

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.7139/Del./2017
(ASSESSMENT YEAR : 2013-14)**

ITO, Ward 65 (2),
New Delhi.

vs. Shri Partap Singh Solanki,
106, Saksham Apartments,
Plot No.40-B, Sector 10, Dwarka,
New Delhi – 110 075.

(PAN : AHIPS6478D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Partap Singh Solanki, assessee in person
REVENUE BY : Ms. Ranu Mukhurji, Senior DR

Date of Hearing : 10.02.2021

Date of Order : 24.02.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ITO, Ward 65 (2), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 31.08.2017 passed by learned Commissioner of Income-tax (Appeals)-32, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

"(i) On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in admitting the additional evidences furnished before him by the assessee without recording his satisfaction that the assessee was prevented by sufficient cause from producing the evidences which he was called upon to produce by the assessing officer in contravention of the provisions of Rule 46A of the Income Tax Rules and thereby grossly erred in deleting the addition of Rs.5,25,00,000/- made by the Assessing Officer.

(ii) The Ld. CIT(A) has erred in admitting the additional evidences simply on the ground that the additional evidences are crucial to the disposal of appeal without recording his satisfaction that the case of assessee falls in any of the situations stipulated in Rule 46A of Income Tax Rules.

(iii) On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.1,07,77,270/- as he has accepted the submission of the appellant as plausible without giving any detailed finding for deletion of the addition.

(iv) On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.1,68,758/- towards interest of capital gain account, which is very much taxable in the hands of assessee.

(v) On the facts and in the circumstances of the case, the Ld.CIT(A) has grossly erred in allowing the exemption claimed by the assessee under section 54 of IT Act whereas in none of the grounds, the assessee has sought this relief before the Ld.CIT(A)."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is a salaried class person working as EE-II in Delhi Jal Board at Jhandewalan, New Delhi and filed return of income for the year under consideration declaring an income of Rs.6,82,860/-. During the scrutiny proceedings, Assessing Officer (AO) noticed some interest income from the bank and unexplained income and called upon the

assessee to explain the same. AO made first addition of Rs.5,25,00,000/- on account of sale consideration qua the plot no.26, B-Block Sector 23A, Dwarka, New Delhi. On failure of the assessee to explain this receipt, AO made addition thereof under section 68 of the Income-tax Act, 1961 (for short 'the Act') . AO also made addition of Rs.1,07,77,270/- u/s 68 of the Act on failure of the assessee to explain about the credit entry appearing in his bank account no.210300111000011 maintained with Corporation Bank, Branch at Main Market, Pankaj Plaza, Sector 6, Dwarka, New Delhi and thereby assessed the total taxable income at Rs.6,41,27,810/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has deleted the additions made by the AO by accepting the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee is a salaried class employee and has been duly paying his taxes by filing regular income-tax return.

It is also not in dispute that assessee is co-sharer to the extent of 1/5th share in the property bearing plot no.26, B-Block Sector 23A, Dwarka, New Delhi having been sold by virtue of the sale deed dated 08.02.2012 for Rs.5,25,00,000/- It is also not in dispute that assessee has been maintaining a bank account no.210300111000011 maintained with Corporation Bank, Branch at Main Market, Pankaj Plaza, Sector 6, Dwarka, New Delhi.

6. Perusal of the impugned order passed by the Id. CIT (A) deleting the additions made by the AO having been passed after calling the remand report from the AO goes to prove that the Id. CIT (A) has deleted the additions by thrashing the facts and evidence brought on record by the assessee before the AO as well as during the appellate proceedings. Operative part of the findings returned by the Id. CIT (A) is extracted for ready perusal to avoid repetition of discussion as under :-

“5.3 Therefore, considering all the above information, I am of the view that the appellant had filed the requisite details at the assessment stage along with copies of appropriate evidences in support of his claim for relief u/s 54 of the Act but these were not properly examined and thereby escaped appropriate consideration in accordance with the extant provisions of law. Even when the 'additional evidences' were sent to the AO for comments no comments on merits have been received. Further, perusal of the details filed by the appellant makes it clear that the appellant is eligible for relief u/s 54 on his Capital Gains.

5.4 As regards the additions made u/s 68 in the impugned order on the bank interest, it is observed that these are found in the appellant's Capital Gains Account and therefore, the appellant's explanation on this is plausible. Accordingly, the

aforementioned additions made in the impugned order at para 2 above stand deleted. The grounds of appeal at (a) to (c) above are allowed.”

7. The contention of the Id. DR for the Revenue challenging the impugned order that the Id. CIT (A) has erred in admitting the additional evidence furnished before him by the assessee in contravention of the provisions contained under Rule 46 of the Income-tax Rules, 1962 (for short ‘the Rules’) is not sustainable in the face of the impugned order passed by the Id. CIT(A). Because in para 4.1 it is specifically recorded by the Id. CIT (A) that detail filed by the assessee was duly sent to AO for a remand report who has given remand report extracted in para 4.1 stating therein that despite giving numerous opportunities to file evidence/details, assessee has not turned up. However, assessee duly filed rejoinder to the remand report in the appellate proceedings before the Id. CIT (A) stating therein that he has submitted all the documents and evidences now relied upon in the appellate proceedings with the AO during assessment proceedings but has not been considered by the AO and that AO refused to admit the reply dated 04.03.2016 in response to notice dated 24.02.2016.

8. Ld. CIT (A) after examining the remand report and original assessment record pertaining to 213 pages and 6 order sheet pages noticed that in reply to the notice u/s 142 (1) dated 20.04.2015

issued to the assessee, entire detail of the capital gains and income from other sources have been attached with letter dated 01.05.2015 bearing pages 11 to 40. Aforesaid information also contains photocopies of the assessee's capital gains earned with Corporation Bank, Dwarka, New Delhi jointly opened in assessee and his wife's name on 06.02.2012 and has also filed copy of registered sale deed of the property in question.

9. When the assessee has duly filed requisite details during the assessment proceedings with copy of his bank statement showing investment of capital gain in capital gain accounts to the extent of sale proceed of his 1/5th share to the tune of Rs.97,70,743/- and also brought on record copy of registered deed for purchase of new residential property on 11.11.2013 and its cost is more than the capital gain received by the assessee and thereby satisfied the provisions contained u/s 54F of the Act, addition made by the AO is apparently not sustainable.

10. When all the documents were placed before the AO who has not taken note thereof for the reasons best known to him particularly when AO has not raised any objection to the documents sent to him for comment, the Id. CIT (A) was well within his right to decide the controversy by examining all the documents himself. When the assessee has been found to be

eligible u/s 54 qua his capital gains which have been duly explained by virtue of the sale deed qua the property in question, bank statements and sale deed of the new residential property purchased with the capitals gains received, the Id. CIT (A) has rightly and legally deleted the additions by accepting the appeal. Finding no illegality or perversity in the impugned order passed by the Id. CIT (A), present appeal filed by the Revenue is hereby dismissed.

11. However, before parting with this order, it is necessary to bring on record, to be taken care of by the CBDT, that present appeal has been filed just to generate unnecessary litigation without examining well-reasoned findings returned by the Id. CIT (A) which can be curtailed if proper scrutiny/vetting by the senior officers, who are at the helms of the affairs, is made before approving any case for filing appeal before a higher forum.

Order pronounced in open court on this 24th day of February, 2021.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of February, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-32, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
