on the ground floor of the building known as 'Nirmal' situated at Nariman Point, Bombay. At the time of allotment of the premises in Nirmal Building, the assessee paid non-refundable deposit of Rs. 45,000/- to M/s. Shri Nirmal Commercial Pvt. Ltd., for 1000 sq.ft. area allotted to her. Similarly, Shri Devikisan B. Sarda had paid a non-refundable deposit of Rs. 45,000/- to M/s. Shri Nirmal Commercial Pvt. Ltd., for 1000 sq.ft. area on the second floor of Nirmal building for 100 shares held by his daughters viz. Miss Kalpana Devikisan Sarda and Miss Sangeeta Devikisan Sarda. There was some dispute with SICOM Ltd. over the rate

of licence fee being paid by it to the assessee and others. In view of the settlement SICOM Ltd., paid the difference in the licence fees aggregating to Rs. 27,06,000/- by two cheques of Rs. 12,96,000/- and Rs. 14,10,000/-. The assessee (late Smt. Rampyaribai Bastiram Sarda, L/H Shri Kisanlal Bastiram Sarda) being entitled to 50% of the said increase in the licence fee, she declared Rs. 15,54,000/- as her income under the head "income from house property" for A.Y. 2004-05 and the balance licence fee was offered for taxation by Miss Sangeeta Devikisan Sarda (married name Smt. Sangeeta Ajay Soni) and Miss Kalpana Devikisan Sarda (married name Smt. Shobha Ashok Karwa) in their respective returns of income for A.Y. 2005-06 as they had received the said increase in rent from the assessee in the month of April 2004. During the course of assessment proceedings, the A.O proposed to tax the entire actual receipt of rent in the assessee's hand as per TDS certificate. The submission of the assessee remained that the beneficial ownership of rental income of the property which is to be enjoyed by the assessee and her two grand daughters in the ratio of 2:1:1 was accepted by the department from the year 1961. The authorized representative of the assessee produced assessment orders of the assessee for A.Y. 1969-70 passed by the ITO, E-ward, Nasik wherein it was discussed that the assessee was entitled for 1000 sq.ft. of area in M/s. Shri Nirmal Commercial Pvt. Ltd. The A.O did not agree with this submission of the assessee on the basis that there was no material evidence to support that the assessee and her grand daughters jointly held the ownership of the said property. The A.O mentioned further that there was no gift deed or any agreement produced by the assessee in this regard. In these circumstances, the A.O assessed the entire sum of actual rental receipt in the hands of the assessee.

4. We find that before the learned CIT(A) the learned AR filed detailed submissions and produced the details of assessment orders for various assessment years relating to Smt. Sangeeta Ajay Soni (before marriage Miss Sangeeta Devikisan Sarda) and Smt. Sbobha Ajay Karwa (before married name Miss Kalpana Devikisan Sarda). The further contention of the assessee reproduced by the learned CIT(A) at pages 3 and 4 remained as under:

> "i) The fact that beneficial ownership in the rental income of the property which is to be enjoyed by the appellant and her two grand daughters in the ratio of 2:1:1 was accepted by the Department in 1967 .as per the assessment order for the A.Y.1969-1970 in her case. Accordingly, the same has been reflected in all the years, which is accepted.
> ii) The matter was enquired into by the Income-tax Officer, Section 11 (Central) Bombay in 1973 and no adverse inference was drawn in this regard. Copy of the appellant's letter dated 23.08.1973 is filed.
> iii) As per the Income-tax returns filed by the two of her grand daughters for various assessment years, it can be seen that the share of rental income has been duly reflected.

iv) Both the grand daughters have shown their shares of wealth of property in their Wealth-tax returns for the A.Ys 1971-1972 to 19911992.
v) The accounts of the appellant along with the assessment records for more than two decades prove beyond doubt that the appellant was entitled to 100, shares and accordingly entitled to only 50% (i.e. 1000 sq,ft. of area) in the said property. vi) The tax effect if the income assessed in the hands of the appellant or in the hands of the grand daughters is the same. As such, no purpose would be served by re-opening the issue which has been settled from 1967 till date and treating the income differently than how it was treated in the earlier years. The appellant also relied on the decisions following decisions in support of this contention:
i) Radhaswamy Satsang vs. CIT 193 ITR 321.
il) CIT vs. India Forge & Drop Stampings Ltd. 240 ITR 208 (Mad)
iii) ITO vs. *M/s. Ram* House Ltd. (ITA No.2378jMum/04 dated 09.10.2007)"

5. Accepting the above submissions, the learned CIT(A) has deleted the addition in question. While doing so, the learned CIT(A) has observed that the A.O himself has stated the fact that the department mentioned about the assessee's share in the said property as 1000 sq.ft. in her own assessment for the A.Y. 1969-70. Accordingly, the grand daughters of the assessee have been admitting their shares of income from the said property in various subsequent years and also reflecting their shares of the property in their wealth-tax returns. In support, copies of returns were filed before the A.O. The department has been accepting the returns of these years without any dispute. Under these circumstances, we are of the view that the learned CIT(A) has rightly come to the

conclusion that substantial proof /evidence is available with the department itself. This observation of the learned CIT(A) have not been rebutted by the revenue before us. We are thus not required to interfere with the finding of the learned CIT(A) on the issue. The same is upheld. Ground is accordingly rejected.

6. In the result, the appeal is dismissed.

Order pronounced in the open court on 31st August 2010.

Sd/-	sd/-
(R.C. SHARMA)	(I.C. SUDHIR)
Accountant Member	Judicial Member

Pune,dated the 31st August 2010
Ankam

Copy forwarded to:

(1) Assessee
(2) Department
(3) CIT(A)-II Nasik
(4) CIT – I Nasik
(4) The D.R. 'B' Bench, Pune

True copy By order,

Assistant Registrar
Income-tax Appellate Tribunal,
Pune Benches, Pune