

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1200/Mum/2020
(Assessment Year :2010-11)**

Shri Komal Gurumukh Sangtani 304, Bhoomi Apartment Mahavir Nagar Kandivali (W) Mumbai – 400 067	Vs.	ITO 33(2)(2) C-12, 7 th Floor Pratyaksha Kar Bhavan Bandra Kurla Complex Bandra (E) Mumbai – 400 051
PAN/GIR No. BABPS6408J		
(Appellant)	..	(Respondent)

**ITA No.1201/Mum/2020
(Assessment Year :2010-11)**

Gurumukh I Sangtani 304, Bhoomi Apartment Mahavir Nagar Kandivali (W) Mumbai – 400 067	Vs.	ITO 33(2)(2) C-12, 7 th Floor Pratyaksha Kar Bhavan Bandra Kurla Complex Bandra (E) Mumbai – 400 051
PAN/GIR No. BFHPS2720C		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Rajendra Chandekar
Date of Hearing	11/07/2022
Date of Pronouncement	14/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M.):

These appeals in ITA No.1200/Mum/2020 & 1201/Mum/2020 for A.Y.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-45, Mumbai in appeal No.CIT(A)-45/ITO-33(1)(3)/ITA-40/2017-18 & CIT(A)-45/ITO-33(2)(2)/ITA-98/2017-18 dated 26/07/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/11/2017 & 27/12/2017 respectively by the Id. Income Tax Officer 33(1)(3), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in both these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. None appeared on behalf of the assessee. We proceed to dispose of these appeals by hearing the Id. DR and after perusing the materials available on record.

2.1. Let us take up the appeal of the assessee in ITA No.1200/Mum/2020 for A.Y.2010-11 in the case of Komal Gurumukh Sangtani.

3. We have heard the Id. DR and perused the materials available on record. We find that assessee is an individual NRI and had not filed her return of income u/s.139 of the Act for A.Y.2010-11. The assessee had entered into a property transaction during the year along with her husband resulting in capital gains. Since, no return of income was filed,

the Id. AO reopened the assessment after issue of notice u/s.148 of the Act. The facts that are relevant for the purpose of adjudication of the issue of capital gains are as under:-

3.1. The assessee purchased two residential flats jointly with her husband Shri Gurumukh I Sangtani in the building known as "The Breezy Corner", Mahavir Nagar, Kandivili (W), Mumbai. The details of the said purchases are as under:-

Sl. No.	Flat No. Purchased	Area of the flat	Date of Purchase	Purchased from	Purchased in the name	Amount of Purchase (Rs.)	Stamp Duty Amount (Rs.)	Registration Fee	Total Cost (Rs.)
1)	705, 7 th Floor, B2 Wing	482 sq. ft.	20-4-2006	Saroj Sales Organization	Jointly by Assessee & Her husband Gurmukh I Sangtani	20,15,000	84,500	21,580	21,21,080
2)	706, 7 th Floor, B2 Wing	505 sq. ft.	20-4-2006	Saroj Sales Corporation	Jointly by Assessee & his wife Komal G. Sangtani	21,10,000	89,300	22,480	22,71,780
					Total Cost				43,42,860

3.2. The Id. AO observed that the main source of purchase of this property was housing loan availed from HDFC Ltd., on 06/05/2006 for Rs.30,00,000/-. The assessee is 50% owner of the subject mentioned properties and remaining 50% is held by her husband.

3.3. These properties were sold by the assessee together with her husband during the year under consideration as under:-

Sl. No.	Flat No. sold	Area of the flat	Date of Sale	Sold to	Amount of Sale (Rs.)
1)	705, 7 th Floor, B2	482 sq.ft	04/02/2010	Mrs. Kusumkasliwal	38,74,400

	Wing				
2)	706, 7 th Floor, B2 Wing	505 sq.ft	04/02/2010	Mr. Amit Kasliwal	40,74,400
		Total Sale Consideration			79,48,800

3.4. The assessee in the return of income filed in response to notice u/s.148 of the Act offered capital gains but also claimed certain expenditure on account of purchase of furniture and fixtures and interest paid on housing loan adding to the cost of acquisition and cost of improvement to the property. The assessee was asked to file the copies of evidence for purchase of furniture and fixtures and proved all the payments made for the same together linking the said payments with the bank statements. The Id. AO observed that assessee vide letter dated 28/11/2017 expressed inability to provide copy of bank account. However, the assessee filed the following bills which are described as hereunder:-

Sl. No.	Bill Party Name	Buyer Name	Date of the Bill	Material Purchased	Paid by Cash / Cheque	Amount (Rs.)	Enquiry made / result
1	....	Mr. Gurmukh Sangtani	28. 8. 2016	wall Unit	Cash	43,700	"A" not provided name and address hence enquiry Not possible
2.	....	Mr. Gurmukh Sangtani	10.8.2006	Painting & POP on Wall	Cash	1.21,000	"A" not provided name and address hence enquiry Hot possible
3.	Mangalam Hardware Malad	Mrs. Komal Sangtani	24.7.2006	Safety Door	Cash	49,000	Notice u/s.133(6) dtd. 14.12.2017 issued but no reply received
4	....	Mr. Gurmukh Sangtani	10.8.2006	POP in hall , 190 sq. ft.	Cash	98,000	"A" not provided Name and address hence enquiry not possible

5	....	Mr. Gurumukh Sangtani	10.8.2006	POP in three bedroom		90,000	"A" net provided name and address hence enquiry Not possible
6	Furniture & Mattress Goregaon	Mr, Gurumukh Sangtani	10.8.2006	6 Chair W/Dining Table Set, Centre Table & Seater, Four Leather Sofa Set	Cash	1,23,300	Notice u/s. 133(6) dtd. 14.12.2017 issued, but no reply received.
7	Casarano	Mrs. KomalSangtani	15.8.2006	Wall Unit, Bed Set, Side Table, Dressing lablf	Cash	1,43,000	Address on the bill not available, hence enquiry not possible
8	Manish Industries	Mr. Gurumukh Sangtani	25.10.2006	Vitrified Tiles (Hall), Digital Floor Tiles. Bathroom Tiles, Granite Slabs	Cash	3,95,673	Address on the bill not available, hence enquiry not possible
9	Manish Industries	Mrs. Komal Sangtani	5.11.2006	Kitchen Tiles and Flooring	Cash	13,000	Address on the bill | not available, hence enquiry not possible
10	Climate Cool Service	Mrs. Komal Sangtani	30.7.2006	Samsung AC 1.5 Ton Samsung AC 1.0Ton	Cash	1,02,500	Notice u/s. 133(6) dtd. 14.12.2017/ issued, but no reply received.
11	Shreeji Electronics	Mr. Gurumukh Sangtani	25.08.2006	Samsung 32" LED	Cash	38,000	Notice u/s. 133(6) dtd. 14.12.2017 issued, but no reply received.
12	Shreeji Electronics	Mr. Komal Sangtani	2.8.2006	LG 450 Ltr Double Door Refrigerator	Cash	79,000	Notice u/s. 133(6) dtd. 14.12.2017 issued, but no reply received.
13	Mangaiaim Fixtures & Fitting*.	Mr. Gurumukh Sangtani	1.11.2006	Wardrobe Handles, Wardrobe drawer Handles. Kitchen Drawer Handles Big, Bedroom Door Handles, Main Door Handles,	Cash	1,28,250	Notice u/s. 133(6) dtd. 11.12.2017 issued, hut no reply received.

				Main Door Handles, Bathroom Washbasin Taps, Bathroom Shower Kits, Bathroom Tap, Kitchen Tap, with Hose, Tap & Fillings for Washing Machine			
			Total			1,45,375/-	

3.5. The Id. AO issued notice u/s. 133(6) of the Act to the aforesaid suppliers and observed that no replies were received from the said parties. Accordingly, the Id. AO did not give deduction towards cost of improvement of property in respect of the aforesaid items and correspondingly denied the benefit of indexation also thereof claimed by the assessee while computing the long term capital gains. Similarly, the assessee also claimed the interest paid on housing loan to HDFC Ltd., as part and parcel of cost of acquisition eligible to be deducted while computing capital gains. The Id. AO observed that assessee had given the loan account No.1910036 dated 06/05/2006 wherein the EMI amount of Rs.62,276/- was duly mentioned. Since assessee could not provide the entire repayment schedule and the appropriation of EMI towards principal and interest portion thereof by HDFC Ltd., and that the assessee had bifurcated the interest by her own calculations by arriving at the interest figure of Rs.19,233/- per month on fixed amount basis, the Id. AO disbelieved the same and did not give deduction towards interest on housing loan to be part and parcel of cost of acquisition while computing capital gains. The Id. AO also observed that assessee would have claimed interest on housing loan as a deduction under the head 'income from house property' u/s.24 of the Act in the returns of income. Accordingly, he observed that assessee is not entitled for deduction u/s.48 of the Act

while computing capital gains. With these observations, he denied the benefit of deduction and correspondingly, the indexation benefit thereon on the interest paid on housing loan component while computing capital gains.

3.6. The assessee always pleaded that the purchase of various items as tabulated supra were made in order to make the house habitable and proper for living condition which is very normal and would be incurred by every citizen of the country who is purchasing a property from a builder. The notices u/s.133(6) of the Act issued by the Id. AO to the concerned suppliers were duly served and the suppliers had not responded to the same. The assessee is merely an individual not liable for any tax audit and not having any business income. It is quiet usual for an assessee to make payments in cash for the purchase of the aforesaid items. With regard to interest cost, the assessee pleaded that the Id. AO having accepted the fact that assessee together with her husband availed housing loan from HDFC Ltd., on 06/05/2006 for Rs.30,00,000/- and had also furnished the loan account details thereon , ought to have granted deduction towards interest. Even assuming if the interest component has been wrongly calculated by the assessee on fixed monthly basis, still the same is very much workable by the Id. AO himself and even that figure was not granted deduction by the Id. AO. The said figure could have easily been obtained by the Id. AO from HDFC Ltd., also by calling for information u/s 133(6) of the Act. The assessee vehemently pleaded that without incurring the aforesaid expenses as tabulated in the table, the flats purchased by it would not be habitable at all. Accordingly, the aforesaid costs would form an integral part of the total amount invested for acquisition of the house property. The assessee also placed reliance on the decision of Ahmedabad Tribunal in the case of Shrinivas R Desai

vs. ACIT reported in 155 TTJ 743 (Ahd) in support of its contentions. The assessee also pleaded before the Id. CIT(A) that the following expenditures were incurred by the assessee towards improvement of the house through regular banking channels:-

Sr. No.	Payment date in Bank Statement	Amount
1	25/07/2006	49,000
2	30/07/2006	1,02,500
3	26/07/2006	38,000
4	02/11/2006	1,28,250
5	14/08/2006	1,23,300
6	18/08/2006	1,43,000
7	26/10/2006	3,95,625
8	04/08/2006	69,000
9	09/11/2006	43,000

3.7. All the aforesaid payments were made by cheques routed through regular banking channels. The Id. CIT(A) simply brushed aside the entire contentions of the assessee by stating that the aforesaid expenditures were incurred only on account of personal effects and the same would not be eligible to get added to the cost of acquisition or cost of improvement of the property and consequently not eligible for deduction while computing capital gains. With regard to claim of deduction towards interest of housing loan to be added to the cost of acquisition, the Id. CIT(A) upheld the action of the Id. AO.

3.8. At the outset, from the perusal of the list of aforesaid expenditure as detailed in the 3rd table supra, we are in complete agreement with the arguments advanced by the assessee before the lower authorities with

the aforesaid expenses were incurred only in order to make the house habitable. From the perusal of the list of expenses incurred as stated supra, we find that majority of the items are embedded to the wall and becomes part and parcel of the building itself which is subject matter of sale by the assessee and her husband. Of course in the said list, items like refrigerator, air conditioner, LED TVs, furnitures, dining tables etc., would certainly fall under the ambit of "personal effects" not liable for deduction. However, in respect of remaining items, the assessee would certainly be eligible for deduction as it becomes an integral part of the building. Accordingly, out of the total sum of Rs.14,54,375/- as tabulated supra, we hold that the following items would not be eligible for deduction to be treated as cost of acquisition / cost of improvement u/s.48 of the Act:-

Sl. No.	Bill Party Name	Buyer Name	Date of the Bill	Material Purchased	Paid by Cash / Cheque	Amount (Rs.)
1	Furniture & Mattress Goregaon	Mr, Gurmukh Sangtani	10.8.2006	6 Chair W/Dining Table Set, Centre Table & Seater, Four Leather Sofa Set	Cash	1,23,300
2	Casarano	Mrs. Komal Sangtani	15.8.2006	Wall Unit, Bed Set, Side Table, Dressing table	Cash	1,43,000
3	Climate Cool Service	Mrs. Komal Sangtani	30.7.2006	Samsung AC 1.5 Ton Samsung AC 1.0Ton	Cash	1,02,500
4	Shreeji Electronics	Mr. Gurmukh Sangtani	25.08.2006	Samsung 32" LED	Cash	38,000
5	Shreeji Electronics	Mr. Komal Sangtani	2.8.2006	LG 450 Ltr Double Door Refrigerator	Cash	79,000

3.9. It is not in dispute that majority of the items were also purchased by making payments in cheques through regular banking channels as stated

earlier. It is not in dispute that assessee never carried on any business and accordingly not liable for any tax audit. Hence, there is no bar for the assessee to incur certain expenditures for the purpose of house in cash. As long as the source for the said cash payment is explained from the disclosed income of the assessee, no fault could be attributed on the assessee. It is not a case of the Revenue that the assessee alongwith her husband did not have sufficient cash or cheque source to make the aforesaid payments. Hence, the aforesaid payments cannot be summarily disbelieved by the Revenue. In view of the aforesaid observations, we hold that assessee would be eligible for deduction along with her husband totaling to Rs.9,68,575/- towards cost of improvement made in the house which has to be reduced while computing capital gains in the hands of the assessee as well as in the hands of her husband. The assessee along with her husband would also be eligible for due indexation benefit on the same.

3.10. With regard to deduction claimed on account of interest on housing loan, though the Id. AO had accepted the fact that assessee and her husband had indeed availed housing loan from HDFC Ltd., at Rs.30,00,000/- for purchasing two flats, the assessee could not produce the EMI chart evidencing the total payment of principal and interest portion made to HDFC Ltd., But we also find that assessee had also claimed deduction on account of interest on housing loan of Rs.75,000/- under the head 'income from house property'. Hence, there is a possibility that the assessee could have claimed the interest on housing loan both under the head 'income from house property' as well as trying to take further benefit by adding it to the cost of acquisition while computing capital gains. This doubt has been rightly raised by the Id. AO in the assessment order. We find that this fact has not been clarified by the

assessee even before the Id. CIT(A). However, since this matter requires factual verification, we deem it fit and appropriate to remand this aspect of the issue alone i.e. claim of interest on housing loan to be treated as cost of acquisition of Rs.5,49,454/- while computing the capital gains to the file of the Id. AO for denovo verification in accordance with law. The assessee is at liberty to furnish further evidences in support of her / his contentions in this regard. Needless to mention that the assessee and her husband be given reasonable opportunity of being heard with regard to adjudication of this issue.

3.11. Accordingly, the ground No.1 raised by the assessee is partly allowed and ground No.2 raised by the assessee is allowed for statistical purposes.

4. The decision rendered hereinabove in ITA No.1220/Mum/2020 shall apply mutatis mutandis in the case of Gurumukh I Sangtani in ITA No.1221/Mum/2020 in view of identical facts and grounds.

5. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced on 14/07/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 14/07/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai