

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 480/JP/2019
निर्धारण वर्ष/Assessment Year :2015-16

Assistant Commissioner of Income Tax, Circle-1, Kota	बनाम Vs.	Smt. Abda Bai, 203, Patel Ji Ka Makan, Dhakadkhedi, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CCMPB3745B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rohan Sogani (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 11/05/2022
उदघोषणा की तारीख / Date of Pronouncement: 20/06/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the revenue aggrieved from the order of the Commissioner of Income Tax (Appeal)- Kota [Here in after referred as Ld. CIT(A)] for the assessment year 2015-16 dated 11.01.2019 which in turn arises from the order passed by the assessing officer passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 10.12.2017.

2. The hearing of the appeal was concluded through video conference by both the parties in view of the prevailing situation of Covid-19 Pandemic.

3. The revenue has taken following grounds in this appeal;

“1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting addition made by the AO of Rs. 41,50,319/- on account of disallowance of deduction u/s 54F without appreciating the facts discussed by the AO. AO in the assessment order.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting addition of Rs. 2,32,310/- made by AO on account of commission on accommodation of entry without appreciating the facts discussed by the AO in the assessment order.

3. The appellant craves liberty to raise additional ground and to modify amend the ground of appeal at the time of hearing.”

4. This Bench has disposed, the appeal of the assessee holding that appeal of the department is not maintainable being monetary limit is less/not exceeding Rs. 50,00,000/- and therefore, the appeal was dismissed.

5. Thereafter, revenue filed MA No. 41/JP/2020 which has been disposed on 07.08.2020 wherein the Id. DR argued that in the present case, the tax effect is Rs. 55,01,470/- which is above the prescribed monetary limit prescribed by the CBDT vide the aforesaid circular No. 17 of 2019 and accordingly, the order passed by the Bench is recalled to decide the issue on merits.

6. During the course of hearing, the Id. AR of the assessee argued that the department has calculated the tax effect wrongly. In support of his contention he has submitted that:-

“We are in receipt of the report of the Id. AO, as regards the calculation of the tax effect for the caption appeal, filed by the Department before the Hon’ble Bench. It is submitted that in the report, Id. AO has committed error in the calculating tax effect. In this regard, below mentioned submissions may please be considered: -

1. *Assessee, during the relevant previous year, sold land, as part of Long-Term Capital Asset, and earned Capital Gain, before claiming exemption under Section 54F and Section 54B, amounting to Rs. 2,02,84,034. At time of filing the return of income, assessee claimed benefit of Section 54B, amounting to Rs. 1,40,05,701, and under Section 54F, amounting to Rs. 41,50,319, totalling to Rs. 1,81,56,020 [Rs. 1,40,05,701+ Rs. 41,50,319].*

2. *Accordingly, Net Capital Gain amount of Rs. 21,28,014 [Rs. 2,02,84,034 - Rs. 1,81,56,020] was calculated by the assessee as part of capital gains and offered for tax, while filing the return of income, for the relevant previous year.*

3. *It may be noted that Capital Gain arising out of sale of land, being Long Term Capital Asset, was the only taxable income derived by the assessee, for the relevant previous year.*

4. *During first appellate proceedings, revised claim of the assessee, in terms of enhanced deduction under Section 54B of Rs. 1,76,04,400, as against Rs. 1,40,05,701, claimed in the return of income, was accepted by the Id. CIT(A).*

5. *Resultantly, assessee after the first appellate proceedings was entitled to total exemption under Section 54B of Rs. 1,76,04,400, and under Section 54F of Rs. 41,50,319, with total exemption of Rs. 2,17,54,719 [Rs. 1,76,04,400 + Rs. 41,50,319].*

6. *As the assessee earned claimed Capital Gain, before claiming exemption under Section 54B and 54F, of Rs. 2,02,84,034, total benefit*

under both the sections [i.e. 54B and 54F] could not be more than such amount i.e. Rs. 2,02,84,034.

7. Attention is also drawn towards Circular issued by CBDT, Circular No. 3/2018, in which at Para 4, of the said circular the mechanism of calculating tax effect has been specified. According to which tax effect means: -

TAX ON INCOME TOTAL INCOME ASSESSED

MINUS

TAX THAT WOULD HAVE BEEN CHARGEABLE HAD SUCH TOTAL INCOME BEING REDUCED BY THE AMOUNT OF INCOME IN RESPECT OF THE ISSUES AGAINST WHICH APPEAL IS INTENDED TO BE FILED.

8. In the present case, tax on total income assessed is Rs. 45,96,362.

Capital Again Income Assessed by AO of which relief provided by CIT(A)	2,02,84,034
Gross Tax (20% on Long Term Capital Gain)	40,56,807
Surcharge	4,05,681
Education Cess	1,33,875
Tax Effect (Which is less than 50 Lacs)	45,96,362

9. Total income minus income in respect of the issues against which appeal is intended to be filed is equal to Rs. 2,02,84,034 minus Rs. 2,02,84,034. In the present case, "income in respect of the issues against which appeal is intended to be filed" figure cannot be considered as Rs 2,17,54,719, as the maximum benefit available to the assessee is Rs. 2,02,84,034. Even if such figure is considered to be Rs. 2,17,54,719, and applied in the said calculation, then the figure would be in negative. Such negative figure has to be considered as zero. This is for the reason that the assessee would not be able to derive any benefit out of the negative amount for the current as well as in the future years and the entire excess claim represented by such figure would have to be forgone by the assessee.

10. Ld. AO, in his report, at Page 2, is adding the amount of the claim allowed by Id. CIT(A), over and above the amount of assessed income, for the purpose of calculating tax effect, which is incorrect and not in accordance with the CBDT circular, in this regard.

Accordingly, the tax effect calculated, as per the CDBT circular is Rs. 45.96 Lacs, being less than Rs. 50 lacs. Thus, present appeal of the Department deserves to be dismissed.

7. In addition to the above written argument, Id. AR of the assessee also argued before us that the deduction claimed by the assessee was considered to be at higher figure than decided by the Id. Assessing Officer for the assessment year under consideration by the CIT(A). Merely that excess deduction decided in favour of the assessee will not change the taxable income or income assessed by the assessing officer, and so the tax effect too. Therefore, taxable income does not change whereas the deduction that has been considered under the provisions of section 54D and 54F and assessed income is remained same in that circumstance. The Id. AR of the assessee further argued that this excess deduction is neither any income nor the loss or like unabsorbed depreciation carried forward to subsequent year and merely excess investment arising out of capital gain will not generate any further benefit. In the light of that back ground as per para 4 of CDBT circular dated 11th July 2018. The tax effect is to be calculated strictly in accordance with the income, for sake of brevity for calculation of tax effect para-No. 4 of CDBT circular is reproduced herein below.

"4. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues'). Further, 'tax effect' shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax

effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against."

8. The income of the assessee chargeable at Rs. 2,02,84,034/- and deduction was decided to be allowable at Rs. 2,17,54,719/-. This additional investment is not allowed to be carried forward for benefit of future income, so the tax effect is required to be calculated in the consonance to the ultimate income under a particular head chargeable to tax and not the deduction allowable. Therefore, the CBDT Circular should be interpreted, accordingly hence the Id. AR heavily argued that CBDT Circular No.03/2018 should be read and interpreted in accordance with the income chargeable to tax but not to the extent of deduction allowable to the assessee. If this additional deduction if it is allowed to be carried forward against the future income then the contention of department is maintainable. But there is no such benefit arising out of its additional investment with that of with the tax effect and so the same is to be calculated in accordance with income chargeable to tax only which in this case comes to below Rs. 50 lacs.

9. Per contra, the Id. DR drawn our attention to AO `s report which has been read and relied upon. The same is extracted herein below for the sake brevity of the facts:

क्रमांक स.आ.आ./वृत्त-2/कोटा/2022-23/38 दिनांक : 09/05/2022

To,
The Addl. Commissioner of Income Tax (Sr. DR-II)
ITAT, Jaipur

Madam,

**Sub :- Appeal before Hon'ble ITAT Bench, Jaipur in ITA No. 480/JP/19 in the case of Smt. Abda Bai, Kota (PAN- CCMPB3745B) for the AY 2015-16:-
reg-**

Kindly refer to your office letter dated 06/05/2022 on the above mentioned subject by which it has been directed to check the error highlighted by the AR of the appellant during calculation of tax effect and submit a report along with comments whether appeal is maintainable or not in view of Board Circular.

In this connection, it is submitted that the assessee filed her return of income for the AY 2015-16 on 26/03/2016 declaring the total income of Rs. 21,28,014/- and deposited the self assessment tax of Rs. 4,03,000/- accordingly. In the ITR, the assessee has claimed the deduction of Rs. 41,50,319/- u/s 54F of the Act and Rs. 1,40,05,701/- u/s 54B of the Act respectively. The assessment proceedings u/s 143(3) of the Act for the AY 2015-16 was completed on 10/12/2017 at the assessed income of Rs. 2,02,84,030/- after making addition of Rs. 41,50,319/- on account of disallowance on deduction u/s 54F of the Act and Rs. 1,40,05,701/- on account of disallowance on deduction u/s 54B of the Act respectively. Accordingly the demand of **Rs. 57,75,570/- (Rs. 45,28,383/- + interest Rs. 12,47,187/-)** for the AY 2015-16 was raised u/s 143(3) of the Act.

Further, it is pertinent to mention here that during the assessment proceedings, the assessee submitted the revised calculation of total income before the Assessing Officer which is as under:-

S. No	Particulars	Amount (Rs.)
1.	Sale consideration of the land	2,95,00,000/-
2.	Less (-) Sale Expenses	45,55,000/-
	Less (-) Indexed Acquisition Cost	46,60,966/-
	Less (-) Deduction u/s 54B of the Act	1,80,00,000/-
	Less (-) Deduction u/s 54F of the Act	41,50,319/-
3.	Total Deduction	3,13,66,285/-
	Income after deduction	(-) 18,66,285/-

The Hon'ble CIT(A) has passed the order in favour of the assessee. The income of the assessee after appeal effect of the Hon'ble CIT(A) is as under:-

S. No.	Particulars	Amount (Rs.)
1.	Sale consideration of the land	2,95,00,000/-
2.	Less (-) Sale Expenses	45,55,000/-
	Less (-) Indexed Acquisition Cost	46,60,966/-
	Relief given by the Hon'ble CIT	
	Less (-) Deduction u/s 54B of the Act (Claimed 1,80,00,000/-)	1,76,04,400/-
	Less (-) Deduction u/s 54F of the Act	41,50,319/-
3.	Total Deduction	3,09,70,685/-
	Income after deduction	(-) 14,70,685/-
	Round off	(-) 14,70,690/-

Further, the appeal effect u/s 250 /154 of the Act for the AY 2015-16 on the returned income of Rs. (-) 14,66,285/- on 18/10/2019 and refund of Rs. 4,85,530/- including interest of Rs. 82,600/-.

From the above mentioned table it is clear that the assessee has claimed the deduction of Rs 41,50,319/- u/s 54B of the Act and deduction of Rs. 1,80,00,000/- u/s 54F of the Act. But the Hon'ble CIT(A) has given relief of deduction of Rs. 41,50,319/- u/s 54B of the Act and also given relief of Rs. 1,76,00,000/- out of total claim of Rs. 1,80,00,000/-. Hence the Hon'ble CIT(A) has given total relief of Rs. 2,17,50,319/- and due to this, the self assessment tax of Rs. 4,03,200/- has also been given as refund of Rs. 4,85,530/- including interest of Rs. 82,600/-. Hence the tax should be calculated after considering the relief given by the assessee and also issuance of self assessment tax as refund. Hence the argument that the assessee has claimed the deduction of Rs. 2,02,84,034/- is not correct but the assessee has claimed the deduction of Rs. Rs. 2,21,50,319/- (Rs. 1,80,00,000/- u/s 54B- + Rs. 41,50,319/-) and the Hon'ble CIT(A) has given relief of Rs.2,17,54,719/- (Rs. 1,76,04,400/- out of claimed Rs. 1,80,00,000/- u/s 54B- + Rs. 41,50,319/-).

Considering the above mentioned facts, issues raised by the A/ R of the assessee and direction given by your office vide letter no. 58 dated 06/05/2022, the computation sent to your office by this office vide letter no. 18 dated 19/04/2022 has again been checked in this case. The revised computation in respect of tax effect is as under:-

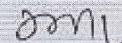
S. No.	Particular	Amount
1.	Returned Income u/s 143(1) of the Act	Rs. 21,28,014/-
2.	Addition u/s 143(3) of the Act	
	Disallowance u/s 54B- Rs. 1,40,05,701/-	
	Disallowance u/s 54F- Rs. 41,50,319/-	
3.	Total Addition	Rs. 1,81,56,020/-
4.	Assessed Income u/s 143(3) of the Act	Rs. 2,02,84,034/-
5.	Tax on assessed income	Rs. 45,28,383/-
6.	Relief given by the Hon'ble CIT(A)	
	Disallowance u/s 54B- Rs. 1,76,04,400/-	
	Disallowance u/s 54F- Rs. 41,50,319/-	
7.	Total Relief given by the Hon'ble CIT(A)	Rs. 2,17,54,719/-
8.	After appeal effect/ 154 of the Act the assessed (4-7)	(-) Rs. 14,70,685/-
9.	Round off	(-) Rs. 14,70,690/-
10.	Tax effect till completion of	
	Hence extra relief given by the Hon'ble CIT(A)	
	Disallowance u/s 54B- Rs. 1,76,04,400- 1,40,05,701 =	

	Disallowance u/s 54F- Rs. 41,50,319 - 4150319	Rs. 35,98,699/- = 0	
		Rs. 35,98,699	
11.	Tax on extra relief given by the CIT(A) 20% on 35,98,699/- 10% surcharge on tax 3% Education cess on 719739/- + 71974/- Total tax on extra Relief given by Hon'ble CIT(A)	= Rs. 7,19,739/- = Rs. 71,974/- = Rs. 23,751/- = Rs. 8,15,464/-	Rs. 8,15,464/-
12.	Therefore, total tax effect after order of CIT(A) i.e u/s 143(3) - Rs. 45,28,383+ tax on extra relief given by CIT(A) - 8,15,464/-		Rs. 53,43,847/-

In view of above mentioned calculation and facts of the case it is submitted that the tax effect of the case is above Rs.50 lacs and the appeal is maintainable in view of the circular issued by the CBDT.

Submitted for kind perusal and necessary action / direction.

Your's faithfully



(B.L.Meena)

Asstt. Commissioner of Income Tax
Circle-2, Kota

Copy to :-

1. The Jt. Commissioner of Income Tax, Range-2, Kota- for kind information

Asstt. Commissioner of Income Tax
Circle-2, Kota

10. The Id. DR relied on the above submission of the AO and heavily argued that since the Id. CIT(A) has given the benefit of additional deduction to the extent of Rs. 35,98,699/- as calculated in point no. 11 above in the letter of the AO. It is not denied by the Id. DR that the assessed income is at Rs. 2,02,84,034/- and tax on that assessed income comes to Rs. 45,28,383/-. In the report of the AO the tax has been calculated on the additional relief in the form of investments granted by Id. CIT(A) at differential value of Rs. 35,98,699/- and consequently the additional tax effect worked out to Rs. 8,15,464/- resultantly tax liability as computed comes to Rs. 53,43,847/- by the

department. Therefore, the Id. DR submitted that the tax effect is in excess of Rs. 50,00,000/- and therefore, the appeal is maintainable.

11. We have heard the rival contentions and perused the material placed on record. The only issue raised by both the party is maintainability of appeal in terms of CBDT's instruction and calculation of tax effect. In this case the issue is of calculation of tax effect whether it is below Rs. 50 lac or not?. It is very much clear from the CBDT's instruction that the tax effected is to be calculated based on the assessed income. It is evident from the AO's letter dated 09.05.2022 that the assessed income is at Rs. 2,02,84,034/- (Sr No. 4 of table -3 of the letter dated 09.05.2022) and the tax as computed on the said table at Sr. no. 5 is calculated at Rs. 45,28,383/-. This calculation is submitted by the AO. The only contention raised by the AO in that letter is that the CIT(A) has given the additional benefit u/s. 54B & 54F for additional sum of Rs. 35,98,699/- and the AO has calculated the tax on this additional deduction allowed by the CIT(A) and the Id. DR heavily relied upon that calculation done by the AO is correct and the tax effect is above Rs. 50 lacs.

12. Au contraire, the Id. AR argued that in any case by allowing the excess deduction the addition made by the AO will not be changed and thereby the assessed income will not change. Thus, tax amount is to be calculated at assessed income and not the allowable deduction amount. Merely the amount allowable decided more than the income assessed the tax liability did not change. Thus, the contention and calculation made by the department need to be restricted to the amount assessed in the assessment order and the tax is required to be calculated

accordingly. Here we inclined to agree that the deduction claimed are not in the nature of amount unutilized benefit or claim and is not carried over to the next year for deduction, if so the contention of the department has force, but in the absence this excess amount has no benefit coming to the assessee directly or indirectly. Thus, the tax effected is to be calculated based on the assessed income which in this case is at Rs. 45,96,362/-. This amount being less than 50,00,000/- limit this appeal of the revenue is not maintainable in accordance with above CBDT circular.

13. In terms of the above observations the appeal of the department is not maintainable and is hereby dismissed.

In the result the appeal of the revenue is dismissed.

Order pronounced in the open Court on 20/06/2022.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/06/2022

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Assistant Commissioner of Income Tax, Circle-01, Kota
2. प्रत्यर्थी / The Respondent- Smt. Abda Bai, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.

6. गार्ड फाईल / Guard File {ITA No. 480/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar