

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND  
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1164/Bang/2018

Assessment year : 2013-14

Shri K.S Hanumantha Road, 378, 'Jamadagni', 16A Main Road, 36A Cross, 4 <sup>th</sup> 'T' Block, Jayanagar, Bangalore-560 041.  PAN – AACPH 3083 Q	Vs.	The Pr. CIT. Commissioner of Income- tax, Bangalore-2, Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S.V Ravishankar & Shri K.S Hanumantha Rao, Advocates
Revenue by	:	Shri Muzaffar Hussain, CIT (DR)

Date of hearing	:	27.02.2020
Date of Pronouncement	:	28.02.2020

**ORDER**

**Per B.R Baskaran, Accountant Member**

The appeal filed by the assessee is directed against the revision order dated 21/3/2018 passed by Id Pr. CIT, Bengaluru-2 u/s 263 of the Act and it relates to the asst. year 2013-14.

2. We heard the parties and perused the record. The assessment in the hands of the assessee for the year under consideration was completed by the AO u/s 143(3) of the Act on 04/3/2016. The Id Pr. CIT noticed that the assessee has declared

long term capital gain on sale of house property and also claimed deduction u/s 54 of the Act in respect of investment made in purchasing another residential property. The ld Pr.CIT also noticed that the interest income of Rs.15,201/- was appearing in Form No.26AS, but it was not disclosed by the assessee in the return of income.

3. The ld Pr.CIT noticed that the house property sold by the assessee was purchased by him on two different dates in two portions. The first portion was purchased on 27/2/1989 and the second portion was purchased on 29/10/2009. The assessee had sold both the portions of the property on 24/5/2012 and declared long term capital gains. The Ld Pr. CIT noticed that the second portion was purchased by the assessee on 29/10/2009 and hence the same was held for less than 3 years on the date of sale of property. Accordingly the ld Pr.CIT took the view that gain arising on sale of second portion was short term capital gain and hence the assessee will not be eligible to claim the benefit of indexation.

4. The ld Pr.CIT also noticed that the new residential house purchased by the assessee, in respect of which deduction u/s 54 of the Act was claimed, was purchased prior to one year from the date of sale of house property. As per the provisions of sec.54 of the Act a new residential house purchased within one year from the date of sale of old property alone is eligible for deduction u/s 54 of the Act. Accordingly he took the view that the assessee is not eligible for deduction us/ 54 of the Act also.

5. The ld Pr.CIT noticed that the AO has not examined all these issues and accordingly took the view that the assessment order passed by the AO is erroneous and prejudicial to the interest of revenue. Accordingly he initiated revision proceedings u/s 263 of the Act.

6. We heard the parties and perused the record. We noticed that the ld Pr. CIT has initiated proceedings on 18/1/2018 by issuing notice to the assessee. In the said notice the assessee was asked to appear before him on 30/1/2018. According to ld AR, the assessee did not appear on that date and sought for adjournment. According to ld AR, the ld Pr. CIT adjourned the matter to 20/3/2018 on which date also the assessee did not appear and sought time. It was stated that the assessee fell ill. However the assessee filed written submissions before Ld Pr. CIT objecting to the revision proceedings on 26/3/2018. However it came to the notice of the assessee later that the ld Pr. CIT(A) had passed the revision order on 21/3/2018 itself.

7. From the sequence of events narrated above, we noticed that there was no occasion for Pr. CIT to examine the objections filed by the assessee before him on 26/3/2018. According to ld AR, the assessee had sought time on 20/3/2018 also but the same was not considered by ld Pr. CIT. Under these set of facts, in the interest of natural justice, we are of the view that the assessee should be given an opportunity to present his case before ld Pr. CIT. Accordingly we set aside impugned revision order passed by ld Pr.CIT and restore all the issues to his file for examining them afresh, after affording

adequate opportunity of being heard to the assessee. We also direct the assessee to extend cooperation to Id Pr. CIT for expeditious disposal of the matter. Accordingly all the issues are kept open.

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **28<sup>th</sup> February 2020.**

**Sd/-**  
**(N.V Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 28<sup>th</sup> February, 2019.

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation .....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
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13. Date of Despatch of Order.  
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