

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. Nos. 4954/Del/2015

Assessment Year: 2011-12

MONIKA JAIN,
LGF-7A, NRI COMPLEX,
MANDAKINI, GREATER KAILASH-IV,
NEW DELHI
(PAN: AACPJ3778Q)
(ASSESSEE)

VS. ITO, WARD II(2)
FARIDABAD

(RESPONDENT)

Assessee by: Sh. Akash Chugh, CA
Revenue by: Sh. Kaushlendra Tiwari, Sr. DR

ORDER

This appeal is filed by assessee against the Order passed by the Ld. CIT(A), Faridabad relating to Assessment Year 2011-12 on the following grounds:-

1. In the facts and circumstances of the case, the Ld. Assessing Authority and Ld. First Appellate Authority have grossly erred in not allowing the claim of exemption in terms of section 54 of the Act in respect of Long term capital gain arising on sale of residential flat at Varsova (Mumbai) against the purchase of new residential plot made during the year, which is grossly injudicious, unwarranted against the facts and bad in law.

2. In the facts and circumstances of the case, the Ld. Assessing Authority and Ld. First Appellate Authority have grossly erred in holding that no ground has been raised by the assessee regarding claim of exemption U/S 54 at any stage during appellate proceedings, which is arbitrary, injudicious and against the facts of the case.
3. In the facts and circumstances of the case, the Ld. Assessing Authority and Ld. First Appellate Authority have grossly erred in alleging that assessee owned a residential house and no details were given in this regard, therefore, assessee is not entitled for exemption for long term capital gain which is arbitrary, unwarranted and against the facts of the case.
4. The Ld. Assessing Authority and Ld. First Appellate Authority have grossly erred in disallowing the cost of construction of flat as claimed by the assessee based on the valuation report of registered valuer and in fact not allowing any cost of construction of flat while computing short term capital gains on sale of construction portion of flat which is grossly injudicious, arbitrary and bad in law.

5. The appellant prays for leave to add, amend, alter or withdraw any grounds of appeal.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. As regards ground no. 1 to 3 relating to denying the benefit of exemption u/s. 54 of the Act is concerned, Ld. Counsel of the assessee stated that Ld. CIT(A) has observed that *“at the time of filing the appeal, these grounds have not been raised as an additional ground at any time during the course of appellate proceedings, even though this was an issue of adjudication by the AO. Thus in view of these facts no comments were offered on this issue”*. However, Ld. Counsel of the assessee has submitted that the aforesaid findings of the Ld. CIT(A) given in para no. 7.1 at page no. 5 of the impugned order are factually incorrect, because the assessee vide letter dated 19.2.2015 had raised an additional ground for granting benefit of exemption u/s. 54 of the Act before the Ld. CIT(A), but was not considered by him. In this behalf, Ld. Counsel of the assessee has stated that Ld. CIT(A) has passed a non-speaking order, despite the fact that assessee has submitted all the evidences and documents, which never commented upon by the Ld. CIT(A). He further stated that assessee has filed all the papers / evidences before the lower authorities and also certified it. He further stated that assessee is still in possession of all the papers and evidences to substantiate its case, if the matter is set aside to the Ld. CIT(A) to decide the same afresh, as per law.

3.1 With regard to ground no. 4 relating to disallowing the claim of cost of construction is concerned, Ld. Counsel of the assessee has submitted that Ld. CIT(A) has dismissed this ground due to non-production of evidences. He stated that now the assessee is in possession of all the evidences regarding expenses incurred on construction of property in question. Ld. Counsel of the assessee further stated that property in question related to three persons. Ld. Counsel of the assessee draw my attention towards page no. 24 which is copy of sale deed dated 02.07.2010 made at Mumbai by (i) Mrs. Usha Rani Jain, W/o Sh. Rattan Bhushan Jain (ii) Mrs. Monika Jain W/o Prashant Jain (3) Mr. Saurabh Jain S/o Mr. Rattan Bhushan Jain, all resident at 24-25, Neelam Bata Road, Faridabad, NIT Haryana-120001. He further stated that the property in question in dispute is owned by the three persons including the assessee and the revenue authority has given the similar relief of cost of construction to other two persons, but denied the same to the assessee. He further draw my attention towards the page no. 56 to 58 of the PB which is the copy of the assessment order of Sh. Saurabh Jain u/s. 143(3) of the I.T. Act, 1961 filed by the assessee. He further stated that all the evidences with him has been filed before the AO and the Ld. CIT(A), but has not been appreciated by both the parties. Therefore, he requested that the issue no. 4 may be set aside to the Ld. CIT(A) to decide the same afresh, keeping in view of the assessment order of Sh. Saurab Jain passed u/s. 143(3) of the Act (Supra).

4. On the contrary, Ld. DR relied upon the orders passed by the lower authorities and stated that assessee was given

sufficient opportunity for substantiating his claim, but he could not avail the same. Therefore, the order of the authorities below especially the impugned order may be upheld and appeal of the assessee may be dismissed.

5. I have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). As regards ground no. 1 to 3 relating to denying the benefit of exemption u/s. 54 of the Act is concerned, I note that Ld. CIT(A) has observed that *“at the time of filing the appeal, these grounds have not been raised as an additional ground at any time during the course of appellate proceedings, even though this was an issue of adjudication by the AO. Thus in view of these facts no comments were offered on this issue”*. However, Ld. Counsel of the assessee has submitted that the aforesaid findings of the Ld. CIT(A) given in para no. 7.1 at page no. 5 of the impugned order are factually incorrect, because the assessee vide letter dated 19.2.2015 had raised an additional ground for granting benefit of exemption u/s. 54 of the Act before the Ld. CIT(A), which was not considered by him and passed a non-speaking order, without appreciating the evidences and documents filed before him. I further find that the assessee is in possession of all the papers and evidences to substantiate its case and intended to raise the additional ground, if any, before the Ld. CIT(A). Therefore, in the interest of justice, we set aside the ground no. 1 to 3 and sent back to the Ld. CIT(A) with the direction to decide the same afresh and pass a speaking order, after appreciating all the documents, evidences, etc. filed by the Assessee and assessee is

directed to fully cooperate with the Ld. CIT(A) and did not take any unnecessary adjournment.

5.1 With regard to ground no. 4 relating to disallowing the claim of cost of construction is concerned, I find that Ld. CIT(A) has dismissed this ground due to non-production of evidences and assessee's counsel has stated that he is in possession of all the evidences regarding expenses incurred on construction of property in question. I further find that property in question related to three persons and after perusing the sale deed dated 02.7.2010 at page no. 24 of the PB made at Mumbai by (i) Mrs. Usha Rani Jain, W/o Sh. Rattan Bhushan Jain (ii) Mrs. Monika Jain W/o Prashant Jain (3) Mr. Saurabh Jain S/o Mr. Rattan Bhushan Jain, all resident at 24-25, Neelam Bata Road, Faridabad, NIT Haryana-120001 and the revenue authority has given the similar relief of cost of construction to Saurabh Jain, but denied the same to the assessee, which is unfair and untenable which establish from page no. 56 to 58 of the PB which is the copy of the assessment order of Sh. Saurabh Jain u/s. 143(3) of the I.T. Act, 1961 filed by the assessee. It is also noted that all the evidences have been filed before the AO and the Ld. CIT(A), but have not been appreciated by both the authorities. Therefore, in the interest of justice, we set aside the ground no. 4 and sent back to the Ld. CIT(A) with the direction to decide the same afresh, keeping in view of the assessment order of Sh. Saurabh Jain passed u/s. 143(3) of the Act (Supra) and pass a speaking order, after appreciating all the documents, evidences, etc. filed by the Assessee and assessee is directed to

fully cooperate with the Ld. CIT(A) and did not take any unnecessary adjournment.

6. In the result, the appeal filed by the assessee stand allowed for statistical purposes.

Order pronounced on 14/05/2018.

SD/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 14/05/2018

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

