

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 265/Srt/2022 (Assessment Year 2015-16)
(Virtual hearing)

Chandrakant Bhagwanji Popat, 54, Dev Deep Society, Ichchhanath Road, Surat. PAN No. ABNPP 1088 R	Vs.	D.C.I.T., Circle-1(3), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri S.K. Kabra, CA
Department represented by	Shri Vinod Kumar, Sr.DR
Date of hearing	02/01/2023
Date of pronouncement	02/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals), (in short, the Id. CIT(A)) dated 22/07/2022 for the Assessment year (AY) 2015-16 wherein the assessee has raised following grounds of appeal:

1. *On the facts and circumstances of the case, as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) - NFAC, Delhi has erred in confirming the action of Deputy Commissioner of Income Tax disallowing claimed of deduction u/s 54F of the Act in spite of the fact that investment was made in time allowed u/s 54F of the Income Tax Act, 1961 ignoring various judicial pronouncements submitted during the course of assessment proceedings.*

Cases relied upon during the course of assessment proceedings –

- (a) *Ashok Kapasiawala Vs. ITO, Ward 1 (7), Surat - (2015) 63 taxmann.com. 284 (Ahmedabad -Trib.)*

- (b) *CIT v. K. Ramachandra Rao [2015] 56 taxmann.com 163/230 Taxman 334*
- (c) *Income-tax Officer, Ward 14 (1), Bangalore v. R. Srinivas [2015] 63 taxmann.com 101 (Bangalore - Trib.)*

2. *On the facts and circumstances of the case, as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) - NFAC, Delhi has erred in confirming the action of Deputy Commissioner of Income Tax levying tax at regular rate i.e. 30% on part amount disallowed u/s 54F of the Income Tax Act, 1961 instead of charging u/s 112 of the Income Tax Act, 1961 at i.e. 20%.*
3. *That the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi has further erred both in law and on facts in disposing off the appeal ex-parte without granting any fair opportunity of being heard to the appellant.*
- 3.1 *That the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi has failed to appreciate that there was reasonable cause for the appellant for not causing appearance on the dates fixed for hearing and as such disposal of the appeal without granting fair, meaningful and proper opportunity is untenable.*
- 3.2. *That even otherwise, an order passed in limini without effectively disposing of the grounds raised by the appellant is in infraction of section 250(6) of the Act and as such, order so made is otherwise too illegal, invalid and a vitiated order.*

Cases relied upon –

- (a) *Bimla Devi D/o. Shri Phool Chand Vs ITO (ITAT Delhi)*
- (b) *Marvel Industries Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) (2) [2022] 140 taxmann.com 430 (Mumbai - Trib.)*

2. Brief facts of the case are that the assessee is an individual, filed his return of income for A.Y. 2015-16 on 30/03/2016 declaring income of Rs. 3.22 crores. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that in the relevant financial year the assessee has sold a land at Magdalla, Surat for Rs. 4.82 crores and purchased a flat at Avadh Oriana for Rs. 1.63 crore and claimed deduction under Section 54F of the Income Tax Act, 1961 (in short, the Act). On further perusal of details, the Assessing Officer noted that as per sale

deed or up till registration of said flat, the assessee made payment of Rs. 1.47 crore whereas the assessee has claimed deduction under Section 54F of Rs. 1.63 crore, thus the assessee was asked to explain as to why Rs. 16,38,616/- (Rs. 1,63,92,616 – 1,47,54,000/-) should not be disallowed. In response to said show cause notice, the assessee filed his reply and submitted that the assessee made investment before filing return of income. The assessee explained that due date of filing of return of income for A.Y. 2015-16 was extended till 07/09/2015 in Gujarat State. The assessee explained that he has made payment of service tax of Rs. 6,07,368/-, sale consideration of Rs. 1,47,54,000/- and remaining expenses were also incurred at the time of registration. The difference of Rs. 16,38,618/- was incurred within the time allowed and allowable under Section 54F of the Act. The reply of assessee was not accepted by the Assessing officer by taking a view that the assessee was required to deposit the part of sale proceed in the designated bank account of capital gain. The Assessing Officer disallowed such amount of Rs. 16,38,618/-.

3. Aggrieved by the additions, the assessee filed appeal before the Id. CIT(A). The appeal of assessee was dismissed by the Id. CIT(A)/NFAC vide its order dated 22/07/2022 by holding that the assessee has not explained the fact and that it is not a fit case to interfere with the assessment order. Further aggrieved, the assessee has filed the present appeal before the Tribunal.

4. We have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have gone through the orders of the lower authorities. The Id. AR of the assessee submits that a very short question is involved in the present appeal. The Assessing Officer disallowed the various expenses which were incurred exclusively for the purchase of residential flat. Such expenses were allowable under Section 54F of the Act. The Id. AR submits that disallowed payment of Rs. 16,38,618/- consist of Rs. 7.23 lacs which was paid on account of stamp duty, the assessee paid brokerage expenses of Rs. 3.00 lacs, Rs. 4,59,828/- was paid on account of service tax and Rs. 1,47,790/- was paid as registration charges and Rs. 8,000/- was paid as advocate/vakil fees and other charges at the time of registration of sale deed of residential flat. Thus, the total payment of Rs. Rs. 16,38,618/- was incurred at the time of registration of sale deed of new asset and the assessee is allowable for all such expenses under Section 54F of the Act.
5. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities.
6. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. We find that during the assessment, the Assessing Officer noted that the assessee has claimed deduction of Rs. 1,63,92,616 /-, however, he has purchased a flat for

payment of Rs. 1,47,54,000/- and difference i.e. Rs. 16,38,618/- was disallowed by taking a view that the said amount was to be deposited in a designated bank account. Before us, the Id. AR of the assessee explained that Rs. Rs. 16,38,618/- consist of service charge of Rs. 4,59,828/-, stamp duty of Rs. 7.23 lacs, registration charges of Rs. 1,47,970/-, advocate's fees and other charges of Rs. 8,000/- and brokerage of Rs. 3.00 lacs total of which is Rs. Rs. 16,38,618/-. We find that all these expenses are part of coast of acquisition of new asset. Therefore, we direct the Assessing Officer to allow such expenses. In the result, grounds of appeal raised by the assessee is allowed.

7. In the result, this appeal of assessee is allowed.

Order pronounced in the open court on 2nd January, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 02/01/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

Sr. Private Secretary, ITAT, Surat