IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.1506/Mum/2019
(A.Y. 2012-13)

Mr. Shabbir Ahmed Peer Mohd. Shaikh, 502, Lake View, Opp. Bandra Talao, Bandra (West), Mumbai – 400 050	Vs.	Income Tax Officer-23(3)(3), 1st Floor, Matru Mandir, Grant Road, Mumbai – 400 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AHHPM0132F		
Appellant	..	Respondent

Appellant by :	Puru Jain Advocate & Rajendra Kumar Jain, C.A.
Respondent by :	Hoshang B. Irani

Date of Hearing	20.04.2022
Date of Pronouncement	15.06.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The solitary ground of appeal of the assessee is directed against the order passed by the ld. CIT(A)- 34, Mumbai, confirming the disallowance claim of investment made u/s 54 of the Act for Rs.22,00,000/-.

2. The fact in brief is that return of income declaring total income of Rs.11,93,850/- was filed on 24.09.2012. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 19.09.2013. During the course of assessment the A.O noticed that

assessee had sold three immovable properties being rooms & shops at Beharam Nagar Bandra. The detail of asset sold as per the agreement given at page no. 5 of the assessment order are as under:

Particulars of asset	Survey Slip No	Date of Sales	Consideration
Room Premises	0224656	15.06.2011	750,000
Room Premises	0224613	15.05.2011	14,50,000
Shop	0224612	15.06.2011	18,00,000
Total			40,00,000

It is stated that assessee has also claimed exemption u/s 54F of the Act for making investment in the new house. It is also stated that the agreements were not registered with the registrar, therefore, the market value for the purpose of stamp duty as per Sec. 50C has not been determined. The A.O further stated that provisions of Sec. 54F were applicable only in respect of investment of long term capital gain on sale of any asset not being a residential house. The A.O further pointed out that as per the agreement the asset sold by the assessee were consisted of two residential offices and one shop premises. The A.O further stated that claim of exemption on sale of residential properties did not fit in the provisions of Sec. 54F, therefore, he has disallowed the claim of exemption of Rs.22,00,000/- on the sale of two room by the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The assessee has claimed exemption of long term capital gain arises on sale of two rooms u/s 54F for making investment in the new houses.

During the course of appellate proceedings the ld. Counsel has placed a paper book comprising copies of sale agreement in respect of the property sold. Without reiterating the facts as elaborated in para 2 of this order, the ld. CIT(A) has dismissed the appeal of the assessee without giving reasoning in support of his decision. The decision of ld. CIT(A) is reproduced as under:

> "*4.5. The third ground of appeal pertains to addition of Rs.22,00,000/on account of capital gain. It was held by the AO in the Assessment Order that the appellant had sold his ' three immovable properties being two rooms and shops at Beharam Nagar. The appellant had claimed exemption u/s.54F stating the investment in new house. However, the AO denied the exemption claimed by the appellant on the sale of residential property amounting to Rs.22.00,000/- on the ground that the appellant's case does not fit in the provision of Section 54F. During the appellate proceedings, the appellant had enclosed copy of 3 sale agreements and copy of purchase agreement. However, AO found that the above agreements were not registered with the Registrar of Sub Assurance as well as provisions of Section 54F are applicable only in respect of Investment of long term Capital Gain on sale of any assets not be a Residential House. Therefore, AO disallowed exemption for the two Room Premises amounting to Rs.22,00,000/- as the exemption claimed by the appellant did not fit in the provision of Section 54F, and added it back to the total income of the appellant. Accordingly, the addition made by the AO of Rs.22,00,000/is confirmed and the ground of appeal is dismissed."*

During the course of appellate proceedings before us the ld. Counsel vide submission dated 09.08.2021 has made legal submission in respect of non-speaking order passed by the ld. CIT(A) which is reproduced as under:

> *"(1) The Ld. CIT(A) had not considered the submission made by the assessee, and passed the order without assigning any reason, which is a blantant violation of sec. 250(6) of the act. Further The Ld. CIT(A) had passed non speaking order which needs, to be quashed.*
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> *The assessee had made submission as on 27th Nov' 2018, which is entirely reproduced by the CIT (A) in his order in para no.3.1, however while delivering his decision, he had totally decimated it, and not uttered a single word, nor gave any reason why the submission made by the assessee is not considered by him and why he is disagree with the submission and the case laws cited by the assessee. This is blatant violations of sec 250(6) of the act . The sec 250(6) we are reproducing hereafter,*

SECTION 250
Procedure in appeal.

(6) The order of the 5949[***] 5950[Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state points for determination, the decision thereon and the reason for the decision.

(2) The Ld.CIT(A) had not considered the submission made by the assessee and cases cited by him. Hence order passed by CIT(A) becomes non speaking order and needs to be quashed. The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of the rule of law which constitutes one of the cornerstones of our constitutional set up. The administrative authorities charged with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision-making process."

In this regard we wish to rely on the case of In ***CIT vs. Vikas Chemi Gum India (2005) 196 CTR (P&H) 123 : (2005) 276 ITR 32 (P&H****) the Court observed : "As regards question..... we find that the Tribunal has neither considered the points raised by the appellant nor assigned any reason for approving the order passed by the Commissioner of Income-tax (Appeals). To put it differently the order of the Tribunal is non-speaking order and is thus, vitiated due to violation of the rules of natural justice.*

Siemens Engineering & ... vs Union Of India & Anr on 30 April, 1976 Equivalent citations: 1976 AIR 1785, 1976 SCR 489

This is a judgement of apex court where Justice P N Bhagwati had observed

“If courts of law were to be replaced by

administrative authorities and administrative law, they may have to be so replaced, administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. The rule requiring reasons to be given in support of an order is like the principal of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mer pretence of compliance with it would not satisfy the requirement of law.[496B-D] ,

Dynamic Process P.Ltd., Kolkata vs Assessee on 11 September, 2012 I.T.A No. 768/Kol/2012 /Assessment Year: 2007-08 , The coordinate bench held as under

After going through the order of CIT(A), We find that CIT(A) has passed a nonspeaking order by following the decision o ITAT in the case of Multiplan India (Pvt.) Ltd. (supra). We are of the view that where appeal has been disposed of

even though on merits without a speaking order, the order of CIT(A) cannot be sustained. The provisions of section 250(6) of the Act are in the nature of judicial discretion to the Appellate Authority and emphasizing that the order disposing of the appeal shall be a speaking order. The order shall not cryptic but shall be self-explanatory.
Hence, We set aside the order of CIT (A)."

In the light of the above facts and perusal of the material on record it is observed that assessee had encroached the land owned by the Railway on which the assessee had built the structure as referred supra in this order. The assessee claimed that he was having right of possession and not an ownership right. The assessee has also referred the decision of Hon'ble Bombay High Court in the case of CIT, TDS Vs. MMRDA vide ITA No. 308 of 2016 dated 23.09.2018. We have perused the aforesaid case which is pertained to payment of compensation on acquisition of certain immovable properties under Sec. 194L of the Act. In that case the assessee evacuated encroached land under the scheme of the Government relating to road widening near the Railway track and the encroached squatters were rehabilitated. It is held in that case that the squatters build their illegal and unauthorized hutments and therefore there was no question of any compulsory acquisition under the land Acquisition Act, 194L, therefore, provision of Section 194LA or Section 194CA are not applicable to deduct tax under the Act.

In the case of the assessee the ld. CIT(A) in his decision has not elaborated the relevant facts of the matter as presented by the assessee in his submission as under:

"(i) Assessee was never owner of the land he was having right of possession of land
(ii) The right of possession was a valuable right which was in the nature of capital assets as per Sec. 2(14) of the Act.
(iii) The assessee had transferred a valuable right not a residential house.

(iv) The claim of the assessee that AO/CIT(A) erroneously considered that it was transferred of residential house.
(v) The claim of the assessee that it was only single structure and not three properties as held by the A.O.
(vi) Photo pass given by the Government to acknowledge the right of occupation."

In the light of the above facts and circumstances we consider that ld. CIT(A) has neither brought the facts of the case nor called any remand report of the A.O and not made any discussion on the submission made by the assessee before reiterating the incomplete findings of the A.O in the form of his decision without substantiating the same with the relevant reasons as prescribed in section 250(6) of the I.T. Act, 1961. Even the ld. CIT(A) has not brought out the facts in his order pertaining to the specific claim of the assessee about his right to sale the possession of encroached land. Section 250(6) contemplates that ld.CIT(A) would determine point in dispute and record reasons on such point in support of his conclusion. The ld. CIT(A) has failed to determine those points and record detailed findings. Therefore, we restore this case to the file of the CIT(A) for passing a speaking order as directed above in accordance to provision of Section 250(6) of the Act. Therefore, this appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15.06.2022

Sd/-	Sd/-
(VIKAS AWASTHY)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 15.06.2022
PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai