



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2876/Mum./2016
(Assessment Year : 2011-12)

Ashok G. Chauhan, Flat no.B-301
Veena Beena Acharya
Dhonde Marg, Sewree
Mumbai 400 015
PAN – AABPC7897A

..... Appellant

v/s

Addl. Commissioner of Income Tax
Circle-32, Mumbai

..... Respondent

Assessee by : Smt. Vasantiben Patel a/w
Shri Nitesh Joshi
Revenue by : Shri Manoj Kumar

Date of Hearing – 27.08.2019

Date of Order – 30.08.2019

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the assessee is against the order dated 10th March 2016, passed by the learned Commissioner of Income Tax (Appeals)-32, Mumbai, for the assessment year 2011-12.

2. The dispute in the present appeal is with regard to the addition made on account of long term capital gain arising out of surrender of

tenancy right and denial of deduction under section 54F of the Income-tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 15th December 2011 declaring total income of ₹ 1,03,17,250. In the return of income filed for the impugned assessment year, the assessee had offered long term capital gain of ₹ 81,12,378, on surrender of tenancy rights and simultaneously had claimed deduction under section 54F of the Act. In the course of re-assessment proceedings, the Assessing Officer called for the details relating to surrender of tenancy rights and computation of capital gain as well as deduction claimed under section 54F of the Act. On perusing the details, he found that on surrender of tenancy rights in favour of Kalpavriksha Developers in respect of a property at Mehta Industrial Estate, Mazgaon, vide agreement dated 2nd March 2010, the assessee was to receive a consideration of ₹ 8.50 crore. Taking note of the date of agreement, the Assessing Officer was of the view that the capital gain arising from surrender of tenancy right has to be assessed in the assessment year 2010-11. However, the assessee claimed that since major part of the sale consideration was received during the year under consideration, capital gain is taxable in the impugned assessment year. The Assessing Officer, however, did not accept the contention of the assessee. He observed,

while completing the assessment in case of the assessee in the assessment year 2010–11, it has been held that the capital gain arising out of surrender of tenancy right is taxable in the assessment year 2010–11. Therefore, he added the capital gain in the impugned assessment year on protective basis. As regards assessee's claim of deduction under section 54F of the Act, the Assessing Officer observed that in the assessment completed in assessee's case for the assessment year 2010–11, claim of deduction under section 54F of the Act has been disallowed. Accordingly, he disallowed assessee's claim of deduction under section 54F of the Act in the impugned assessment year as well.

4. The learned Authorised Representative submitted, while deciding assessee's appeal on identical issue in the assessment year 2010–11, the Tribunal, though, has sustained the addition of capital gain made on substantive basis, however, assessee's claim of deduction under section 54F of the Act has been allowed. Thus, she submitted, the addition of capital gain made on protective basis in the impugned assessment year has to be deleted.

5. The learned Departmental Representative agreed with the aforesaid submissions of learned Authorised Representative.

6. We have considered rival submissions and perused material on record. Undisputedly, the capital gain arising from surrender of tenancy rights was added on substantive basis in the assessment year 2010-11 and on protective basis in the impugned assessment year. Notably, while deciding assessee's appeal in the assessment year 2010-11, the Tribunal in ITA no.1309/Mum./2016, dated 12th April 2019, though, has upheld the addition of capital gain on substantive basis, however, assessee's claim under section 54F of the Act was allowed. That being the case, the addition of long term capital gain made on protective basis in the impugned assessment year cannot survive. Accordingly, we delete the addition of capital gain made by the Assessing Officer on protective basis. Since, it is held that the capital gain on surrender of tenancy right is assessable in the assessment year 2010-11 and assessee's claim of deduction under section 54F of the Act was also allowed in assessment year 2010-11, the ground raised by the assessee against the disallowance of deduction under section 54F of the Act has become redundant. Grounds are partly allowed.

7. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 30.08.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.08.2019

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai