

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A .L. SAINI, AM

आयकरअपीलसं./ITA No.298/Kol/2018

(निर्धारणवर्ष / Assessment Year: 2014-15)

Suman Saha C/o. ATULPURI & COMPANY, Chartered Accountants, First Floor, 121, Shankar Road Market, New Rajinder Nagar, New Delhi – 1100 60.	Vs.	D.C.I.T, Cir-2(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :CLMPS 1937 F		
(Appellant)	..	(Respondent)

Appellant by

:Shri Atul Puri, AR

Respondent by

:Shri Sallong Yaden, Addl. CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing**

: 11/04/2018

घोषणाकीतारीख/**Date of Pronouncement**

: 30/05/2018

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2014-15, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals), Kolkata, in Appeal No.82/CIT(A)-22/14-15/16-17/Kol, dated 04.12.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3)/144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'),dated 31.12.2016.

2. The grievances raised by the assessee are as follows:

1. That the Ld. CIT (A) has erred in misunderstanding the facts of the case.

2. That the Ld. CIT (A) has further erred in confirming the addition, made by the A.O. u/s 69 of the Income Tax Act, despite the evidence of the investment being available withthe A.O., in the form of the bank statement and also furnished to the Ld. CIT(A) duringthe appellate proceedings.

3. That the Ld. CIT (A) has further erred in confirming the addition, made by the A.O. u/s69 of the Income Tax Act, despite the evidence of the source of investment, in

the property under question, submitted, in the form of sale deeds, etc., of other properties, before the A.O. as well as the Ld. CIT during remand/ appellate proceedings.

4. That the Ld. CIT (A) has further erred in deviating from the main issue of addition having been made u/s 69 and ignoring the additional evidence, of the source of investment into the property, filed during the appellate/ remand proceedings.

5. That the Ld. CIT (A) has further erred in ignoring the evidence of investment into the two properties, sold to invest into the new property, which had been acquired and evidence of all the payments made, during the year 2003 to 2005, out of Non Resident bank Account of the assessee, with Citibank, also having been submitted and dismissing the appeal on the ground that no income, from the self occupied property has been declared.

6. That the Ld. CIT(A) has further erred in ignoring the evidence of investment made with GGL Hotels & Resorts was sold during the year under consideration, on the ground that no income from the property has been declared, despite the short term capital gains reported during the year under consideration.

7. Any other ground before or at the time of hearing.”

3. Although, in this appeal, the assessee has raised a multiple grounds of appeals but at the time of hearing the solitary grievance of the assessee has been confined to the issue that Assessing Officer was erred in making addition of Rs.2,40,00,000/- on account of unexplained investment in spite of evidences submitted by the assessee in respect of source of investment in the property.

4. The brief facts qua the issue are that the assessee is a U.S National, of Indian origin. During the year under consideration, he had sold two flats and out of the proceeds of these two flats, he bought a new property in Kolkata. During the assessment proceedings, the Assessing Officer noted from the bank statement, in which the sale proceeds of the two properties amounting in all to Rs.2,68,37,350/- appeared, as deposited, on various dates, out of which, the payment for the new property, had been made by the assessee to the tune of Rs.2,40,00,000/-. The Assessing Officer noted that the CIB section of the ITS reflects that the assessee purchased two immovable properties at a consideration of Rs.1,20,00,000/- each. The said properties were registered on 15.06.2013 with Jt. Sub-registrar Kurla-4, Mumbai, Maharashtra, from whose office the information emanated. However, the Assessing Officer

noted that the assessee has not provided any details pertaining to these investments, especially the source of funds for such investments. Further, from the bank statements furnished by Union Bank of India and Corporation Bank it was observed by the Assessing Officer that there was no debit matching, the cost of acquisition of the said properties, therefore, the source of funds remains unexplained and hence, the Assessing Officer framed assessment order u/s 144 of the Act and added back the full amount of investment into the new flats at Mumbai, u/s 69 of the Income Tax Act, 1961, to the tune of Rs.2,40,00,000/-.

5. On appeal by the assessee, the Id. CIT(A) confirmed the addition made by the Assessing Officer. During the appellate proceedings, the Id. CIT(A) after satisfying himself, was kind enough to accept additional evidence u/s 46A of the I.T. Rules and asked for remand report from the Assessing Officer. The Assessing Officer, in turn, during the remand proceedings, investigated the matter and heard to the Authorized Representative of the assessee. During the remand proceedings, complete documents, in support of source of acquiring both the properties were submitted to the Assessing Officer. A Rejoinder dated 20.06.2017 to the remand report was submitted by the assessee and the assessee also submitted further clarifications to the Id. CIT(A) vide his letter dated 29.11.2017. However, the Id. CIT(A) rejected the contention of the assessee and upheld the addition made by the Assessing Officer.

6. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before us.

7. The Id. counsel for the assessee has submitted before us, the bank statement (vide PB-50) wherein the amount of sale proceeds deposited in the bank, are getting reflected in deposit side of the bank statement and payment for purchase of property in Mumbai is also getting reflected in the withdrawal side of the bank statement. The Id. counsel for the assessee has submitted

that sale proceeds of the property and the refund from GGL Hotels & Resorts were utilized to purchase property in Mumbai. The Id. counsel for the assessee also submitted the details of the sale consideration received by the assessee on account of sale of the property in Kolkata and this detail of consideration is duly matched with the entries reflected in the bank statement of Union Bank of India, account number 460902010092906. The Id. counsel submitted that the assessee has submitted additional evidences before the Id. CIT(A) and in turn the Id. CIT(A) sent these additional evidences for examination by the Assessing Officer. The Assessing Officer submitted the remand report on may 16,2017 and the important para of the remand report is quoted below for ready reference:

Report:

A: It is seen from the registered deeds, bank statements, memo of consideration etc., that the assessee sold a residential apartment, located at Highland Park, Kolkata on 06.06.2013 for a consideration of Rs.1,96,00,000/-. The said apartment was purchased at an aggregate cost of Rs.72,62,716/- during the year 2003-04. The assessee has claimed indexation and the indexation cost of the property has been worked out to Rs.1,44,62,896/- and the resultant LTCG has been worked out at Rs.51,37,104/-.

From the above para of the remand report, it is clearly evident that assessee sold the property located at Highland Park, Kolkata on 06.06.2013 for a consideration of Rs.1,96,00,000/- and offered long term capital gain tax. The said sale consideration was utilized by the assessee, along with GGL hotels proceeds, to purchase the property in Mumbai

In response to the remand report, the assessee has also submitted the rejoinder of the remand report dated 20.06.2017, which is given below for ready reference:

*“He was not aware that tax at source has been deducted by GGL Hotel & Resorts Co Ltd. on the additional benefit which was Rs.7,50,000/-. That was the reason for the difference of Rs.2,17,998.00 between 26AS and the returned income. This being the factual position and had occurred due to a genuine mistake on the part of the assessee, who is a foreign national, we offer it for taxation and do not press this ground.
In the case of Long Term Capital gains on the sale of Kolkata property, from what the assessee had understood, that since more than the entire sales consideration from the sale of the residential house property, has been invested into a new residential house property, the*

same was exempt. The assessee under a bona fide belief that, being exempt it was not required to be reflected in the income tax return, omitted to include, the same, while filing the return.

But, we wish add here that there is no suppression of the facts, as observed by the Ld. A.O. since the TDS on the transaction, is appearing in 26AS of the assessee, which is a part of the records. Also neither there was any intend nor there is any evasion of tax. We feel that this is a technical omission on the part of the assessee, who is a foreign national, not expert on Indian taxation, and there is no loss to the revenue.

Now coming to the merits of the case, we regretfully but respectfully state that, the Ld. A.O., while responding, in the remand report, has deviated from the main issue. The disallowance, while framing the assessment, by the Ld. A.O., has been made u/s 69 of the Income tax Act, 1961. The Ld. A.O. in Point 7:02 of the assessment order mentions the reason for this as that from the Bank statements it is seen that there is no debit, matching or near matching the cost of acquisition of such properties. Although the four amounts of Rs.59,40,000.00 each appearing on 14-06-2013,(Rs.60,00,000 - Rs.60,000 TDS), when reconciled with 26AS of the assessee, fully match with the investment into the new residential property at Mumbai.

We have, in our earlier submissions, clearly demonstrated, with documentary evidence, that the source of investment of Rs.2,40,00,000.00 into Mumbai property was partly, out of the sale proceeds amounting to (Rs.1,96,00,000.00) of Kolkata property, acquired in 2003 i.e. is more than 10 years ago from its sale, and partly out of the buyback of GGL Hotels & Resorts,(Rs.72,37,350/-) on which short term capital gains has already been offered for taxation. Since the Ld. A.O. has, in the remand report, remained silent on this aspect, it means only one thing that he is satisfied with the explanation and documents submitted, in support of the source of investment of Rs.2,40,00,000.00 which was added back u/s 69 of the Act.

In any case, the sale proceeds of Kolkata property, are appearing in the bank statement on 7-5-13, 24-5-13 and 8-6-13. If these were unexplained, we wonder, why did the Ld. A.O. not resort to the provisions of sec 68 of the Income tax Act, 1961. We, even at the cost of repetition, state that the issue under consideration is the addition of Rs.2,40,00,000.00 u/s 69 of the Act, and not due to the denial of claim u/s 54 of the Act which in any case the assessee is entitled to. It is well settled that, where an assessee has not claimed a deduction, which he is entitled to, the A.O., on his own must allow the same, while computing the taxable income. So if the assessee sold a residential house property, and in turn invested the entire capital gains into a new residential House property, within one year before or two years from the sale of the original asset, the deduction u/s 54 of the Income Tax is allowable. So this deduction, in the case under consideration is allowable.”

8. On the other hand, the Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that the Assessing Officer has completely misunderstood the facts of the case. The fact is that the assessee had sold his property at Highland Park, Kolkata for a total consideration of Rs.1,96,00,000/- and under buy back scheme with GGL Hotel & Resorts, he received Rs.72,37,350/- (Rs.66,50,000 + Rs.5,87,350)

as compensation, on which the assessee offered for taxation as current year income. With help of the sale proceeds of Kolkata and GGL proceeds, the assessee purchased another residential property, jointly with his wife, in Mumbai, for a total consideration of Rs.2,40,00,000/- plus registration charges. We note that Assessing Officer made addition of Rs.2,40,00,000/- as unexplained investment u/s 69 of the Income Tax Act, 1961 without considering the sale deed of the property sold and purchase deed of the property purchased. The Assessing officer could not verify the bank statements properly and failed to establish the link between purchase and sale of property by the assessee. The Bank statements were available to the Assessing Officer during the assessment proceedings wherein the details regarding the property purchased and sold were available and the same had been explained by the assessee during the assessment proceedings and appellate proceedings. We note that on perusal of the sale deed of the new property acquired, reveals that the total consideration paid is Rs.2,40,00,000/- and there are two sellers and two buyers. Accordingly, four payments of Rs.59,40,000/- each [Rs.60,00,000 - Rs.60,000/- (1% TDS on Rs.60,00,000)] were made on 14.06.2013 and on 17.06.2013. These four entries are getting reflected in the bank statement submitted to us, vide page No.50 of paper book.

We note that the assessee purchased another residential property, jointly with his wife, in Mumbai, for a total consideration of Rs.2,40,00,000/- and TDS deducted thereon are getting reflected in the bank statement, vide paper book page No.51, there are two entries of Rs.1,20,000/- each, on dated 17.06.2013 appearing in the bank statement for TDS @1% on Rs.1,20,00,000,(with narrations, by the bank "Direct Tax"). All these entries appear in the bank statement and clearly prove beyond doubts that the payments, for the acquisition of the new property, were made through the banking channel by account payee cheque and duly accounted for. Merely, because the Assessing Officer could not match these payments, the addition cannot be justified. We note that source for the payment of the new property acquired at Mumbai is from the sale consideration of property at Highland

Park, Kolkata and buy back scheme with GGL Hotel & Resorts, a few days before the purchase of the property in Mumbai.

10. We note that the source of investment into the properties sold, is not in question and it is also not the case of the Assessing Officer that the source of the properties sold, during the year under consideration, is in doubt. The perusal of the sale deed of the property at Kolkata shows that the property was acquired way back in 2003. The details reflect that the payments for the same were made during the years 2003-05, out of the NRE account of the assessee. Therefore, it is abundantly clear that the source to acquire the Kolkata property, which is sold, during the year under consideration, is not in doubt, as the sale consideration is appearing in the bank statement. In fact, the Memo of sale consideration which is on Page 24 of the sale deed of Highland Park property, Kolkata, is containing instrument (cheque numbers) as mentioned therein, which is getting tallied with the cheque numbers appearing in the bank statement.

We note that the case of the assessing officer is that the assessee has failed to explain the source of investments to purchase the property in Mumbai. We are of the view that the source for acquiring the new property is sale of property at Highland Park, Kolkata and buy back scheme with GGL Hotel & Resorts, as explained above, which are evident from the bank statement, transaction through account payee cheques and copies of the sale deeds. Moreover, appropriate TDS has been deducted by the respective parties on sale of property in Kolkata and purchase of property in Mumbai, as explained by us in para 9 of our order. Therefore, assessee has discharged his obligation to prove the source of investments in Mumbai property by way of providing sale deed, purchase deed, bank statement, deduction of TDS on purchase and sale of property and the fact that all transactions are through account payee cheques. The assessing officer has failed to bring any evidence on record to prove that purchase and sale deed of properties and transaction through banking channel by account payee cheques, followed by

TDS deduction are bogus. Hence, by no stretch of imagination, the investment in Mumbai property, can be treated as unexplained investment.

Therefore, considering the factual position discussed above, we are of the view that the addition made by the Assessing Officer and sustained by the Id. CIT(A) needs to be deleted. Accordingly, we delete the addition.

11. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 30.05.2018.

**Sd/-
(A. T. VARKEY)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Date: 30/05/2018

(RS, SPS)

**Sd/-
(A. L. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Suman Saha
2. प्रत्यर्थी/ The Respondent-D.C.I.T, Cir-2(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
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By Order

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Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.