

आयकर अपीलिय अधीकरण, न्यायपीठ – “ए” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1157/Kol/2018
Assessment Year :2013-14

Smt. Ranjana Sharma (Sikhwal)/C/o. Rajasthan GGuestHouse,19,Zakaria Street, Kolkata-700 073 [PAN No.AKLPS 3351 D]	V/s.	Income Tax Officer,Ward-32(4), 10B,Middleton Row, Kolkata-700 017
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.M.Surana, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Ram Bilash Meena, CIT-SR-DR & Shri Dhruvajyoti Ray, CIT-DR
सुनवाई की तारीख/Date of Hearing	28-01-2020
घोषणा की तारीख/Date of Pronouncement	19-02-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2013-14 arises against the Principal Commissioner of Income Tax-11, Kolkata's order dated 14.03.2018 passed in case No.M.No.Pr. CIT-11,Kol/U/s 263/2017-18/9212-14, involving proceedings u/s 263 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file peruse.

2. Both the learned representatives invited our attention to the PCIT's revision direction under challenge regarding assessee's sec. 54F deduction claim as under:-

"2. The assessment records of the assessee were called for, examined and on the basis of the verification of the materials available on record, it was found that the order

of assessment was erroneous in so far as it is prejudicial to the interest of revenue on the following grounds:-

- (a) During scrutiny of the assessment folder, it is seen that the assessee had sold a property at Sridungargarh, Rajasthan on **12/03/2013** at a consideration of Rs.50,00,000/-. The said property was declared to be purchased at a cost of Rs.60,000/-. However the assessee failed to produce the purchase deed. In absence of valid document the indexed cost of purchase was considered at Rs.2,36,683/- ($R0,000 \times 758/199$) and the taxable Long Term Capital Gain (LTCG) was computed at Rs.47,63,317/-.
- (b) The assessee had then claimed exemption of the said LTCG u/s. 54F as she claimed to have purchased a residential property at **South City Garden, Kolkata** at Rs.80,00,000/-. But it is seen that Deed of Conveyance was executed on **04/80/2011**.
- (c) As per the provisions of Section 54F of the IT Act, 1961 'When an individual or HUF transfer any long-term capital asset not being a residential house, and invests the net sale proceeds to acquire a residential house, the exemption is available provided that the assessee purchased a residential house within one year before or 2 years after the date on which the transfer took place'.
In this case, the Purchase Deed of Conveyance of the residential property at South City Garden, Kolkata was execution 04/08/2011 and Sale Deed of property at Sridungargarh, Rajasthan was executed on 12/03/2013. So there is a time lag of more than 1year in between two transactions that renders the as ineligible for claiming exemption u/s/. 54F. The exemption was wrongly claimed by the assessee and was wrongly allowed in the assessment and so it was irregular and prejudicial to the interest of revenue.
- (d) Hence, omission to account for Rs,47,63,317/- resulted in an under-assessment of Long Term Capital Gain of Rs.47,63,317/- with the consequential undercharge of tax and interest U/s. 234B.

3. A show cause notice, dated 15.01.2018, was issued to the assessee requiring it to submit clarification or explanation to the above issue & also to show cause why remedial action of Revenue of assessment us.263 of the Act would not be taken against the assessment made u/s143(3) dated 20/01/2016."

3. It is sufficiently clear from a perusal of the PCIT's detailed discussion that he has assumed his sec. 263 revision jurisdiction on the sole ground that the assessee's sale deed had been registered on 12.03.2013 as against the purchase deed of her residential property in Kolkata on 04.08.2011 involving more than a year's gap as specified in relevant statutory provision. The assessee's case on the other hand is that the sale deed / agreement to this effect dated 15.06.2012 running into nine pages qua the capital asset sold in Rajasthan had put the purchaser concerned in vacant peaceful possession on the said very date only and therefore, the time gap between assessee on 03.08.2011 and 15.06.2012 is less than the statutory time span of one year. We find force in learned counsel's argument to this effect. This tribunal's co-

ordinate bench's decision in *Income Tax Officer (International Taxation) 3(1)(1) Mumbai vs. Shri Sunil Shiv Khanna ITA No.5857/Mum/2016* decided on 14.05.2018 takes note of hon'ble Bombay high court's judgment in *Commissioner of Income Tax vs. Smt. Beena K. Jain (1996) 217 ITR 363 (Bom)* that the clinching aspect in such a case is the date of possession and payment of balance consideration only. Learned CIT DR fails to dispute that going by the relevant details forming part of case record, the clinching fact herein of assessee's conveyance deed registered on 03.08.2011 and agreement to sell alongwith possession on 15.06.2012 have been accepted as correct. We conclude in these facts and circumstances that the Assessing Officer had rightly not disallowed the assessee's claim of sec. 54F deduction during the course of scrutiny assessment and therefore, the same is not an instance involving an erroneous assessment causing prejudice to the interest of Revenue. We make it clear that hon'ble's apex court's landmark decision in *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax (2000) 243 ITR 83 (SC)* and *Commissioner of Income Tax vs. Max India (2007) 295 ITR 282 (SC)* has settled the law long back that the foregoing twin conditions must / simultaneously co-exist before revision direction jurisdiction u/s 263 of the Act is assumed. We accordingly reverse the PCIT's revision directions under challenge and restore regular assessment dated 20.01.2016 accepting the assessee's sec. 54F deduction to this effect.

4. This assessee's appeal is allowed.

Order pronounced in the open court 19/02/2020

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp Sr.P.S

दिनांक:- 19/02/2020

कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Smt. Ranjana Sharma (Sikhwal), C/o Rajasthan Guest House, 19 Zakaria Street,Kolkata-700 073
2. प्रत्यर्थी/Respondent-ITO,Wd-32(4), 10B, Middleton Row, Kolkata-700 017
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।