

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

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT  
&  
SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**Stay Appl. No. 896/Del/2018  
(In ITA No. 7165/Del/2018)  
(ASSESSMENT YEAR-2014-15)**

Suresh Singhal 811-812, Aggarwal Syber Plaza-1 Netaji Subhash Place, Pitampura, New Delhi. <b>PAN No. AAAPS7729L</b>	vs	ACIT Circle 61(1) New Delhi.
<b>Appellant by</b>	<b>Sh. K. Sampath, Adv.</b>	
<b>Respondent by</b>	<b>Sh. S.L. Anuragi, Sr. DR</b>	

<b>Date of Hearing</b>	<b>07/12/2018</b>
<b>Date of Pronouncement</b>	<b>11/12/2018</b>

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

Present stay application has been filed by applicant seeking stay of outstanding demand of Rs.57,81,580./-.

2. Brief facts are as under:

it has been submitted that Assessee, an Individual, is a professional, and has filed his return of income for Rs.46,67,470/- on 26.11.2014. Assessment u/s 143(3) of the Act, 1961 was completed at total income of Rs.2,60,31,500/- on 29.12.2016, wherein following additions were made:

- i. Rs.1,74,96,164/- by denying exemption claimed u/s 54 of the Act against long term capital gain earned on sale of house property;
- ii. Rs.38,67,868/- being the amount of interest expenses claimed against income from other sources.

2.1 assessee aggrieved by the order of Ld.AO, preferred appeal before the Ld.CIT(A)-20, which was partly allowed in vide order dated 28<sup>th</sup> September, 2018. The Ld.CIT(A) confirmed disallowance of exemption claimed u/s 54 on account of sale of long term capital asset and also confirmed the finding of Ld.AO that sale was not effected during the year under consideration. In regards second addition made on account of interest, Ld.CIT(A) allowed partial relief to the extent of Rs. 6,04,835/-.

2.3 Aggrieved by the order of Ld.CIT(A), assessee preferred appeal before this Tribunal on following grounds:

1. *“The Ld. AO has made a disallowance of deduction u/s 54 of the Income Tax Act, 1961 amounting to Rs. 1,46,28,050/-, which has not been justified and against the law. Therefore, the assessee prays in your Court of law that the same may please be deleted on the following grounds:*

1.1 *Extinguishment of rights amounts to ‘transfer’ in terms of section 2(47) of the Income Tax Act, 1961. The transfer of possession of property by the assessee after receipt of full consideration amounts to ‘extinguishment of rights’.*

- 1.2 *Allowing possession of property to be taken or retained in part performance of contract in terms of section 53A of the Transfer of Property Act, 1882 amounts to 'transfer'. There is no condition of execution of sale deed for the same.*
- 1.3 *The stamp duty had been paid by the buyer company much before the execution of sale deed, indicating the fact that property had been transferred for all practical purposes and also the intention to execute sale deed.*
- 1.4 *The execution of sale deed was beyond the control of the assessee as the management of buyer company was Orissa-based, who could not find it feasible to travel to Delhi at that time for the purpose.*
2. *The Ld. AO has made a disallowance of 50% of the cost of improvement amounting to Rs.28,68,114/-. The Assessee does not agree to the addition and prays the same be deleted on the following grounds:*
  - 2.1 *Despite the fact that maintenance of books of accounts and other documents are not required post six years from the end of the relevant assessment year in terms of Rule 6F(5) of the Income Tax Rules, 1962, the assessee had submitted relevant documents and records supporting his claim of cost of improvement.*
  - 2.2 *Disallowance of 50% expenses is arbitrary and lacks basis.*

3. *The Ld.AO has made a disallowance of interest expenses under the head 'Income from other sources' amounting to addition of Rs. 38,67,868/-, to which the assessee does not agree and prays that the same be deleted on the following grounds:*

3.1 *Replacement of loan has been considered as the repayment of loan by the Ld. AO.*

3.2 *Long term loans have been advanced as short term demand loans, resulting in mismatch in the rates of interest.*

3.3 *The amount of interest which has been capitalized by the assessee himself in his books of accounts (which was not claimed as expense), has been added to the total income of the assessee by the Ld. AO.”*

3. Ld.Counsel submitted that assessee has duly deposited 15% of gross demand amounting to Rs.8,67,240/-, and assessee does not have wherewithals to pay balance demand. Under these circumstances, it is prayed that disputed demand may be stayed till disposal of appeal.

4. On the other hand, Ld.DR relying upon orders passed by authorities below objected for a blanket stay to be granted to assessee. He submitted that in the event stays granted certain amount may be directed to be deposited against the balance outstanding demand as on date.

5. We have perused the submissions advanced by both the sides and the light of the records placed before us.

6. We are of considered opinion that assessee has made out *prima facie* case on merits, and balance of convenience shifts in favour of assessee. We are therefore inclined to grant stay to assessee for year under consideration, for a period of six months(180 days) or till passing of order, whichever is earlier, subject to making payment of Rs.10 Lacs in two equal installments of Rs.5 Lacs each on or before 31/12/18 and 15/01/19. On making afore stated payment within stipulated time, registry is directed to fix appeal in ITA No. 7165/del/2018 for hearing on 05/03/2018. Needless to say that assessee shall not seek any adjournment unless there being a cogent reason, otherwise this stay shall stand automatically vacated.

**Order pronounced in the open court on 11/12/2018**

**Sd/-  
(N.K. SAINI)**

**ACCOUNTANT MEMBER**

**Sd/-  
(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dated: 11/12/2018

*\*Kavita Arora*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date
1.	Draft dictated on	07/12/2018
2.	Draft placed before author	11/12/2018
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	12/12
6.	Kept for pronouncement on	11/12
7.	File sent to the Bench Clerk & order uploaded on	12/12
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	