

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 978/Mum/2013
(Assessment Year: 2009-10)

Income Tax Officer-11(3)(4) Room No. 444, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	Dr. Vandana Bhulchandani Atul House, 87, Dr. Annie Besant Road Worli, Mumbai 400018
PAN - AFBPB0262K		

Appellant

Respondent

Appellant by: Shri A.K. Dhondial
Respondent by: Shri Satish R. Modi

Date of Hearing: 01.08.2016
Date of Pronouncement: 10.08.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by Revenue is directed against the order of the CIT(A)-2, Mumbai dated 09.11.2012 for A.Y. 2009-10.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, a medical professional, filed her return of income for A.Y. 2009-10 on 31.07.2009 declaring income of ₹55,230/-. The case was subsequently taken up for scrutiny. In the course of assessment proceedings, the Assessing Officer (AO), on the basis of AIR information that there was a sale of a property at 1601, Era IV, Marathon Nextgen, Veer Santaji Marg, Lower Parel, Mumbai 400013 (hereinafter referred to as the 'said property') for ₹2,12,00,000/-, observed that no such sale was reflected in the assessee's return of income for the period under consideration. On being queried in this regard, the assessee submitted that the said property/flat was purchased by the assessee's husband Shri Arjun Bulchandani out of funds from his account and the said flat was shown in his Balance Sheet. It was submitted that though the flats were in

the joint names of the assessee, Sri Arjun Bulchandani was the owner of the said property and on sale thereof in the period under consideration, the capital gains arising therefrom was disclosed in his return of income. It was further submitted before the AO that though the assessee's case re-opened for A.Y. 2005-06 for considering the investments made in the acquisition of the said property, the AO after examining the issue accepted that, though the said flat/property was in the joint names of the assessee and her husband, the whole investment in acquisition of the said property was made by her husband, Sri Arjun Bulchandani. The AO in the case on hand, however, did not accept the explanation put forth by the assessee. He was of the view that the whole arrangement surrounding the transaction in respect of the said property was worked out to avoid legitimate tax and defraud the Revenue Department, since though the capital gains on sale of the said property were disclosed by the assessee's husband, he has actually not paid any tax on the profit on the sale thereof as the same was set off against short term capital loss (STCL) on sale of some shares. In this view of the matter, the AO, observing that the case of the assessee's husband case was not selected for scrutiny for A.Y. 2005-06 and 2009-10 and also since the assessee was shown to be the first holder of the said property as per the agreement and AIR information, proceeded to bring to tax 50% of the short term capital gains (STCG) arising on sale of the said property in the assessee's hands as co-owner of the property. The assessment was completed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 13.12.2011 wherein the income of the assessee was determined at ₹48,78,865/- .

2.2 Aggrieved by the order of the assessment for A.Y. 2009-10 dated 13.12.2011, the assessee preferred an appeal before the learned CIT(A)-2, Mumbai challenging the AO's action in bringing to tax 50% of the STCG of ₹45,38,254/- on sale of the said property. The learned CIT(A) disposed off the assessee's appeal vide order dated 09.11.2012 directing the AO to delete the addition of ₹45,38,254/- made in the assessee's hands in respect of 50% of the STCG on sale of the said property.

3.1 Revenue, being aggrieved by the order of the CIT(A)-2, Mumbai dated 09.11.2012 for A.Y. 2009-10, has preferred this appeal raising the following grounds: -

- “1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the short term capital gain of ₹45,38,254/- arising out of sale of residential flat jointly held by the assessee.*
- 2. The appellant prays that the order of the CIT (Appeals) on the above ground be set aside and that of the Assessing Officer be restored.*
- 3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary”.*

3.2 From a perusal of the grounds raised (supra), it is seen that the only issue raised by Revenue is in challenging the impugned order of the learned CIT(A) in directing the AO to delete the 50% of STCG of ₹45,38,254/- arising out of the sale of the said property (flat) in which she was a co-owner with her husband, Sri Arjun Bulchandani. The learned D.R. placed strong reliance in the findings of the AO in the order of assessment that the assessee being a joint owner of the said property along with her husband was liable for tax of 50% of the STCG arising from the sale thereof. It was submitted that the AO was correct in concluding that the whole arrangements surrounding the transaction in respect of the said property was worked out to avoid payment of due taxes, since though the assessee's husband disclosed the entire capital gains on sale of the said property, no taxes were paid as the capital gains was set off against STCL from sale of some shares. It was prayed by the learned D.R. that the order of the learned CIT(A) be reversed and that of the AO be restored in the matter.

3.3.1 Per contra, the learned A.R. for the assessee supported the finding of the learned CIT(A) in the impugned order in directing the AO to delete the addition of ₹45,38,254/- on account of assessing 50% of the STCG on sale of the said property in the assessee's hands. The learned A.R., reiterating the submissions put forth before the authorities below, submitted that while the said property was held in the names of the assessee, her

husband Sri Arjun Bulchandani and Shri Ashwin Bulchandani, it was purchased totally out of the funds of her husband's account; the said property was reflected as part of his immovable property in his personal Balance Sheet and consequently on sale thereof, the STCG arising therefrom was reflected in the return of income filed by her husband, Sri Arjun Bulchandani. It was also submitted that though the assessment for A.Y. 2005-06 in the assessee's case was re-opened for considering her investment, inter alia, in the said property, the AO had accepted the fact that though the assessee's name appeared as a co-owner, the entire investment in the acquisition thereof was made by her husband. It was argued that, in these factual circumstances, the AO's bringing to tax 50% of the STCG in the assessee's hands is erroneous as the same had undisputedly been disclosed by her husband in his return of income for A.Y. 2009-10.

3.3.2 The learned A.R. for the assessee also assailed the view of the AO that the whole arrangement surrounding the transactions in respect of the said property was a device to avoid payment of due taxes as baseless and factually incorrect since all the transactions have been duly reflected in the accounts and returns of the assessee's husband since purchase of the said flat to its sale and the STCL in the same year, against which STCG was set off, was a mere coincidence which could not have been pre-planned from the time of acquisition of the said property in the earlier years. The learned A.R. prays that in view of the above factual matrix of the case, the learned CIT(A)'s finding/order, deleting the addition made by the AO of taxing 50% STCG on sale of the said property, being factually correct ought to be upheld and Revenue's appeal dismissed.

3.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The issue before us is whether or not the 50% of STCG of ₹45,38,254/- arising on sale of the said property is exigible to tax in the assessee's hands.

3.4.2 The facts of the matter as emanate from the record are that the AO in the course of assessment proceedings, on the basis of AIR information

observed that the capital gains on sale of the said property in the period under consideration was not disclosed in the assessee's return of income. The explanation put forth by the assessee, that though the assessee's name appeared as one of the joint owners, the investment in the said property was made entirely by her husband out of his account; was reflected in his personal Balance Sheet from acquisition till disposal and the STCG arising on sale therefrom was disclosed in his return of income for the relevant period, was brushed aside by the AO. The AO was of the view that since the assessee's name appeared in the agreement, she was liable to be taxed for 50% of the STCG arising from sale of the said property, observing that since the assessee's husband had set off the STCG on sale of the said property against sale of some shares, the entire arrangement was done with the intention to avoid payment of legitimate taxes.

3.4.2 On an appreciation of the facts on record, we notice that the AO, after reopening the assessee's case for A.Y. 2005-06 for the purpose of examining, inter alia, the investment in the said property, has in the order of assessment dated 30.11.2012 not disputed the fact that the assessee has not purchased the said property, but rather that the same was purchased by the assessee's husband, Shri Arjun Bulchandani, out of his own funds. Revenue has also not been able to controvert the factual finding rendered by the learned CIT(A), after examining documents and copies of bank statements, etc. placed before him, that even though the assessee is shown as the co-owner of the said property, the source of funds for investment in purchase of the said property is by the assessee's husband and that the property was reflected in his Balance Sheet from the period relevant to A.Y. 2005-06 (i.e. 31.03.2005) till its sale, after which the STCG arising thereon was admittedly disclosed by the assessee's husband in his return of income. In this factual matrix of the case, we concur with the finding rendered by the learned CIT(A) that the entire STCG arising on sale of the said property is to be assessed in the hands of Sri Arjun Bulchandani, the assessee's husband and not in the assessee's hands and consequently uphold his direction to the AO to delete the addition of ₹45,38,254/- on account of 50% STCG arising on sale of the

said property. Revenue's grounds at Sr. No. 1 to 3 are accordingly dismissed.

4. In the result, Revenue's appeal for A.Y. 2009-10 is dismissed.

Order pronounced in the open court on 10th August, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 10th August, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -2, Mumbai*
4. *The CIT - 11, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.