



IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAVISH SOOD, JM
ITA No.3633/Mum/2013
(Assessment Year :2009-10)

Mr. Neval Angel Disilva Paras Mani, Room No.2 Thomas Disilva Road Opp. Amar Vyayam Shala Dahisar(W), Mumbai - 400068	Vs.	The Income Tax Officer – Ward 15(2)(4) Mumbai
PAN/GIR No.AHUPD7423M		
Appellant)	..	Respondent)

Assessee by	Shri K.P. Kapadia
Revenue by	Shri Suman Kumar
Date of Hearing	23/04/2018
Date of Pronouncement	25/04/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-26, Mumbai dated 02/01/2013 for A.Y.2009-10 in the matter of order passed u/s.144 of the Income Tax Act, 1961.

2. In this appeal assessee is aggrieved for not giving credit for the cost of acquisition as on 01/04/1981 while computing capital gains.
3. Rival contentions have been heard and record perused. Facts in brief are that it is a case which was completed u/s.144 of the I.T Act as the assessee could not make proper compliance at the time of assessment proceedings. It was observed by the A.O that the assessee

alongwith ten co-owners sold a property for Rs.2,72,16,000/-, but long term capital gain was not disclosed. Due to non-compliance on the part of the assessee, the A.O treated the-entire amount of Rs.2,72,16,000/- as long term capital gain in the hands of the assessee.

4. By the impugned order CIT(A) directed the AO to tax the capital gain in the hands of the assessee to the extent of 1/10th of sale consideration of the sale property and not on the entire consideration of Rs.2,72,16,000/-. However, the CIT(A) did not allow any deduction on account of the cost of acquisition of the property as on 01/04/1981 on the plea that assessee has not placed reliable documentary evidence which can prove that the property was purchased in the year 1973 as claimed.

5. Precise observation of CIT(A) was as under:-

“3.5 As regards the benefit of indexation of the cost of purchase of this property, it is noted that the appellant has not been able to file any reliable documentary evidence which can prove that the property was purchased in 1973 as claimed. Further/ there is no evidence that the said property was acquired and any consideration was paid at that time by the appellant. Therefore, under these circumstances, cost of acquisition of this property will have to be considered as Nil in the hands of the appellant. However, I do agree with the appellant that as per the development agreement of this property, the appellant will have 1/10th share in the seven flats worth Rs.2.60 crores in all. Therefore, under these circumstances, the appellant is entitled to claim exemption u/s.54. In this regard, the case law of Smt. K.G Rukminiamma (Supra) relied upon by the appellant is applicable in the case of the appellant also because like in that case, the appellant has received 1/10th area of the seven flats. Simply on this ground that the share of the appellant in seven flats is not specific, exemption available u/s. 54 cannot be denied to the appellant because all the ten co-owners of the property will have to jointly share the seven flats by their internal adjustments. Even if .the appellant will not get one full flat still, he will get atleast a portion of one fiat which will be treated as a residential house within the expression of residential house u/s. 54 of the Income Tax Act. Under these circumstances, the A.O is directed to provide appropriate relief to the appellant by allowing the exemption u/s.54 of the Income Tax Act and rework out the capital gain taxable if any, on the 1/10th share of sale consideration of the appellant of Rs.27,21,600/- . . :

4. *In the result, appeal is partly allowed.”*

6. Against the above order of CIT(A), assessee is in further appeal before us.

7. Learned AR placed on record the documentary evidence which indicate that property was acquired by the original owner on 29/12/1973, thereafter, property devolved to the assessee as a legal heir. This document goes to the root of the issue for deciding the net capital gain earned by assessee on its sales. Since it is an exparte order, in the interest of justice, we restore the matter back to the file of the AO to verify the documents and its authenticity to find out genuineness of the documents and to consider fair market value of the property as on 01/04/1981, if the same is found to be acquired by the assessee prior to 01/04/1981. After verification the AO decide the matter afresh as per law. We direct accordingly.

8. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 25/04/2018

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 25/04/2018

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai