

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.4274/Del/2018
Assessment Year : 2013-14**

Deepak Marwah, H Farm No.5C, West Circular Road, Dera Mandi Greens, New Delhi-110074 PAN-AHUPM9221E	vs	JCIT, Circle-32(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. Sanjay Nath, CA	
Respondent by	Ms. Alka Gautam, Sr.DR	
Date of Hearing	23.08.2021	
Date of Pronouncement	31.08.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee pertaining to assessment year 2013-14 is directed against the order of Ld. CIT(A)-11, New Delhi dated 03.04.2018.

The assessee has raised following grounds of appeal:-

1. *“The action of the CIT(A) in upholding the assessment order passed by the JCIT Range-32 New Delhi is unjust, illegal, arbitrary, illusory and the order passed on protective basis deserves to be quashed.*
2. *The action of the lower authorities in holding that the assessment u/s 143(3) on protective basis is legal and valid is unjust, illegal, arbitrary, illusory and the assessment deserves to be quashed.*
3. *The action of the lower authorities in not accepting the long term capital gains declared by the assessee in the relevant assessment year at*

Rs. 1,65,96,121/- but holding that this is taxable in AY 2013-14 is unjust, illegal, arbitrary, illusory and the capital gains may be held to be taxable in this year alone.

4. The action of the Lower authorities in holding that the capital gains declared by the assessee at Rs. 1,65,96,121/- is taxable in A.Y. 2012-13 and not in A.Y. 2013-14 is unjust, illegal, arbitrary, illusory and the addition deserves to be deleted.

5. The action of the lower authorities in subjecting to tax a sum of Rs. 4,38,72,723/ - as long term capital gains on protective basis is unjust, illegal, , arbitrary, illusory and this addition deserves to be deleted in full.

6. That in the alternate and without prejudice to the above the action of the lower authorities in disallowing the rebate of Rs. 2,72,76,602/ - claimed u/s 54 is unjust, illegal, arbitrary, illusory and this addition deserves to be deleted in full.

7. That his action in holding that the investment made by the assessee in a residential house is not covered u/s 54 and there by disallowing the deduction is illegal, unjust, arbitrary, illusory and the' same may be directed to be allowed

8. Appellant craves leave to add, alter, modify or delete any ground of appeal either before or at the time of hearing of the appeal.”

2. The facts giving rise to the present appeal are that return declaring income of Rs.2,24,91,960/- was electronically filed on 31.07.2013. Subsequently, the case was selected for scrutiny under CASS and assessment was framed u/s 143(3) of the Income tax Act, 1961 (“the Act”) vide order dated 31.03.2016. While framing the assessment, the Assessing Officer noticed that during the year under consideration, the assessee has claimed deduction u/s

54F of the Act against Long Term Capital Gain. The assessee has disclosed the capital gain for the property which was sold during the Financial Year 2011-12 relevant to Assessment Year 2012-13. The Assessing Officer, therefore, re-opened the case for Assessment Year 2012-13. Further, the Assessing Officer disallowed the claim of the deduction u/s 54/54F of the Act and made addition of Rs.2,72,76,602/-. The Assessing Officer made assessment on protective basis and recorded that substantial assessment will be made in Assessment Year 2012-13 for which re-assessment proceedings have already been initiated.

3. At the outset, Ld. Counsel for the assessee submitted that in the year under consideration, the addition was made on the protective basis only. He submitted that the assessment of income of the assessee for Assessment Year 2012-13 on substantive basis has already been completed. The income of the assessee has been assessed and due taxes have been paid. Therefore, the addition made in this year does not survive.

4. Ld. Sr. DR could not controvert this fact that the income has already been assessed on substantive basis in Assessment Year 2012-13.

5. We have heard the rival contentions and perused the material available on record. There is no dispute with regard to the fact that the addition was made on the protective basis. It is stated by the Ld. Counsel for the assessee that the assessment has been made on substantive basis in Assessment Year 2012-13 which is not controverted by Revenue. We, therefore, direct the

Assessing Officer to delete the addition made in this year on protective basis after verifying that the income of the assessee has been assessed to tax in the correct Assessment Year i.e.2012-13. The appeal of the assessee is partly allowed in terms as indicate above.

6. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 31st August, 2021.

Sd/-

**(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI