

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'B' : NEW DELHI)

BEFORE DR. B.R.R.KUMAR, ACCOUNTANT MEMBER

AND

SH.ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.3126/Del/2019
(Assessment Year : 2015-16)

ACIT, Circle- 56(1), New Delhi	Vs.	Shri Sandeep Taneja, C-228, Surajmal Vihar Delhi-110092 PAN – AADPT6410G
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Cross Objection No. 136/Del/2019
(Arising out of ITA No.3126/Del/2019)
(Assessment Year : 2015-16)

Shri Sandeep Taneja, C-228, Surajmal Vihar Delhi-110092 PAN – AADPT6410G	Vs.	ACIT, Circle- 56(1), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. C.S.Anand, CA
Revenue by	Ms. Shashi Kajle, Sr. DR

Date of hearing:	02.05.2022
Date of Pronouncement:	19.05.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal no ITA No.3126/Del/2019, has been preferred by the Revenue against order dated 17.01.2019 in appeal no. 10296/17-18 for the assessment year 2015-16 passed by Ld. Commissioner of Income Tax (Appeals)-19, New Delhi, in appeal pending before it against the order dated 29.12.2017 of

Assessing officer, Assistant Commissioner of Income Tax, Circle -56 (1), New Delhi.

Assessee has also filed **Cross Objection No. 136/Del/2019**.

2. The facts in brief are that the assessee is an individual, who claimed he was residing for the last so many years with his family in the residential H. No. C-228, Surajmal Vihar, Delhi- 110092 (which is owned by assessee's wife- Smt. Meena Taneja) He had filed his ITR for A.Y. 2015-16 declaring total income of Rs. 1,17,42,240/- as under :-

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Income from Salary Director's remuneration from M/s Shanker Foundry India</i>	<i>18,00,000/-</i>
<i>Income from House Properties</i>	<i>87,10,620/-</i>
<i>Income from Other Sources</i>	<i>13,91,623/-</i>
<i>Gross Total Income</i>	<i>119,02,243/-</i>
<i>Less: Admissible deduction u/s VIA</i>	<i>1,60,000/-</i>
<i>Total Income</i>	<i>1,17,42,243/-</i>

2.1 The assessee had declared Long Term Capital Gain of Rs. 5,60,56,490/- on sale of his immovable property located in Chikambarpur, Loni (U.P). He also had deposited Rs. 6,00,00,000/- in the Capital Gain Account (opened in Bank of India) on 23.03.2015.

2.2 The Ld. Assessing Officer, mentioned in the assessment order that the said ITR was selected for "Limited Scrutiny" on the below mentioned reasons :

- (i) "High increase in Annual Letting Value of House Property"
- (ii) "Large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA"

2.3 The Ld. Assessing Officer had passed the assessment order u/s 143(3) on 24.12.2017, thereby determining the total income of the assessee at Rs. 6,82,31,550/- as under :-

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Total Income as per return</i>	<i>1,17,42,240/-</i>
<i>Disallowance of claim made in respect of long term capital gains</i>	<i>5,60,56,490/-</i>
<i>Disallowance of claim made on a/c of cost of construction carried out in F.Y. 2012-13.</i>	<i>4,32,820/-</i>
	<i>6,82,31,550/-</i>

3. The Ld. CIT(A) has allowed the appeal on the basis that assessee is eligible for benefit of provisions of Section 54F of the Act in view of investing Rs 6 Cr. in the prescribed Capital Gains Account Scheme and on account of his having fulfilled other relevant conditions, as applicable for AY 2015-15.

4. Now, in appeal before the Tribunal the Revenue has raised following grounds of appeal :-

- “1. On the facts and in the circumstances of the case, the order of the Ld. CIT(A) is bad in law and not in consonance with facts of the case.*
- 2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition to Rs. 5,64,89,310/- made by AO on account of Long Term Capital Gain (LTCG).*
- 3. On the facts and in the circumstances of the case, the ld. CIT(A) has failed to appreciate the fact that the claim of Rs. 5,64,89,310/- under section 54F of the IT, Act, 1961 is not proper and is inadmissible.*
- 4. The appellant craves, leave to add, allow or amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

4.1 Assessee in Cross objections has raised following grounds of appeal :-

- 1. That on the facts of the case and under the law, the assessment order passed by the ld. ACIT, Circle 56(1), New Delhi u/s 143(3) is liable to be quashed because the jurisdiction over the case of the assessee was not with the ld. ACIT, Circle 56(1), New Delhi.*
- 2. That on the facts of the case and under the law, the assessment order passed by the ld. ACIT, Circle 56(1) New Delhi u/s 143(3) is liable to be quashed because the ld. ACIT Circle 56(1), New Delhi had travelled beyond the scope of limited scrutiny.*
- 3. That on the facts of the case and under the law, the claim made by the assessee under section 54 was not liable to be rejected.”*

5. Arguments were heard and record has been perused. As in the cross objections, the assessee has raised grounds of appeal questioning irregular exercise of jurisdiction by the Ld. AO. Arguments on the same were heard first followed by those on merits.

5.1 It was submitted on behalf of the assessee that the Ld. AO has fallen in error in passing the assessment order beyond the scope of scrutiny. Referring to

para no. 2 of the assessment order it is submitted that the reason for selection of the case of assessee under limited scrutiny was first High increase in Annual Letting Value of House Property and second Large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA. But the addition was made declining benefit of section 54 of Act. It was submitted that Ld. CIT(A) has also failed to take into consideration the arguments and in a summary manner dismissed this ground of appeal.

5.2 The revenue defended this finding of Ld. CIT(A) submitting that the mandate was to examine the deduction claimed for capital gain and no prejudice was caused to the assessee if sections other than mentioned in limited scrutiny was invoked.

6. Thus it is appropriate to take up the ground no. 1 and 2 of the cross objections prior for determination. Appreciating the matter on record it can be observed that the case of assessee was selected for limited scrutiny but the Ld. Assessing officer has not discussed a word about the original reasons for selection of the case under limited scrutiny and straightway proceeded to examine the disallowance on account of exemption claimed as per the provisions u/s 54 of the Act. The ld. AO made a detailed inquiry into the claim and also discussed the plea in alternative of the assessee for allowing the benefit u/s 54F of the Act.

6.1 In this context, the settled proposition of law is that the Assessing officer can widen the scope of scrutiny even when the case was selected for limited scrutiny. However, the condition precedent for such widening of the scope is that the Assessing Officer has to seek prior approval of the PCIT. Reliance in this regard can be placed on the judgment of the Co-ordinate Bench in ITA no. 7496/Del/2019 where after referring to various instructions of CBDT. aforesaid proposition of law was upheld.

7. Thus, there is irregular exercise of jurisdiction by the Ld. AO in expanding the scope scrutiny. Ld. CIT(A) has fallen in error in dismissing this

ground against the assessee by a sweeping observation that there was no prejudice to the assessee and it was a procedural or administrative matter. Consequentially, the ground no 1 and 2 of Cross Objection filed by assessee, going to the root of jurisdiction of the assessment order are allowed.

8. Even on merits, Ld. DR has questioned the findings of Ld CIT(A) of allowing claim of assessee on basis that it failed to consider the detailed enquiry of Ld. AO but the Bench is of considered opinion that the Id. CIT(A) after taking into consideration, the entire facts of the case viz., date of purchase, date of sale, date of investment in capital gain scheme held that the assessee is eligible for claim u/s 54F of the Income Tax Act, 1961. Notwithstanding anything, the amount once invested in the capital gain scheme cannot be brought to tax in the year of investment itself without considering the utilization within the period allowed under the said scheme.

9. Resultantly, the appeal of revenue is **dismissed** and the Cross Objections are **allowed**.

Order pronounced in open court on this 19th day of May, 2022.

Sd/-

(B.R.R.KUMAR)

ACCOUNTANT MEMBER

Date:- 19.05.2022

Binita, Sr.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI