

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 33/KOL/2022
Assessment Year: 2017-2018**

Smt. Nilam Devi Jhunjhunwala,.....Appellant
107, Old China Bazar Street,
4th Floor, Room No. 402,
Brabourne Road,
Kolkata-700001
[PAN:ACWPJ4534C]
-Vs.-

Income Tax Officer,.....Respondent
Ward-44(3), Kolkata,
3, Government Place (West),
Kolkata-700001

Appearances by:

Shri Abhishek Bansal, FCA, appeared on behalf of the assessee
Md. Ghayasuddin, CIT(DR), appeared on behalf of the Revenue

Date of concluding the hearing : 15th November, 2022

Date of Pronouncing the Order: 22nd November, 2022

O R D E R

Per Sanjay Garg, Judicial Member:-

This appeal preferred by the assessee is against the order of Id. Principal Commissioner of Income Tax-13, Kolkata dated 22.12.2021 (hereinafter referred to as 'PCIT') for agitating against the exercise of jurisdiction by him under section 263 of the Income Tax Act, 1961, vide which the Id. PCIT quashed the impugned assessment order and directed the Id. Assessing Officer to make the assessment afresh.

2. Brief facts of the case are that the assessee during the assessment year under consideration sold shares, whereupon the assessee earned capital gains. The assessee claimed deduction from tax in respect of the

aforesaid capital gains under section 54F of the Income Tax Act on account of investment of the aforesaid capital gains for the purchase/construction of residential house. The case of the assesee was selected for limited scrutiny for verification on the issue "large deduction/exemption claimed in scheduled Capital Gain of ITR and large investment in immovable property".

2.1. During the assessment proceedings, the assessee furnished the required details and documents to show that the assessee during the year had invested the capital gains for acquisition of residential house and also furnished the copies of receipts of payments made to the builder and also furnished the evidentiary document to show that the value of residential property adopted by the Registering Authority was lower than the purchase consideration. The Id. Assessing Officer considering the aforesaid evidences accepted the claim of the assessee.

3. Thereafter the Id. PCIT invoked his revisionary jurisdiction under section 263 of the Income Tax Act and observed that from the documents furnished by the assessee, the only evidentiary document relating to the set off claimed by the assesee under section 54F was the purchase agreement dated 13.04.2013, which related to assessment year 2014-15. The Id. PCIT further noted that however, the capital gains have been earned by the assessee during the assessment year 2017-18 and therefore, the deduction claimed by the assessee under section 54F was not available to the assessee as the residential house property was not acquired by the assessee within the stipulated period of one year before, or within two years after the date of transfer of original asset. He accordingly held that the order of the Id. Assessing Officer was erroneous and prejudicial to the interest of the revenue. He accordingly set aside the assessment order and remanded the matter back to the file of Id. Assessing Officer for assessment afresh on this issue.

4. We have heard the rival contentions and gone through the record carefully. It is pertinent to mention that as per the provision of section 54F, the capital gain arising from the transfer of any long-term capital asset, not being a residential house, and the assessee has, within a period of one year before, or within two years after the date of transfer took place purchased, or has within a period of three years after that date constructed a residential house in India, the capital gain shall be calculated after deduction of the investment made in the aforesaid new asset/residential house. In the case in hand, the assessee had furnished documents before the Id. Assessing Officer claiming that the agreement to purchase a new house was made with the builder in the year 2013, however, the payment to the builder was to be made at different stages of construction i.e. certain payments were made on the completion of RCC work at different levels, external works/windows etc. The Id. Counsel has submitted documents to show that in the instant case, the assessee had invested all the consideration received in the year of receipt itself. The Id. Counsel in this respect has relied upon the copies of the payment receipts to the builder to show that all the payments were made during the year of receipt of capital gains itself. In our view, the assessee in this case is entitled to claim deduction under section 54F of the Income Tax Act, which has rightly been allowed by the Id. Assessing Officer to the assessee. The Id. PCIT in this case has wrongly exercised his jurisdiction under section 263 of the Income Tax Act and has set aside the assessment order without considering the relevant documents on record. The impugned order of the Id. PCIT thus is not sustainable in the eyes of law and the same is hereby quashed.

5. In the result, the appeal of the assessee stands allowed.

Order is pronounced in the open court on November 22, 2022

Sd/-
(Manish Borad)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Kolkata, the 22nd day of November, 2022

- Copies to :*
- (1) Smt. Nilam Devi Jhunjhunwala,
107, Old China Bazar Street,
4th Floor, Room No. 402,
Brabourne Road, Kolkata-700001**

 - (3) Income Tax Officer,
Ward-44(3), Kolkata,
3, Government Place (West), Kolkata-700001**

 - (3) Principal Commissioner of Income Tax-13, Kolkata**
 - (4) The Departmental Representative**
 - (5) Guard File**

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.