

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

And

SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.407/Ind/2017

A.Y. 2012-13

Rakesh Rajani, Indore
PAN – AKNPR 8240 G

:: Appellant

Vs

ITO-1(2), Indore

:: Respondent

Assessee by	Shri Hitesh Chimnani, CA
Respondent by	Shri K.C. Selvamani, Sr. DR
Date of hearing	19.3.2019
Date of pronouncement	01.4.2019

O R D E R

PER SHRI KUL BHARAT, JM

This appeal is filed by the assessee against the order of Id. CIT(A)-I, Indore dated 31.3.2017 challenging the confirmation of the addition of Rs.68,11,873/- on account of deduction claimed u/s 54F of the Income Tax Act.

2. Facts, in brief, are that the assessee returned long term capital gain of Rs.68,11,873/- on sale of land claiming exemption by stating that the capital gain was invested in purchase of plot for a consideration of RS.77,50,000/- which was purchased in the FY 2011-12 and on which construction work of house was going on. The Assessing Officer noted that as per registry, the plot

was not purchased in FY 2011-12 but on 23.3.2013. The Assessing Officer also noted that the claim for exemption was made u/s 54/54F of the Income Tax Act, however, the construction was not completed within the stipulated period of three years from the date of transfer i.e. 08.11.2014 and also the unutilised amount was not deposited in capital gain account scheme as provided u/s 54/54F. The Assessing Officer also recorded a finding that on inspection of the new asset i.e. plot no.345, Gumasta Nagar, Indore, in the presence of Shri Pawan Rajani brother of the assessee on 30.1.2015, it was found that there was no house constructed on the said plot. Statement of Shri Pramod Neema, Manager of Indore Cloth Market Madhyamvargiya Grah Nirman Sahakari Sansthan Maryadit, seller was recorded wherein Shri Neema also gave a categorical statement that there was no construction on the plot except for construction of a wall approx.10*40 sq.ft. and cement poles. The construction of wall was started only two days before. Considering these facts, the Assessing Officer disallowed the claim of Rs.68,11,873/-. Ld. CIT(A) maintained the addition holding that the assessee has not been able to establish that the conditions specified for allowing the claim u/s 54F have been satisfied and hence the assessee is found to be not eligible for the allowance of the claim u/s 54F.

3. At the outset of the hearing, Id. counsel for the assessee contended that the Assessing Officer as well as Id. CIT(A) violated the principle of natural justice as they ignored vital evidences admitted by the Assessing Officer himself. Revenue Authorities failed to appreciate that it is true that the

registry was done on 23.3.2013 but the purchase of plot was made before 30.7.2012 in three parts much prior to the date of the registry. The assessee had filed relevant papers related to bank account, cash account, house account, new asset purchased etc. Even remand report submitted by the Assessing Officer was ignored wherein it is stated that the house was built in due time. Thus, the Revenue Authorities have taken contrary versions in the original and remand proceedings. On the other hand, Id. Sr. DR relied upon the orders of the Revenue Authorities.

3. On consideration of above facts and submissions of both the parties, we find that in the instant appeal, the assessee has filed paper books running into 116 pages along with summary of relevant pages of orders and paper book, wherein the relevant documents have been annexed, which need reconsideration at the level of the Assessing Officer. The Assessing Officer is required to examine the submissions as narrated above by the learned Counsel for the assessee and the material placed before him in respect of the claim. Therefore, in the interest of justice, we deem it appropriate to set aside the orders of the Revenue Authorities. The appeal is remanded back to the file of the Assessing Officer with direction to consider the submissions/relevant papers. The Assessing Officer would decide the appeal afresh in terms as indicated above after affording due opportunity of being heard to the assessee as per law and the assessee is also directed to

cooperate/appear before the Assessing Officer in this regard. Accordingly, appeal filed by the assessee is allowed for statistical purposes only.

Order was pronounced in the open court on 01.4.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated : 01.4.2019

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