

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1857/Bang/2017
Assessment Year : 2012-13

Shri Mugur Dundanayaka Basavaraju, # 149, Nayakara Street, Muguru Village, T. Narasipura Taluk, Mysuru District. PAN: BGQPB6811H	Vs.	The Income Tax Officer, Ward – 1 [1], Mysuru.
APPELLANT		RESPONDENT
Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Dr. P.V. Pradeep Kumar, Addl. CIT (DR)
Date of hearing	:	08.07.2019
Date of Pronouncement	:	12.07.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. Pr.CIT, Mysuru dated 23.03.2017 u/s 263 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

“1. The order passed by the learned Pr. C.I.T. u/s 263 of the Act, in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned Pr.CIT is not justified in directing the learned A.O. to disallow the deduction claimed u/s.54F of the Act, which results in subjecting the entire compensation received by the appellant to tax without allowing any deduction for the cost of acquisition and improvement under the facts and in the circumstances of the appellant's case.

3. The learned Pr. CIT ought to have appreciated that the exemption u/s. 54F of the Act was available only in respect of the capital gains arising to the appellant and since the appellant has not computed the capital gains and had claimed the gross consideration as exempt u/s. 54F of the Act, the learned Pr. CIT ought to have directed the learned A.O. to deny the exemption on the capital gains and not on the entire consideration.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. It was submitted by Id. AR of assessee that the main issue i.e. regarding allowability of deduction u/s. 54F of the IT Act, the assessee has admittedly no case because this is true that the capital gains arising from the transfer of long term capital asset was invested in reconstruction of hotel which is not eligible for deduction u/s. 54F of the IT Act. He submitted that in view of the assessee's claim for deduction u/s. 54F to the extent of entire amount of long term capital gain, no claim was made by the assessee towards cost of acquisition or cost of improvement and therefore, even if this was held by Id.Pr. CIT that the assessee is not eligible for deduction u/s. 54F, he should have directed the AO to allow cost of acquisition and cost of improvement for the purpose of computing long term capital gain. The Id. DR of revenue supported the order of Pr.CIT passed by him u/s. 263 of the IT Act. At this juncture, the bench wanted to know as to what happened in the consequential order passed by the AO as per the direction of Pr. CIT u/s. 263 of the IT Act. In reply, it was submitted by Id. AR of assessee that in course of proceedings for passing consequential order, as per order dated 30.06.2017 passed by the AO u/s. 143(3) r.w.s. 263 of the IT Act, copy available on pages 27 to 32 of the paper book, this claim was raised by the assessee that for the purpose of computing long term capital gain out of the compulsory acquisition, deduction on account of indexed cost of acquisition of Rs. 71,20,950/- should be allowed which will result into capital loss of Rs. (-) 28,96,422/-. But this claim of the assessee was not considered by the AO by following the judgment of Hon'ble Apex Court rendered in the case of Goetze (India) Ltd. vs. CIT as reported in 284 ITR 323. He submitted that even if this claim was not allowed by the AO by following this judgment of Hon'ble Apex Court, said claim should be considered and allowed by the Tribunal. The judgment of Hon'ble Apex Court does not impinge upon the power of the Tribunal. Id. DR of revenue supported the order of Id. CIT.
4. We have considered the rival submissions. We find that as per the impugned order of Id. CIT passed by him u/s. 263, he has simply held this much that assessee's claim for deduction u/s. 54F is not allowable as per law and on this aspect, the assessee has nothing to submit. In fact, the Id. AR of

assessee has fairly admitted that the claim of the deduction u/s. 54F is not allowable in the facts of present case. Regarding second submission in respect of allowing deduction of indexed cost of acquisition for the purpose of computing long term capital gain, we would like to observe that in the present proceedings initiated by way of the order passed by Id. Pr. CIT u/s. 263, this aspect of the matter is not open before us in the present appeal and hence, on this aspect, we do not want to make any observation. As per the Id. AR of assessee, separate appeal is pending before the Tribunal against the consequential order passed by the AO u/s. 143(3) r.w.s. 263 of the IT Act on 30.06.2017 and hence, we feel that this issue may be raised by the assessee in those proceedings if so advised but in the present proceedings, no observation on this aspect is called for because making any observation on those aspects in the present appeal will amount to giving advance decision in respect of that appeal. Hence, we make no comment on this aspect.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 12th July, 2019.
/MS/

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.