

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**MA NO. 629/MUM/2018 : A.Y. : 2008-09
(Arising out of ITA NO. 3195/MUM/2015)**

Assistant Commissioner of Income Tax - Vs. Neelam Omprakash Singh
16(3), Mumbai. (Applicant) C/o. Neelam Nursing Home,
Laxmi Palace, S.V. Road, Malad
(W), Mumbai 400 064.
PAN : ABDPS7751C
(Respondent)

Applicant by : Shri Pravin Salunkhe, Sr DR
**Respondent by : Dr. K. Shivraman &
Shri Rahul Hakani**

Date of Hearing : 24/01/2025
Date of Pronouncement : 24/01/2025

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

This is an application by the Revenue under Section 254(2) of the Income Tax Act, 1961 ('Act' for short) for rectification of order dated 19.04.2018 in ITA No. 3195/Mum/2015 for assessment year 2008-09.

2. The brief facts are that there was a land situated at Goregaon (West) which belonged to late Shri Laxmi Singh Udit Singh. Shri Laxmi Singh Udit Singh died intestate on 15.03.1986 leaving behind his widow, Smt. Kaushalya Laxmi Singh, five sons and five daughters. Smt. Kaushalya Laxmi Singh and the five daughters had relinquished their rights in favour of the five sons of late Shri Laxmi Singh Udit Singh. One of the sons, Dr. Omprakash Singh also died intestate on 07.06.1991 leaving behind his widow, Smt.

Neelam Omprakash Singh, son Shri Anirudh Singh and daughter Natasha Singh. The co-owners had entered into a development agreement with M/s. Brickworks Trading Pvt. Ltd. on 09.10.2022. On the same date, a registered Power of Attorney was executed in favour of the Developer.

3. A Return of Income (RoI) was filed by the assessee, Smt. Neelam Omprakash Singh for assessment year 2008-09 on 30.01.2009 declaring Long Term Capital Gain (LTCG) of Rs.1,76,54,562/- in respect of the development rights assigned to M/s. Brickworks Trading Pvt. Ltd. In the assessment made under Section 143(3) r.w.s. 147 of the Act vide order dated 29.03.2014, the Assessing Officer assessed the total income at Rs.15,17,97,240/-. In appeal by the assessee, the Commissioner of Income Tax (Appeals) ('CIT(A)' for short) vide order dated 15.04.2014 gave partial relief to the assessee, in so far as ground no. 3 is concerned. The Assessing Officer was directed to adopt the Cost Inflation Index (CII) for F.Y 2007-08 and to recompute the cost of acquisition accordingly. All other grounds raised by the assessee came to be dismissed. This order gave rise to ITA No. 3195/Mum/2015 which was filed by the Revenue on the ground as to whether the CIT(A) was justified in directing the Assessing Officer to adopt the CII for financial year 2007-08 for determination of the cost of acquisition in place of CII for 2002-03.

4. It appears that there were other appeals filed by the co-owners with which we are not presently concerned. All these appeals came to be decided by a common order dated 19.04.2018.

5. The only contention raised in the present application by the Revenue is that the Tribunal had made reference to the assessee, Shri Jaiprakash L. Singh in relation to assessment year 2007-08, whose case was not under challenge in ITA No. 3195/Mum/2015, which pertains to the assessee, Smt. Neelam Omprakash Singh. It is

contended that there is no decision rendered by the Tribunal insofar as ITA No. 3195/Mum/2015 for assessment year 2008-09 in respect of the assessee.

6. We have heard parties. Perused record.

7. The learned DR submitted that the Tribunal has not decided ITA No. 3195/Mum/2015 relating to Smt. Neelam Omprakash Singh, which is a mistake apparent from record.

8. Shri K. Shivaram, learned senior Advocate for the respondent has submitted that it was a case of sale of immovable property by joint owners/co-owners and, therefore, issues can be said to be connected. It is submitted that the only contention so far as ITA No. 3195/Mum/2015 in respect of Smt. Neelam Omprakash Singh is concerned was whether the Assessing Officer could have been asked to adopt the CII for financial year 2007-08 in place of 2002-03 for determining the cost of acquisition of the said property. It is submitted that the appeals came to be decided on the preliminary issue regarding assessability of the capital gains in the year under consideration, which would apply uniformly in all the appeals.

9. We have considered the submissions. A perusal of the common order dated 19.04.2018 shows that there was an additional ground raised on behalf of the assesseees, who are the co-owners, as to the eligibility of LTCG being taxed in assessment year 2008-09. A perusal of the order from para 6 shows that this Tribunal placing reliance on the decision of Bombay High Court in *Chaturbhuji Dwarkadaas Kapadia of Bombay vs CIT, 260 ITR 491 (Bom.)* came to the conclusion that the capital gains will arise when the development agreement was entered into which is in assessment year 2003-04 and not in the captioned assessment year. In para 14, this Tribunal has observed that all the captioned appeals relating to other co-owners shall be governed by the findings given in ITA No. 3303/Mum/2013 and 4530/Mum/2013

which shall apply mutatis mutandis. In that view of the matter, the controversy so far as application of the CII would be rendered infructuous. In any case, it cannot be accepted that appeal in ITA No. 3195/Mum/2015 has not been considered or decided. The application is accordingly dismissed.

Order pronounced in the open court on 24/01/2025.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 24/01/2025

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai