

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**I.T.A .No.13/DEL/2014
ASSESSMENT YEAR-2006-07**

Krishena Rampal, E-13/1, Vasant Vihar, New Delhi. (PAN: AAEPR3122N) (Appellant)	vs	DCIT, Circle-24(1), New Delhi. (Respondent)
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Appellant by	Shri G.N. Gupta
Respondent by	Shri Raman Kant Garg, Sr. DR

Date of Hearing	4.1.2016
Date of Pronouncement	18.1.2016

ORDER

PER BEENA A. PILLAI, JM

The present appeal has been filed by the assessee against the order of the ld. CIT(A)-XXVIII, New Delhi vide order dated 28.10.2013, for assessment year 2006-07, on the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case, the learned CIT(A)-XXVIII, New Delhi (hereinafter called the CIT(A) for short) erred in holding that DCIT, Circle-24(1), New Delhi (hereinafter called

the AO for short) had jurisdiction to frame the assessment for A.Y. 2006-07 u/s 147/147/143(3) of the Income Tax Act, 1961 (hereinafter called the Act for the sake of brevity).

2. That on the facts and in the circumstances of the case, the learned CIT(A) erred in holding that the appellant had transferred any assets to Laxmi Builtech Pvt. Ltd. during F.Y. 01.04.2005 to 31.03.2006 relevant to A.Y. 2006-07.

3. That without prejudice to the generality of grounds of appeal no. 1 & 2 above, the learned CIT(A) erred

i) in confirming the action of the AO in determining the capital gains at Rs. 72, 71,158/- representing the total sale consideration received by the appellant without making any deduction in respect of the indexed cost of the original assets transferred; and

ii) further in not allowing a deduction u/s 54 of the Act in respect of the investment in the new residential house acquired from M/s. Laxmi Builtech Pvt. Ltd.”

2. At the outset, ld. AR submitted that on instruction obtained from the assessee, Ground no.1 and Ground no. 2 in the present appeal, are being withdrawn. Accordingly, on the basis of the submissions made by the ld. AR, ground no. 1 and 2 in the present appeal stand dismissed.

3. The only issue that remains to be adjudicated, is in respect of the computation of capital gains in the hands of the assessee.

Brief facts of the case are as under:-

3.1. The assessee and her husband late Shri N.N. Rampal entered into a collaboration agreement with the Builder on 20.10.2005, wherein it was agreed between the parties that the Builder would build for them their house afresh, which then consisted only of the ground floor. It was agreed between the parties that the builder would construct a three storied structure, being ground plus two floors at his own cost. The consideration for bringing into existence three storied structure was that the parties would part with first floor of the constructed premises, along with a proportionate share (being 30%) of undivided land, and the amount as set out in the collaboration agreement dated 20.10.2005 would be paid to the assessee and her husband.

3.2. Accordingly, the sale deed was executed on 12.10.2006 for the first floor between the assessee. During the assessment proceedings, ld. Assessing Officer sent summons to the builder for examining the details as set forth in the agreement dated 20.10.2005. The Assessing Officer framed assessment u/s 147 r/w 143(3) of the Act. The Ld. Assessing Officer was of the opinion that, a benefit has accrued to the assessee being Rs.55,42,316/- which is a part of the sale consideration received against the transfer of 30% of the ownership right in the undivided,

indivisible and impartable plot of land. Apart from the above consideration, the assessee had also received a sum of Rs.45,00,000/- on account of collaboration agreement executed between the builder and the assessee against which the assessee had claimed exemption u/s 54EC in the assessment year 2007-08. Ld. Assessing Officer was of the opinion that the assessee was not eligible for exemption u/s 54EC as the limitation period for making such investment u/s 54EC had expired. Ld. Assessing Officer also observed that the assessee has claimed capital gain in the year 2007-08 whereas it should have been in the year under consideration. Ld. Assessing Officer, therefore, made an addition of Rs. 73,16,350/- taxable at 20%.

4. Aggrieved by the order of the ld. Assessing Officer, the assessee preferred an appeal before the ld. CIT(A).

4.1. Ld. CIT(A), after going through the submissions of the ld. Assessing Officer, recorded that the claim u/s 54EC has rightly been rejected as the investment in REC bonds have been made on 31.3.2007, whereas the amount was received by the assessee on 12.10.2006 on execution of the sale deed with the builder. He further held that the collaboration agreement was signed during the FY. 2005-06, and the date of sale of property clearly falls

within the FY. 2005-06. He, therefore, held that the Assessing Officer has rightly charged capital gain. Ld. CIT(A) dismissed the assessee's appeal filed before him.

5. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

5.1. Before us, the ld. AR submits that the assessee is not disputing to the year of charge for considering the capital gains in the hands of the assessee. However, ld. AR submits that the Assessing Officer should have considered the indexation and the benefit that could arise in the hands of the assessee u/s. 54 of the Act. Ld. AR submitted that a specific ground could not be raised as the representative of the assessee before the ld. CIT(A) was not from a tax background. Ld. AR submitted that a specific ground in respect of indexation to be considered and for allowing the deduction u/s 54 of the Act has been raised before us in the present appeal.

5.2. A perusal of the computation by the ld. Assessing Officer reveals that the impugned income earned by the assessee has been subjected to normal rate of tax instead of considering it under section 45 of the Act. It cannot be disputed that the

assessee is not eligible for the benefit of indexation provided under the Act. Further, it cannot be ignored that the assessee has made an investment in another new residential house, acquired from the builder and thus, could be eligible for deduction u/s 54 of the Act.

5.3. We are, therefore, of the considered opinion that it would be fit and proper to set aside this issue for a *de novo* consideration, to the file of the ld. Assessing Officer, for computing of the capital gains in the hands of the assessee in accordance with law. Needless to say that the ld. Assessing Officer may issue notice to the assessee to substantiate its legal claim and the same may be considered for computing capital gains in the hands of the assessee. In the light of above discussion, we are setting aside the orders of the ld. CIT(A). The appeal of the assessee stands statistically allowed.

Order pronounced in the open court on 18.01.2016

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated: 18thJANUARY 2016
'GS'

I.T.A. 13/Del/2014
Assessment year 2006-07

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT 4.CIT(A)
5. DR

Asstt. Registrar