

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3692/Mum/2023  
(Assessment Year :2011-12)**

Lalita Troy Caeiro 902, Tapovan CHS Ltd. J.K. Mehta Marg Santacruz (W) Mumbai – 400 054	Vs.	Income Tax Officer, Ward 22(2)(3) Mumbai
<b>PAN/GIR No.AADPC2752L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Prakash Jotwani
Revenue by	Shri Manoj Kumar Sinha
<b>Date of Hearing</b>	<b>12/03/2024</b>
<b>Date of Pronouncement</b>	<b>13/03/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 21/03/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for the A.Y.2011-12.

2. In the grounds of appeal assessee has raised following grounds:-

1. a) *The Learned CIT(A) erred in confirming reopening of case u/s 148 when on the same facts, circumstances and material,*

*the assessment was made u/s 143(3) and the claim of the appellant was accepted, tantamounting to change of opinion.*

*b) The Learned CIT(A) erred in confirming reassessment, when it was time barred as made beyond the period of 4 years.*

*c) The Learned CIT(A) erred in confirming reassessment, when there was no information available with the A.O and there was no case of Income escaping assessment.*

*2. a) The Learned CIT(A) erred in law and facts in confirming the disallowance of interest paid of Rs. 8,51,107/- by holding that the interest paid was directly not attributable to transfer of asset nor part of cost of acquisition/improvements.*

*b) The Learned CIT(A) erred in not giving reason for confirmation of disallowance and did not give any findings as to how the interest paid could not be considered acquisition/improvements.*

*3. The Learned CIT(A) erred in not considering that an identical claim being half (1/2) share of expenses was accepted in other co-owners case by the A.O and CIT(A) did not give any findings to disagree on the same.*

*4. The appellant craves to leave to add, alter, amend or delete any of the above grounds of appeal.*

2. At the outset, appeal of the assessee is time barred by 146 days. In the petition for condonation of delay alongwith affidavit of the assessee, it has been stated that assessee was not aware of any mails received from CIT (A) office as the same were looked into by Mr. Manish Tiwari, who was an Accountant to Flora Group. It was only on 03/10/2023 assessee came to know that the ld. CIT (A) has confirmed the disallowance made by the ld. AO. No physical order was served by the ld. CIT (A) and later on only she came to know that the order was sent by mail on

21/03/2023 which went into spam folder. Thus, due to this bonafide omission, appeal could not be filed in time leading to delay of 146 days. On perusal of the aforesaid averment made in the affidavit, we find that there were no latches on the part of the assessee as the Accountant to whom assessee was depending upon could not track the order of the Id. CIT (A) and assessee was not aware of any such order being passed and sent through mail. Accordingly, the appeal of condonation of delay of 146 days is condoned.

3. The brief facts qua the issue raised is that assessee is an individual who had filed its return of income on 14/09/2011 declaring total income of Rs.20,91,879/-. Later on, the return was revised on 17/10/2012 at Rs.9,76,290/-. Thereafter, assessee's case was selected for scrutiny and assessment was passed u/s. 143(3) vide order dated 31/03/2013 determining total income of Rs.9,76,292/-. Thereafter, assessee's case has been reopened u/s.147. The issuance of notice u/s.148 dated 21/03/2018 on the following reasons recorded:-

*"1. In the above case, Return of Income was filed on 14.09.2011 declaring total income of Rs. 19,76,880/-. Subsequently Revised Return of Income was filed on 17.10.2012 declaring a total income of Rs 9,76,290/- Thereafter, assessment was completed u/s 143(3) assessing total income at Rs. 9,76,292/-*

*2. On verification of records, it is seen that the assessee had purchased property on 30.12.2009 alongwith spouse for a total consideration of Rs. 3,50,00,000/- The same was sold on 27.12.2010 for consideration of Rs 3,85,00,000/- and accordingly worked out STC G. of Rs. 16,973/- was offered for taxation. For purchase of property, loan amounting to Rs 2,99,99,000/- was taken from CITI Bank NA It is seen that the*

*Home Loan taken from CITI Bank was sanctioned on 17.06.2010. Since the property was sold within one year, assessee had to close the CITI Bank NA loan account and paid closure charges. For working of STCG, in purchase value, the assessee has added interest paid for closure of the loan of Rs.11,43,912/-, loan processing fees of Rs. 1,48,816/- and loan preclosure charges of Rs. 4,09,486/- totaling to Rs. 17,02,214/- in purchase value which is not allowable. Therefore STCG is worked less by Rs. 8,51,107/- which is 1/2 share of the assessee.*

*3. In view of the these facts & circumstances of the case, I am satisfied that the income of Rs 8,51,107/- chargeable to tax has escaped assessment within the meaning of section 147 of the IT. Act, 1961 for failure on the part the assessee to disclose fully and truly all material facts necessary for assessment for the previous year relevant to A.Y 2011-12*

*4. The case is put-up before the Ld. Pr. CIT-22, Mumbai for kind sanction to issue notice u/s. 148 in the light of proviso to sub-section (2) of the section 151 of the I.T. Act, 1961.*

*Submitted for kind perusal and necessary approval.*

4. After receiving the notice u/s.148 and the reasons recorded, assessee raised objections stating that during the course of assessment proceedings, ld. AO had called for the details of capital gains declared during the year vide letter dated 16/12/2013 and 26/12/2013 wherein all the details were furnished regarding computation of capital gain and the claim for deduction made alongwith evidence. Assessee also produced the details of loan taken for the acquisition of the property alongwith interest. It was only after verification of all these documents, ld. AO has accepted the computation of capital gain in his order passed under Section 143(3). Subsequently, notice u/s. 154 dated 12/06/2017 was issued by the ld. AO to rectify the claim

of short term capital loss by proposing to disallow the claim of interest and loan processing charges. The assessee vide letter dated 15/06/2017 objected to said rectification and thereafter, ld. AO did not pass any rectification. Further, assessee submitted that once this issue has been examined during the course of original assessment proceedings and there is no failure on the part of the assessee to disclose fully and truly all material facts declared in the return of income and documents submitted at the time of assessment, no reopening can be done after the expiry of four years from the end of the assessment year as here in this case reopening has been done beyond the period of four years. In support, various decisions were also referred and relied upon. Assessee also challenged reopening on the ground of 'change of opinion' and in support various decisions were relied upon.

5. However, the ld. AO rejected objections stating that taxes should not escape due to oversight or mistake committed by taxing authority and sufficiency of the reasons cannot be questioned in the Court of law. Thus, in very summarily manner, assessee's objection was rejected. Thereafter, ld. AO noted the following facts and made disallowance of Rs.8,51,107/- for disallowing the interest paid for the acquisition of the property from the computation of short term capital gain which reads as under:-

*4. The main issue involved, the assessee along with spouse sold property on 27/12/2010 which has been purchased on 30/12/2009 and offered STCG of Rs. 16,973/-. While calculating STCG assessee has claimed an amount of*

*Rs.8,51,107/- being interest and loan processing charges on loan. A show-cause notice issued vide letter dated 09/10/2018 stating that why STCG should not be reworked in view of the following facts:*

*4.1 on verification of records, it is seen that the assessee had purchased property on 30/12/2009 along with spouse for a total consideration of Rs.3,50,00,000/- The same was sold on 27/12/2010 for consideration of Rs.3,85,00,000/- and accordingly worked out STCG of s. 16,973/- was offered for taxation. For purchase of property, loan amounting to Rs.2,99,99,000/- was taken from Citi Bank NA. It is seen that the Home Loan taken from Citi Bank was sanctioned on 17/06/2010. Since the property was sold within one year, assessee had to close the Citi Bank NA loan account and paid closure charges. For working of STCG, in purchase value, the assessee has added interest paid for closure of the loan of Rs. 11,43,912/-, loan processing fees of Rs. 1,48,816/- and loan pre-closure charges of Rs.4,09,486/- totaling to Rs. 17,02,214/- in purchase value which is not allowable. Therefore, STCG is worked less by Rs 8,51,107/-which is 1/2 share of the assessee*

*5 The assessee has given the written submission vide letter dated 06/10/2018 is not acceptable and STCG is reworked as per facts mentioned above and STCG reworked at Rs.8,68,080/- after deducting STCG offered earlier. Balance of Rs.8,51,107/- is added to the total income.*

6. The ld. CIT (A) has confirmed the action of the ld. AO holding that there was a clear link between information available with the ld. AO and the reason of belief that income chargeable to tax had escaped escapement and thereafter, he has referred to various decisions. On merits also he has confirmed the action of

the ld. AO holding that cost claimed is neither through transfer of asset nor part of cost of acquisition/improvements.

7. We have heard both the parties at length and also perused material placed on record. It has been pointed out before us that assessee during the course of assessment proceedings has given detailed working of short term capital gain on sale of flats and in the computation of short term capital gain, assessee has also taken loan processing charges and loan repayment charges, interest payment etc., before the ld. AO. In response to specific query raised, assessee had given the details vide letter dated 16/12/2013 and again on 26/12/2013 alongwith statement of computation of the short term capital gain on the sale of property which was in the co-ownership of her husband Troy Caeiro. After examining these details and computation of short term capital gain, ld. AO has accepted the claim of the assessee and the short term capital gain disclosed by the assessee was accepted. From the perusal of the reasons recorded as noted above, it is seen that nowhere there is any reference of any information or material coming on record and it is only from verification of same records which was there before the ld. AO during the course of original assessment proceedings, the ld. AO has entertained the reason to believe interest paid on closure of loan cannot be added to the purchase value and therefore, there short term capital gain has been worked less and excess claim of Rs.8,51,107/- has been made. Admittedly, the reopening has been done beyond the period of four years from the end of the relevant assessment year and since original assessment was

completed u/s. 143(3), therefore, limitation provided in proviso to Section 147 has to be strictly adhered to. The permissible condition for reopening the assessment beyond the period of four years is that there should be a failure on the part of the assessee to file the return of income or failure to disclose fully and truly all material facts necessary for assessment. There is neither failure on part of the assessee to file return of income nor failure to disclose wholly and truly all material facts, nor there is any material or information on record to show that there is failure on the part of the assessee. In fact assessee has made full disclosure in the return of income and also before the ld. AO during the course of assessment proceedings. Once these material facts were there on the record, ld. AO cannot reopen the case beyond the period of four years without fulfilling the conditions laid down in the *proviso* to Section 147. Thus, the entire reasons recorded for reopening the computed assessment beyond the period of four years is bad in law and is hereby quashed. Accordingly, the entire assessment is being quashed as same is beyond the time limit provided under proviso to Section 147.

**8. In the result, appeal of the assessee is allowed on legal ground.**

Order pronounced on 13<sup>th</sup> March, 2024.

**Sd/-**  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 13/03/2024  
KARUNA, sr.ps



**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,

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