

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE, SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3941/Del/2018
(Assessment Year: 2013-14)**

Late Smt. Saroj Bansal, Represented by Legal Heir Manish Bansal, C/o- MattaGarg& Co., 15, Astley Hall, Dehradun	Vs.	Income Tax Officer, Ward-2(3), Dehradun
PAN – AJZPB0140J		
(Appellant)		(Respondent)

Appellant By	Sh. S.K. Matta, CA
Respondent by	Smt. Poonam Sharma, Addl. CIT
Date of Hearing	19.06.2023
Date of Pronouncement	23.06.2023

ORDER

This is an appeal by the assessee against order dated 06.03.2018 passed by learned Commissioner of Income Tax (Appeals) [hereinafter referred to as the learned CIT(A)], Dehradun, pertaining to assessment year 2013-14.

2. The only effective issue to be decided in this appeal is as to whether the learned CIT(A) was justified in upholding the action of learned Assessing Officer in treating the gains received on sale of property by assessee as business income as against capital gains reported by the assessee. The inter-connected issue involved therein is as to whether the assessee is eligible for claim of deduction under section 54F of the Act in respect of reinvestment made in residential property.

3. We have heard rival submissions and perused the materials available on record. The assessee is an individual engaged in the business of commission agent of real estate. The return of income for the assessment year 2013-14 was belatedly filed by the assessee on 07.02.2014 declaring income of Rs.8,90,130/-, which includes capital gain of Rs.6,88,777/-, after claiming deduction of Rs.80,91,127/- under section 54F of the Act in respect of reinvestment of capital gains in another residential property.

4. It is not in dispute that the assessee has purchased the various properties commencing from assessment year 2008-09 to assessment year 2011-12. It is also not in dispute that the assessee

had sold one of the properties in assessment year 2011-12 and assessment year 2012-13. According to learned AR, the assessee had only invested in the property in the capacity of investor for the purpose of earning capital appreciation thereon. The intention of the assessee at the time of purchase of properties in the capacity of investor has also been accepted by learned Assessing Officer in page 4 of his order. Hence, learned AR argued that the Assessing Officer erred in treating that the assessee by splitting the land into various plots and thereafter selling the same to different persons would only constitute adventure in the nature of trade carried on by the assessee, thereby losing the status of being an investor. Hence, according to Assessing Officer, the resultant gain on sale of those properties would only be income from business and not income from capital gains. Consequently, learned Assessing Officer had also denied the claim of deduction under section 54F of the Act in respect of reinvestment made in new house property. This action of learned Assessing Officer was upheld by learned CIT(A).

5. It would be relevant to understand the behavior of the assessee with regard to the purchase and sale of the properties, which could be understood from the following table:

F.Y.	A.Y.	Purchases	Sale	Remark
2007-08	2008-09	6,02,400		<p>In the Balance Sheet these immovable properties have been shown as Fixed Assets along with other prior owned properties. Assessment u/s 147/143(3) of the Income Tax Act, 1961 was completed by the same Assessing officer on 21.03.2016. Wherein above immovable properties were taken as Fixed Assets..</p> <p>Copy of assessment order and Balance Sheet as on 31.03.2008 is placed on record.</p> <p>Thereby it is clear and accepted that immovable property purchased is not stock in trade.</p>
2008-09	2009-10	4,85,255		<p>In the Balance Sheet these immovable properties have been shown as Fixed Assets along with other prior owned properties.</p> <p>Balance Sheet as on 31.03.2009 is placed on record.</p> <p>Thereby it is clear that immovable property purchased is not stock in trade.</p>
2009-10	2010-11	21,85,000		<p>In the Balance Sheet these immovable properties have been shown as Fixed Assets along with other prior owned properties. Return of income was submitted on 04.01.2012.</p> <p>Copy of acknowledgement of return filed and Balance Sheet as on 31.03.2010 are placed on record.</p> <p>Thereby it is clear and accepted that immovable property purchased is not stock in trade.</p>
2010-11	2011-12	32,10,250		<p>In the Balance Sheet these immovable properties have been shown as Fixed Assets along with other prior owned properties. Assessment u/s 147/143(3) of the Income Tax Act, 1961 was completed by the same Assessing officer on 21.03.2016, wherein, above immovable properties were taken as Fixed Assets.</p>

				Copy of the assessment order and the Balance Sheet as on 31.03.2011 are placed on record. Thereby it is clear and accepted that immovable properties purchased were not stock in trade.
2011-12	2012-13		54,52,150	Gain on Sale of immovable properties was shown as Income from Capital Gain in the return of income filed on 29.03.2013. Copy of Computation of income and acknowledgement of return filed are placed on record.

6. We find that the contention of the assessee is that she has been showing the property purchased as fixed assets in her statement of assets and liabilities account, which goes to prove that she would like to remain as an investor and never wanted to exploit the said property commercially by using it for business purposes. Hence, according to AR, there was no intention of the assessee to earn any short-term gains from the said property by engaging herself in the adventure of any trade.

7. Per contra, learned DR vehemently argued that the assessee has divided its lands into several plots and had sold those plots to several parties. The assessee has also sold the property in assessment year 2011-12 and similarly in assessment year 2012-13. This goes to prove that the assessee had decided to transform

herself as a business women to exploit commercially the properties owned by her as an adventure in the nature of trade in order to earn business income.

8. We are unable to accept to this proposition made out by learned DR and by the lower authorities for the following reasons:-

- i. We find that the assessee had bought the properties from financial year 2008-09 till assessment year 2010-11 in the capacity of investor, which has been accepted by learned Assessing Officer. Part of these assets were sold by the assessee in assessment years 2011-12 and 2012-13.
- ii. The capital gains arising out of such sale has duly been disclosed by the assessee in assessment year 2011-12 and accepted as such by the revenue, though u/s 143(1) of the Act.
- iii. For the purpose of arriving at the capital gains in respect of sale of property in assessment year 2012-13, we find that the assessee had indeed considered the sale price as determined by the Stamp Valuation Authority in terms of section 50C of

the Act as the actual sale consideration was less than the circle rate. This clearly shows the intention of the assessee that she always wanted to remain only as an investor and never intended to carry on any business on the property.

- iv. We find, learned Assessing Officer had also accepted the very same sale consideration disclosed by the assessee in terms of section 50C of the Act, even though, he has sought to treat the gains arising from the sale of property as business income. In this regard, it is pertinent to note that when a business asset is sold (i.e. immovable property held as stock in trade), the learned Assessing Officer could substitute stamp duty value as against the actual sale consideration in terms of section 43CA of the Act, if the actual sale consideration is less than the circle rate. But the provisions of section 43CA of the Act was introduced in the Statute only w.e.f. 01.04.2014 and applicable from assessment year 2014-15 onwards only and cannot be applied to earlier assessment years. Hence, the learned Assessing Officer was not justified in accepting the gain as business income as against capital gain.

- v. One more excruciating fact which prove the intention of the assessee to be an investor beyond any doubt is that the assessee is only 50% co-owner of the property along with his daughter-in-law, which is subjected to sale during the assessment year 2012-13 i.e. the year under consideration. No prudent person would buy property jointly for doing business. This fact also goes to prove that the assessee, right from the time of purchase till the sale of the property, had intended to treat the property as capital asset and offer capital gains on its sale.
- vi. One more fact which goes in favour of the assessee is that if the theory of learned Assessing Officer that the assessee is doing business in the form of adventure in the nature of trade vis-à-vis property is to be accepted, then the capital asset which had been shown by the assessee as such, had to be first converted into stock-in-trade. On the said conversion, it would be liable for capital gains in terms of section 45(2) of the Act. Admittedly, no such case was made out by the Revenue by bringing to tax the capital gains at the time of conversion. In

fact, the learned Assessing Officer, having accepted the fact that the assessee bought the property only in the capacity of an investor, had not even brought on record with cogent evidence as to on which date the said capital asset got converted into stock-in-trade, thereby, warranting levy of capital gain tax under section 45(2) of the Act.

vii. As stated earlier, the assessee had sold the subject mentioned property jointly with her daughter in law and the daughter in law has offered capital gains of her 50% share in the property in her return of income, which has been accepted by the revenue. Hence, there is no reason for the Revenue to take a divergent stand on the very same transaction qua the assessee herein.

9. In view of the aforesaid observations and considering the totality of the facts and circumstances of the case, we are of the considered view that the gains arising on the sale of the property to the assessee has to be taxed only as capital gains and not as income from business. Consequently, the assessee would be eligible

for deduction under section 54F of the Act in respect of reinvestment of capital gains made in the house property.

10. However, in the interest of justice and fair play, we find that since there is no finding given by learned Assessing Officer in his assessment order with regard to examination of quantum of deduction under section 54F, we deem it fit and appropriate to restore this issue only for the limited extent of allowability of the claim of deduction under section 54F of the Act, vis-à-vis, its quantum. Grounds raised by the assessee are disposed of subject to above mentioned directions.

11. In the result, the appeal is allowed for statistical purposes.

Order pronounced in Open Court on 23rd June, 2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/06/2023

RK/Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)