

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

**Before Shri D.T. Garasia, Judicial Member  
and Shri Rajesh Kumar, Accountant Member**

**ITA No. 3975/Mum/2016**  
(Assessment Year: 2011-12)

Shri Pradip K. Darooka C/o. G.M. Kapadia & Co. 1007, Reheja Chambers 213, Nariman Point Mumbai 400021	Vs.	Income Tax Officer (International Taxation)-1(1) Scindia House, Ballard Pier Mumbai 400038
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PAN – ADXPD3562C

**Appellant**

**Respondent**

Appellant by: Shri Madhur Agarwal & Hitesh T  
Respondent by: Shri M.C. Omi Ningeshen

Date of Hearing: 03.02.2018  
Date of Pronouncement: 13.02.2018

**ORDER**

**Per Rajesh Kumar, AM**

This appeal has been filed by the assessee against the order of the CIT(A)-57, Mumbai dated 12.02.2016 for A.Y. 2011-12.

2. The only issue raised by the assessee is against upholding the order of the AO by the CIT(A) in disallowing a loss of ₹21,72,891/- arising on sale of agricultural land and residential building therein.

3. The brief facts of the case are that the assessee filed return of income on 28.07.2011 declaring total income of ₹6,17,549/-. The case was selected for scrutiny and statutory notices were issued and served upon the assessee. In the assessment proceedings the AO noticed that the assessee has shown long term capital gain (loss) of ₹21,72,891/-. During the course of assessment proceedings a revised working was called for by the AO and was accordingly filed calculating a loss of ₹81,72,891/-. The AO disallowed the loss by observing and holding as under: -

*“18.1 The assessee has shown the magnanimity in not claiming the c/f. Of such loss for set off for subsequent assessment years, but for the reason noted as “the bifurcation of sale consideration is not available between land and building”.*

*18.2 The fact is that the assessee has computed the loss of current assessment year and providing the reason that the bifurcation of sale consideration is not available between land and building, while the sale agreement in itself is for land only. Considering the facts, circumstances and the position of law as discussed above in the order, it is clear that assessee has sold and transferred the agriculture land only. Therefore, the Long Term Capital Loss of Rs.21,72,891/- (revised working for Long Term Capital Loss at Rs.81,72,891/-) computed by the assessee is disallowed. Accordingly, the carry forward of such Long Term Capital Loss is disallowed.”*

The AO also initiated penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter “the Act”). Aggrieved by the order of the AO the assessee preferred appeal before the CIT(A).

4. Before the CIT(A) the assessee submitted that the action of the AO in disallowing loss of ₹21,72,891/- arising on sale of agricultural land and residential building therein was wrong and against the facts of the case. The assessee further submitted that in A.Y. 2011-12 the assessee sold agricultural land along with building for a consideration of ₹1.80 crores. The assessee submitted that he has no intention of setting off the loss against current year income or carrying forward the said loss to the subsequent years for setting off the same against any income in subsequent assessment years. The intention of the assessee not to claim set off or carry forward of the loss is apparent from the computation of income, return of income filed and submission of the assessee during appellate proceedings in which he categorically submitted his intention was not to set off against the current year's income or carry forward the loss to subsequent years for setting off against the future income. However, the CIT(A) brushed aside the contention of the assessee and dismissed the appeal on the issue by observing and holding as under: -

*“I have considered the issue. The brief facts are that the assessee bought an agricultural piece of land for Rs. 30 lacs in AY 2007-08 and*

*which was sold in the present year for Rs. 1.80 cr. The appellant has claimed deduction of Rs. 1,06,04,342/- on account of construction of a residential house on the said plot and a further exemption u/s 54 of Rs. 24,31,451/-. The said was the amount invested in the capital gains account scheme from the sale of flat made in Ay 2007-08. As for the cost of construction the AO has held that the facts of the case do not show that the assessee had constructed residential house. From the drawings submitted before the Sarpanch the plan is of a school, dormitory, cowsheds, laundry, tool shed etc. There is no NA from the Municipal authorities to show that the assessee had the requisite approval for construction of a residential property; naturally consequentially there is no completion certificate. The appellant on the other hand has tried to submit that he had the approvals from the sarpanch. But then he has not been able to show the drawings of a residential house having been approved nor has he been able to show any receipts for the expenditure on construction. All this assumes even more significance in light of the AO's finding that the Agreement to sell in 2010 only talks of the land having been sold; there is no mention of any building. In light of these findings I am in agreement with the AO that the appellant does not satisfy the conditions as laid down in section 54. The loss calculated on the sale thereby is to be disallowed. The action of the AO is upheld. It is also observed that though the original claim was Rs. 21,72,891/- it was revised by the appellant during the course of assessment to Rs. 81,72,891/- which is what the AO has disallowed. Capital gain is to be calculated without factoring in the loss/ deduction u/s 54. The action of the AO is upheld. The ground is rejected.”*

Aggrieved, assessee is in appeal before us.

5. We have heard the rival submissions and perused the relevant material placed before us from which we find that the loss incurred by the assessee on sale of agricultural land and residential building located therein to the extent of ₹21,72,891/- was neither claimed for set off against any other income in the current year nor the same was claimed to be carried forward to the subsequent years for being set off. After examining the record carefully we find that the order of the CIT(A) is not correct and cannot be sustained as an item of loss which is never set off or claimed in the current year or carry forward to the subsequent years for being set off against future income cannot be disallowed. Accordingly we set aside the order of the CIT(A) and direct the AO to delete the disallowance as the same is not claimed by the assessee as has been discussed hereinabove.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 13<sup>th</sup> February, 2018.

Sd/-  
**(D.T. Garasia)**  
**Judicial Member**

Sd/-  
**(Rajesh Kumar)**  
**Accountant Member**

Mumbai, Dated: 13<sup>th</sup> February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -57, Mumbai*
4. *The CIT (IT)-1, Mumbai*
5. *The DR, "H" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.