

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.589/Lkw/2018
Assessment Year:2013-14

Smt. Meenu Malhotra, 99, HIG, Ratanlal nagar, Kanpur. PAN:AFUPM 0622 H (Appellant)	Vs.	Income Tax Officer-2(2), Kanpur. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Smt. Alka Singh, D.R.
Date of hearing	31/07/2019
Date of pronouncement	31/07/2019

ORDER

This appeal has been filed by the assessee against the order of learned CIT(A)-I, Kanpur dated 15/06/2018 pertaining to assessment year 2013-14. In this appeal the assessee has raised the following grounds:

"1. Because the CIT(A) has erred on facts and in law in upholding the order passed under section 143(3) of the Income-tax Act, 1961 dated 10.03.2016 which order is bad in law and be quashed.

2. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs.23,59,223/- earned on account of long term capital gains, invested in purchase of residential house claimed exempt u/s.54F, without any basis or reasoning the same be allowed.

3. Because the assessee appellant having utilized the entire net consideration in purchase of a residential house, the exemption claimed u/s 54F being allowable, the CIT(A) was not justified in disallowing the same. The order passed by the CIT(A) be set-aside and the claim be allowed.

4. *Because the Assessing Officer as well as the CIT(A) have erred on facts and in law in disallowing and upholding the deduction claimed u/s 54F on account of long term capital gains earned during the year, the deduction claimed be allowed.*

5. *Because the CIT(A) has erred on facts and in law in upholding the disallowance of loss of Rs.1,57,718/- claimed on sale of units as well as upholding the addition of Rs.13,189/-, the addition is bad in law and be deleted.*

6. *Because the CIT(A) has erred on facts and in law holding that the provision of section 94(8) of the Act are applicable and the short term capital loss of Rs.1,57,718/- incurred as sale of units of Reliance Income Fund, is not allowable. The finding of the CIT(A) is not based on correct facts, the order of the CIT(A) be set-aside and the short term capital loss be allowed to be set off against other income.*

7. *Because on a proper consideration of facts and circumstances of the case the authorities below have erred on facts and in law in making and upholding the disallowances and additions to the income of the assessee without proper appreciation of facts of the case, the disallowances / additions be deleted."*

2. At the outset, Learned A. R. submitted that assessee had sold a commercial property and had invested the proceeds in Birla Mutual Fund and after withdrawing from Birla Mutual Fund, the assessee had purchased a residential property within the prescribed period of time. However, the Assessing Officer did not allow deduction u/s 54F of the Act on the basis that assessee had not invested the proceeds in the capital gain scheme account and also at the time of sale, the assessee was holding three properties and also because of the fact that the property so purchased by the assessee was partly residential and partly commercial. Learned A. R. in this respect submitted that regarding first objection of the Assessing Officer that assessee had not deposited the proceeds in the capital gain scheme, the law laid down by various Benches of the Tribunal, is that if the assessee,

during the course of assessment proceedings, demonstrates before the Assessing Officer that he has invested the amount in the purchase of a new property then the requirement of keeping the funds in capital gain scheme is not necessary. Reliance in this respect was placed on the order of Chandigarh Bench of the Tribunal in the case of Seema Sabharwala vs. Income Tax Officer in I.T.A. No.272/Chd/2017.

2.1 As regards the objection of Assessing Officer that the assessee was holding three properties, Learned A. R. submitted that out of three properties, two properties were commercial in nature and in this respect invited our attention to the copy of affidavit signed by the assessee and also invited our attention to the petition for admission of additional evidence, which are in the form of confirmation from the tenants regarding use of properties for commercial purposes. Learned A. R. submitted that these evidences could not be filed before the Assessing Officer as the authorities below did not demand the same. However, since these evidences go to the root of the matter, it was prayed that the same may be admitted.

2.2 Regarding the third objection of the Assessing Officer, which relates to the fact that a part of new property was being used for residential purposes and a part was being used for commercial purposes, Learned A. R. relied on the order of Chennai Bench of the Tribunal in the case of A. M. Subramanian vs. DCIT in I.T.A. No.860/Chny/2017 and ACIT vs. A. M. Surbamanian in I.T.A. No.1196/Chny/2017 where vide order dated 05/03/2018, the Tribunal has held that only criteria for allowing benefit u/s 54F is that the assessee should have purchased a residential house within the stipulated period and therefore, it was prayed that the necessary relief may be allowed to the assessee.

3. Learned D. R., on the other hand, argued that if the assessee could not file the evidence before the Assessing Officer, she could have definitely filed the same before the CIT(A) as it was the objection of the Assessing Officer and therefore, assessee should have filed the same before learned CIT(A) and in view of the above, it was argued that the additional evidence at this stage should not be admitted.

4. I have heard the rival parties and have gone through the material placed on record. I find that the assessee did own three properties at the time of sale of property however, the nature of properties was neither explained by the assessee nor was asked by the Assessing Officer. As regards the argument of Learned D. R. that assessee should have filed the same before the CIT(A), Learned A. R. had stated that assessee was never advised by the counsel, representing the matter, and she was completely dependent upon the advisor and therefore, there was no fault of the assessee. Learned A. R. has also stated that CIT(A) also never raised any query to demonstrate the character or use of the property. Therefore, keeping in view the substantial justice, I am of the opinion that the additional evidence filed by the assessee should be admitted as these evidences go to the root of the matter and therefore, these are admitted. Since these have to be examined by the Assessing Officer therefore, I deem it appropriate to remit the matter back to Assessing Officer who should readjust the issue afresh after keeping in view the additional evidences. The Assessing Officer is also directed to examine the case laws relied on by Learned A. R. for the following propositions:

- (a) That if the assessee had demonstrated before the Assessing Officer that assessee had already invested the amount in the purchase of new property then the need to place the funds into capital gain account is not necessary.
- (b) That new property should be residential property, even though a part of it is used for commercial purposes.

With these directions, the matter is set aside to the file of the Assessing Officer for readjudication.

5. The other issue raised by the assessee regarding disallowance of Rs.13,189/- is also set aside to the Assessing Officer for readjudication as I have already remitted the substantial grounds to the file of the Assessing Officer. Needless to say that assessee will be provided sufficient opportunity of being heard.

6. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 31/07/2019)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:31/07/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow