

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 2816/Mum/2022
(Assessment Year: 2014-15)

Machindra Baburao Chavan Flat No. A/403, 4 th Floor, Evershine Cosmic Building, Orhiwara, Jogeshwari (W), Mumbai-400 102	Vs.	ITO-34(2)(1) Mumbai
PAN/GIR No. ACRPC 5790 N		
(Appellant)	:	(Respondent)
Assessee by	:	Shri D. B. Shah
Revenue by	:	Ms. Mahita Nair
Date of Hearing	:	13.03.2023
Date of Pronouncement	:	09.06.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

2. The assessee has raised the following grounds:

1) *On the facts in circumstances of the case and in law the learned Commissioner of Income Tax Appeals erred in stating that the appellant failed to submit the relevant documents and further erred in dismissing the appeal when submissions dated 12th August, 2022 were already available on record.*

2) *On the facts in circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of exemption under section 54 by the Assessing Officer amounting to Rs. 25,83,160/- in respect of investment of capital gain on sale of two houses converted into one house, by investing capital gain in one residential house.*

3) *On the facts in circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) has erred in not allowing full deduction u/s 80TTA in respect of Savings Bank Interest as a result of dismissal of the appeal without considering the submissions made by the appellant during the appeal proceedings.*

3. The brief facts of the case are that the assessee is an individual and had filed his return of income dated 11.02.2016, declaring total income of Rs.5,88,720/-. The assessee's case was selected for scrutiny and the assessment order dated 28.12.2016 was passed u/s. 143(3) of the Act, determining the total income at Rs.61,21,190/- by making disallowance u/s. 56(2)(vii) and u/s. 54 of the Act of the Act amounting to Rs.55,32,475/- on the ground that the assessee has sold two flats, i.e., 706 & 707 in the building name Nikita Apartments admeasuring 195.6 sq. ft. and 195.34 sq. ft. respectively. The A.O. has observed that the assessee has sold two flats and has purchased one flat at Evershine Cosmic and, therefore, the A.O. disallowed the exemption claimed by the assessee u/s. 54 of the Act on the proportionate amount of capital gain derived from one flat out of two.

4. The assessee was in appeal before the Id. CIT(A) who vide an *ex parte* order dated 08.09.2022 upheld the addition/disallowances made by the A.O. for the reason that the assessee has failed to furnish any documentary evidence in support of his claim. The A.O. has also disallowed interest income of Rs.5,295/- received by the assessee for the reason that the assessee has failed to offer the said income under the original return of income and has also not claimed deduction thereon. It is also observed that the A.O. has disallowed the said interest for the reason that the assessee has filed his return of income belatedly and, therefore, rejected the claim of deduction u/s. 80TTA of the Act.

5. Aggrieved by the said order, the assessee is in appeal before us.

6. We have heard the rival submissions and perused the materials available on record. It is observed that the first appellate authority has dismissed the appeal filed by the assessee for the reason of failure to furnish any evidences in support of the assessee's claim. During the appellant proceeding, the ld. AR for the assessee contended that the ld. CIT(A) has failed to consider the submission made by the assessee and has also failed to pursue the documentary evidences filed in support of the assessee's claim. It is evident from the ld. CIT(A)'s order that the aforementioned issues has not been decided on merits. Hence, we are of the considered opinion that all these issues may be set aside to the file of the ld. CIT(A) to decide the grounds raised by the assessee on merits of the facts and after duly considering the documentary evidences filed by the assessee in order to adhere to the principles of natural justice.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 09.06.2023.

Sd/-

(B. R. Baskaran)
Accountant Member

Mumbai; Dated : 09.06.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai