

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.3113/Del./2018
Assessment Year 2013-2014

Shri Mishri Lal Deepak, M/s. Khurja Gas Syndicate, G T Road, Khurja, Bulandshahr, UP PAN AFWPD1141G (Appellant)	vs.,	The DCIT, Circle- Bulandshahr, Bulandshahr. (Respondent)
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For Assessee :	Shri Divyanshu Agrawal, And Ms. Sishmita Kumar, Advocates
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	27.08.2019
Date of Pronouncement :	05.09.2019

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(A), Ghaziabad, Dated 2nd January, 2018, for the assessment year 2013-14.

2. Briefly the facts of the case are that the assessee filed return of income declaring income of Rs.7,83,480/-. The assessing officer asked the assessee to justify the capital gain and claim of deduction under section 54EC of

the Income Tax Act, 1961. The assessee submitted that as the assessee was the first owner and beneficial owner of the sold property, despite it being in the joint name with his wife, the income from capital gain was clubbed in the hands of the assessee under section 64 of the Income Tax Act. However, the assessee claimed benefit under section 54EC of the Income-Tax Act of Rs.66 lacs by purchase of lands under section 54EC in his name and in the name of his wife. The said details are given in para-3 of the assessment order. The assessing officer noted that the monetary limit of purchase of land or rather limit under section 54EC is restricted to Rs.50 lacs in case of a single assessee.

2.1. The assessee explained that as per section 64 clubbed income means total income i.e., the income after deduction. The assessing officer, however, noted the language of section 64(1) of the Income Tax Act which reads *“in computing the total income of an individual, there shall be included all such income as arises directly or indirectly---”*. The assessing officer, thus, noted that the word “total” is used for the person in whose hands the income is calculated

i.e., the person who has paid the cost of acquisition. The word “total” is not used as prefix before income for the person whose income is to be clubbed. Hence, the method is clear, that first the income will be calculated only after that eligible deduction to the beneficial owner will be allowed. The assessing officer, therefore, held that in this case only the 54EC investment made till the prescribed limit of Rs.50 lacs will be allowed and balance claim of Rs.16 lacs is to be disallowed. The assessing officer, therefore, made addition of Rs.16 lacs.

3. The assessee challenged the addition before the Ld. CIT(A). The assessee, however, pleaded before the Ld. CIT(A) that mistakenly the long term capital gain of half share of his wife Smt. Shakuntala Devi, the sold of flat was clubbed under section 64 of the Income Tax Act. She is entitled for separate exemption. The Ld. CIT(A) noted that assessee was beneficial owner of the property sold, as the entire investment was made by the assessee, though the property also bears name of his wife and the income from capital gain was accordingly clubbed in the hands of

assessee. During appellate proceedings, assessee failed to substantiate that appellant was not the beneficial owner of the land sold during the year. The Ld. CIT(A), accordingly, dismissed the appeal of assessee.

4. I have heard the Learned Representative of both the parties.

5. Learned Counsel for the Assessee submitted that only the net income is to be considered instead of gross income. However, he has admitted that no such plea was taken before the authorities below and even there is no ground of appeal raised by the assessee. He has also argued that assessee did not furnish information/details of gross and net income before the authorities below as well as before the Tribunal.

6. On the other hand Ld. D.R. submitted that assessee has been changing the stand at different stages, therefore, appeal of assessee has no merit and the same may be dismissed considering that the limit of cost of investment have been provided at Rs.50 lacs under section

54EC of the Income Tax Act, 1961. There is, thus, no infirmity in the orders of the authorities below.

7. I have considered the rival submissions and do not find any merit in the appeal of the assessee. The assessee pleaded before the assessing officer that he is beneficial owner of the property sold, despite it was in the joint name with his wife. The assessee also shown income from capital gain by clubbing the entire income in his hand. Thus, the assessee has definitely shown capital gain in his name considering him to be the beneficial owner of the property. The assessee made cost of investment in purchase of land in a sum of Rs.66 lacs. The assessing officer, therefore, correctly noted that the exemption under section 54EC is prescribed up-to Rs.50 lacs only. In Section 54EC cost of investment should not exceed Rs.50 lacs. The assessing officer rightly given benefit of Rs.50 lacs only in the hands of the assessee. The assessing officer, therefore, correctly made addition of Rs.16 lacs. The assessee, however, fetched the submission before Ld. CIT(A) and it was submitted that wife of assessee Smt. Shakuntala Devi

has half share in the property which should be allowed exemption separately. The assessee has, however, failed substantiate before the Ld. CIT(A) that he was not the beneficial owner of the land sold during the year. Since the assessee disclosed entire capital gain in his hands in the return of income and admitted before assessing officer that he is beneficial owner of the property sold, therefore, assessee could not be allowed to change the stand. The Ld. CIT(A) correctly dismissed the appeal of assessee. It may also be noted here that now the assessee has taken a different plea which were not taken before the authorities below that only net income must be considered, for which, assessee did not furnish any details before the authorities below as well as before the Tribunal. The Counsel for Assessee, therefore, was not justified in raising such a plea which was also not taken in the grounds of appeal. The plea of the Learned Counsel for the Assessee is, therefore, an afterthought and is accordingly rejected. In view of the totality of the facts and circumstances of the case, I do not find any infirmity in the orders of the authorities below in

confirming the addition of Rs.16 lacs. Appeal of assessee has no merit and the same is accordingly dismissed.

8. In the result, appeal of assessee dismissed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th September, 2019

VBP/-

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1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

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