

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.833/Bang/2018
Assessment year : 2012-13

The Income-tax Officer, Ward-6(2)(3), Bangalore.	Vs.	Mr. Amrutlal Pachan Patel, Patel Timber, No.2/4, 1 st Phase, Peenya Industrial Area, Bangalore-560 058. PAN – AAZPP 1174 H.
APPELLANT		RESPONDENT

CO No.79/Bang/2018
Asst. Year : 2012-13
(By assessee)

Appellant by	:	Dr. P.V Pradeep Kumar, Addl. CIT
Respondent by	:	Shri H Sivaprasad Reddy, C.A

Date of hearing	:	06.06.2019
Date of Pronouncement	:	12.06.2019

ORDER

Per B.R Baskaran, Accountant Member

The Revenue has filed this appeal challenging the order dated 30/10/2017 passed by Id CIT(A)-6, Bengaluru and it relates to asst. year 2013.

2. The Revenue is aggrieved by the action of Id CIT(A) in granting relief allegedly by admitting additional evidences in violation of Rule 46A of the ITAT Rules.

3. We heard parties and perused the record.

4. In the return of income filed, the assessee claimed exemption u/s 54D of the Act, which is allowable against the capital gains arising on sale of industrial undertaking. The AO noticed that there is difference in the address of the property which was claimed to be industrial undertaking and which was actually sold. Since the assessee did not clarify the possession, the AO disallowed the claim of deduction u/s 54D of the Act. The ld CIT(A) noticed that there has been change in the address of the plot as per Karnataka Gazette No.C1429SPQ211 dated 22/2/2012. He also noticed that the address and Ward No. of Village Peenya, Dasarahalli have been used interchangeably by the Revenue authorities. Accordingly the Ld CIT(A) held that disallowance of deduction claimed us/ 54D is not sustainable. Accordingly he allowed the claim of the assessee. The Revenue is aggrieved by the said decision of ld CIT(A) on the plea that the ld CIT(A) has admitted additional evidences in violation of Rule 46A of the IT Rules.

5. The ld DR submitted that the ld CIT(A) has admitted additional evidence without confronting the same by the AO. He further submitted that the assessee had claimed exemption u/s 54D of the Act in succeeding asst. year and the assessee has actually filed the relevant details only in that year. The ld DR submitted that it is well settled proposition that each asst. year is separate and the principle of *res judicata* will not apply to Income-tax proceedings. Accordingly, the ld DR submitted that the assessee should have furnished necessary details in this asst. year

also before the AO. Accordingly he submitted that the Ld CIT(A) should have confronted the details with the AO.

5. On the contrary, the ld AR submitted that the assessee has furnished all the details before the AO during the course of asst. proceedings of the year under consideration. He submitted that the AO, however, has failed to consider those details. He submitted that the ld CIT(A) has examined those details and accordingly given relief to the assessee. Accordingly he submitted that there is no violation of Rule 46A of the ITAT Rules, as contended by the revenue. The ld AR further submitted that the assessee has claimed exemption on the sale of very same industrial plot u/s 54D of the Act in the succeeding asst. year and the same has been allowed by the AO. The ld AR further submitted that the brother of the assessee was the co-owner of the plot and he had also claimed similar exemption on his share in asst. year 2012-13 and 2013-14. He submitted that the claim made by the assessee's brother has been allowed by his AO. Accordingly the AR submitted that there is no dispute with regard to the nature of land as well as address of the land and hence the order passed by ld CIT(A) does not call for any interference.

6. We have heard the rival contentions and perused the record. Admittedly the AO has not examined the relevant details relating to deduction claimed by the assessee u/s 54D of the Act during the year under consideration. It is an admitted fact that the AO has allowed deduction u/s 54D in the succeeding asst. year in respect of very same plot on which the deduction was claimed during the

year under consideration. Hence, the issue under consideration boils down to only examination of relevant details for the year under consideration.

7. The Id AR has submitted that the AO has already considered relevant facts in the succeeding year and hence the AO shall allow deduction u/s 54D of the Act for the year under consideration also, if the matter is restored to the his file. Under the set of facts we are of the view that no prejudice would be caused to the assessee if this issue is restored to the file of the AO for the purpose of examining the relevant details relating to deduction u/s 54D of the Act. Accordingly we set aside the order passed by the Id CIT(A) and restore the issue to the file of the AO for examining relevant details relating to deduction claimed u/s 54D of the Act.

8. In the cross objection, the assessee has supported the order passed by the Id CIT(A). In view of the order passed by us in the appeal of the Revenue, the cross objection does not require adjudication.

9. In the result, the appeal filed by the Revenue is treated as allowed and the Cross-objection filed by the assessee is dismissed.

Order pronounced in the Open Court on **12th June, 2019.**

Sd/-
(N.V Vasudevan)
Vice President
Bangalore,
Dated, 12th June, 2019.
/ vms /

Sd/-
(B.R Baskaran)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.