

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Sudhanshu Srivastava, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 49/Del/2019 : Asstt. Year : 2015-16

Surinder Singh Kalra, A-45, Surya Nagar, Ghaziabad, Uttar Pradesh-201011	Vs	Income Tax Officer, Ward-2(3), Ghaziabad-201002
(APPELLANT)		(RESPONDENT)
PAN No. AAUPK8908M		

**Assessee by : Sh. Sandeep Manaktala, CA &
Sh. Yashpal Saini, CA**

Revenue by : Sh. Prakash Dubey, Sr. DR

Date of Hearing: 28.01.2021

Date of Pronouncement: 09.02.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Ghaziabad dated 31.10.2018.

2. Following grounds have been raised by the assessee:

"That the findings of the Assessing Officer in the case of rebate claimed u/s 54 of the Income Tax Act, 1961 is without any rationale and basis. The Assessee (Appellant) furnished all the desired details to the A.O asked time to time which was not considered further the order is not reasoned as the ground of rejection of the contentions of the assessee (Appellant) have not been mentioned. The Ld Assessing Officer misinterpreted/misread the various clauses Collaboration Agreement, which would have entitled the Appellant (Assessee) of rebate u/s 54 and 54F of the Income Tax Act, 1961. The Ld. Assessing Officer chose to pass the

Assessment order against the Principal of Natural Justice.

The Assessing Officer on its own disallowed deductions u/s 54 of the Income Tax Act, 1961, which is not as per the letter and spirit of the Act. The Assessing Officer was bent upon to make disallowance against the factual position of law and facts of the Case. The Assessing Officer erred in not pursuing all the available options available under the Income Tax Act, 1961 to verify the facts of the case. The findings of the Assessing Officer are contrary to the facts and law and therefore, these additions/findings are liable to be quashed.

The Assessing officer first allowed only 1/3 of Cost of Improvement /construction done by Shri Vinod Kumar Setia i.e. Rs46,16,667/- but no deduction was allowed u/s 54 of the Income Tax Act,1961.

The Ld. CIT Appeal further allowed only deduction u/s 54 for only one flat only i.e. Rs 46,16,667/- instead of two flats as the Appeal was part allowed. The Ld CIT Appeal did not pass speaking order why the deduction u/s 54 is not allowed for both flats as the case of the Appellant falls under pre-amended u/s 54 of the Income Tax Act, 1961 as the Collaboration Agreement was entered on 16-03-2013 i.e. before amendment in Section 54 of Income Tax Act, 1961.

The Ld. CIT Appeal failed to appreciate that there is no restriction to acquire more than one residential unit provided such residential unit(s) is/are part of the same house. The LD CIT (Appeal) failed to consider that the Appellant is an octogenarian and senior most citizen, further a law abiding and regular in filing Income Tax Returns with proper and complete disclosures of Income.

2. That the Ld. CIT Appeal did not seek Remand Report nor afforded reasonable opportunity to the Appellant, the Ld CIT Appeal have drawn her own inferences and decided the Appeal without hearing Appellant and Respondent.

3. NON CONSIDERATION OF ADDITIONAL EVIDENCE:- The Ld. CIT Appeal did not afforded sufficient opportunity to the Appellant to explain its position and circumstances for not able to file additional evidences which were very crucial for proper adjudicating of

matter. The Ld. CIT Appeal suo moto decided the matter."

3. Heard the arguments of both the parties and perused the material available on record.
4. The Id. CIT (A) did not admit the additional evidences submitted by the assessee during the proceedings. The additional evidences pertain to the cost estimates which are relevant for determination of tax after affording indexation as available under the provisions of the Income Tax Act.
5. The provisions of Rule 46A are as under:

"46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the 96[Assessing Officer], except in the following circumstances, namely:—

- (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or*
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or*
 - (c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or*
 - (d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*
- (2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as*

the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.”

6. On going through the Rule 46A(b) and see, we find that if the assessee was prevented by sufficient cause from producing any evidence, the same can be admitted by examining the reasons for not producing such evidences or records.

7. The Id. CIT (A) rejected the additional evidence holding that the normal expectation is that all the evidence should be available even at first stage which is contrary to the spirit of the Rule 46A which given a reason, entitles production of evidence which the assessee could not do during the assessment proceedings.

8. Hence, after going through the record, we remit the matter back to the Id. CIT (A) for adjudication *de novo* after going through the additional evidences filed.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 09/02/2021.

Sd/-

(Sudhanshu Srivastava)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 09/02/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR