

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 84/Kol/2023
Assessment Years: 2015-16

Siddharth Pahwa 68B, Park Street Apsara Apartment Kolkata - 700016 [PAN : AKIPP2353B]	Vs	Income Tax Officer, Ward-12(3), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Rip Das, CA
Revenue by :	Shri P.P. Barman, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 27/03/2023
घोषणा की तारीख /Date of Pronouncement: 22/06/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal filed by the assessee pertaining to the Assessment Year 2015-16 is directed against order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by National Faceless Appeal Centre [in short "ld. CIT(A)"] dated 15/12/2022.

2. The assessee has raised the following grounds of appeal:-

"1. Your appellant is an individual deriving income from Salary, Long Term Capital Gain (hereinafter LTCG) and Income from Other Sources out of Savings Bank Interest, Interest on Bank FDR & Bond Interest, etc. During the year under consideration, your appellant filed his return of income on 31.08.2015 declaring Total Income of Rs. 14,00,130/-, inter-alia claiming a deduction of Rs.76,87,108.20/- under the head of Long Term Capital Gain by virtue of sale of House Property.

2. However, the said declared income was recomputed at Rs.70,99,897/- in the Assessment Order passed u/s 143(3) of the Income Tax Act, 1961 dated 29.11.2017 passed by Learned Income Tax Officer, Ward - 33(1), Kolkata (hereinafter referred to as Ld. ITO) by disallowing the entire claim of deduction preferred u/s 54F of the Act, on the ground that he failed to transfer the Sale proceeds of the flat in a separate Capital Gain Account created with a Bank for the purpose of making investment in a new flat. Further, the Ld. AO has considered wrong purchase cost and financial year of acquisition for computation of the indexed cost of the flat sold.

3. Being aggrieved with the said Order passed u/s 143(3), your appellant preferred an Appeal before the Learned Commissioner of Income Tax (Appeals) - 9, Kolkata on 06.01.2018. The said Appeal Order was passed on 15.12.2022 by the Learned Commissioner of Income Tax, NFAC, Delhi [hereinafter referred to as Ld. CIT (A)] by confirming the order passed u/s 143(3) of the Act. The Learned CIT (A), while passing order u/s 250 has stated that 'No documents / evidences produced neither in the course of the assessment proceedings nor at the time of the appeal proceedings as regard to the transfer of the property' is not correct. Further, the claim that "The year of taxability was not agitated at the time of the assessment' is also not correct. Therefore, the instant appeal is preferred by your appellant before your honours for redressal and appraisal, by enumerating the facts of the case as below.

4. That your appellant submits that the sale consideration from the sale of one-half portion of the Flat No. 7B2 located at 24/1A, Ballygunge Circular Road, Kolkata - 700 019 would have been at Rs.1,12,50,000/- in place of Rs.1,10,00,000/- shown in the computation of income filed at the time of filing his return of income, only because the balance amount of Rs.2,50,000/- was paid by the buyer of the said flat after 31.03.2015 in the form of cheque drawn on bank and TDS [Rs.1,37,500 + Rs.1,12,500/-]. During the course of hearing of scrutiny assessment u/s 143(3) the information was passed on to the Ld. AO by a letter dated 11.11.2017 and a request was made to re-compute the Long Term Capital Gain (LTCG) accordingly.

5. That your appellant submits that though the payments against the said proposed Sale of Flat started coming up from 15.01.2015, the execution of Deed of Conveyance of the said Flat was held on 05.05.2015, after receipt of the entire consideration money. Thus, the LTCG arises to your appellant only in the next Assessment Year, i.e. AY 2016-17 and not in the Current Assessment Year though inadvertently the same was declared as LTCG in the current Assessment Year. The question which is raised here, when the LTCG has taken place as per law! i.e., whether in AY 2015-16 or in AY 2016-17. Your appellant submits that the correct position would be to consider the LTCG in AY 2016-17 only and not in the Assessment Year 2015-16 (under dispute) as the title of the property was transferred to buyer only in AY 2016-17 by execution of the Deed of Conveyance. Your appellant further submits that if any mistake is committed by an assessee unknowingly then a prudent Assessing Officer should consider the correct position of Law and assess an Assessee accordingly.

6. That your appellant further submits that Ld. AO has considered FY 1999-2000 as the year of purchase of the said Flat sold instead of FY 1993-1994. Your appellant submits that actual investment was made and possession of flat was taken in the FY 1993-94 along with his father Dr. Vijay Pahwa (since deceased), as Father & Natural Guardian after payment of full consideration. However, the registration of the said flat was made in the FY 1999-2000 due to some problem with the promoter-developer of the said flat at that time. Hence, it is prayed before your honour to consider the year of physical possession of the said flat as FY 1993-94 as actual date of acquisition of the flat instead of FY 1999-2000 as considered by the Ld. AO.

7. That your appellant submits that Indexed Cost be calculated on the basis of year of acquisition, i.e. FY 1993-94 at Rs.33,12,891.80/- [Rs.7,89,400/- x 1024/244] because the cost of acquisition of the sold flat was Rs.7,89,400/- as per Books of Accounts of your appellant in the FY 1993-94 and not Rs.2,09,100/- as in the FY 1999-2000 as considered by the Ld. AO. Your appellant further submits that the actual year of acquisition may please be directed to be considered as the

year of purchase for the purpose of the calculation of the indexed cost of acquisition.

8. That your appellant further submits that the alleged non-deposit of Long Term Capital Gain proceeds as specified in Section 54F is not correct, as your appellant transferred Rs. 80,00,000/- in a Special Deposit Account created as compliance to Section 54F of the Act with Standard Chartered Bank, hence, the allegation made against your appellant do not hold good.

9. That your appellant further submits that out of the LTCG earned, investment made for the purchase of a new House Property (Flat) on 17.08.2016 jointly with his father and two others in equal shares, wherein your appellant's share comes at Rs.42,25,000/- which may please be allowed as investment u/s 54F, as the said investment in Flat has been within two Financial Years from the date of Sale.

10. That your appellant craves leave to urge, to add, to alter, to amend and/or to adduce further Statement of Facts on or before the date of appeal hearing."

3. Brief facts of the case are that the assessee is an individual earning income from salary and profession. Income of Rs.14,00,130/- declared in the e-return for Assessment Year 2014-15 filed on 31/08/2015. Case selected for scrutiny through CASS followed by notice u/s 143(2) and 142(1) of the Act. In the course of the assessment proceedings, ld. Assessing Officer examine the long-term capital gains received by the assessee during the year. After considering the submissions filed by the assessee the ld. Assessing Officer made the following additions:-

(a) shortfall in sale consideration declared during the year – Rs.2,50,200/-

(b) excess claim of cost of acquisition on account of year of acquisition adopted by the Assessing Officer as 1999-20 as against 1993-94 claimed by the assessee – Rs.27,62,469/-

(c) denial of deduction u/s 54F of the Act at Rs.42,25,000/-.

3.1. After making the above additions income of the assessee assessed at Rs.70,99,897/-which included long-term capital gains at Rs. 56,99,767/-.

3.2. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed on any of the issues as the Id. A/R of the assessee was either unable to satisfy the Id. CIT(A) with the contentions or relevant documentary evidences were not placed in support of the grounds.

4. Aggrieved the assessee is now in appeal before this Tribunal.

5. The Id. Counsel for the assessee vehemently argued referring to the written submissions, copy of deed of conveyance dt. 21/01/2000, proof of acquiring the property in question during financial year 1993-94, copy of sale deed, proof of delivery operation, copy of deed of conveyance dt. 17/08/2016 for claim u/s 54F of the Act as well as the bank statement, financial transactions for claiming deduction u/s 54EC of the Act. On the other hand, the Id. D/R, vehemently argued supporting the orders of the lower authorities.

6. We have heard rival contentions and perused the material placed before us.

7. The first issue for our consideration is regarding the taxability of the transactions for sale of immovable property carried out during the year. We notice that the transactions for long term capital gain is on account of sale consideration received from sale of a flat situated at 7th Floor of Premises No. 24/1A Ballygunge Circular Road, Kolkata. The consideration for the said transaction was agreed at Rs.1,12,50,000/- . The major consideration amounting to Rs.1,10,00,000/- was received during the financial year 2015-16 relevant to assessment year 2016-17 and the balance of Rs.2,50,000/- was received in the subsequent financial year. The deed of conveyance was entered on 05/05/2015, which falls under the assessment year 2015-16. Though it was contended by the Id. Counsel for the assessee that the alleged transaction needs to be taxed in assessment year 2016-17 rather than assessment year 2015-16 but when it was asked whether the assessee has disclosed the said transactions in the return for assessment year 2016-17, no satisfactory reply was given. Thereafter, the Id. Counsel for the assessee requested for not pressing this issue and give consent on behalf of the assessee that the alleged transactions may be taxed for Assessment Year 2015-16, i.e., the year under consideration. So for the purpose of adjudicating this issue we hold that on account of acceptance of the assessee and on account of the fact that major consideration was received during the assessment year 2015-16, the taxability of these transactions will fall under Assessment Year 2015-16.

8. The next issue for our consideration is regarding the addition of Rs.2,50,200/- on account of discrepancy in shortfall of sale consideration declared by the assessee. We notice that the sale consideration for the alleged transactions of sale of flat, is Rs.1,12,50,000/- (though inadvertently the Assessing Officer has taken the figure at Rs.1,12,50,200/-) and the consideration received in the year was Rs.1,10,00,000/- and the remaining sum was received for the next year but since it has not been offered to tax in the assessment year 2016-17, the addition for Rs.2,50,200/- is confirmed and to this extent the finding of the Id. CIT(A) is confirmed and the issue is decided against the assessee.

9. Next issue for our consideration is regarding the calculation of cost of acquisition. We notice that the cost of acquisition of Rs.2,09,100/- is not in dispute being 50% share paid by the assessee. The Id. Assessing Officer has allowed the indexation benefit based on the year of acquisition as 1999-20. Before us, Id. Counsel for the assessee has placed copy of deed of conveyance dt. 21/01/2000 and on perusal of page no. 33 of the said conveyance deed, we notice that the consideration for the purchase of the said plot was jointly given by the assessee during the financial year 1992-93 through account payee cheques of Rs.1,66,860/- and Rs.2,50,000/-, dt. 29/09/1992 and at Rs.11,340/- dt. 01/10/1992 . This fact remains undisputed that the consideration for the purchase of the flat was passed on by the assessee jointly with the other owner during financial year 1992-93

only, even though the deed of conveyance was finally signed on 21/01/2000. Therefore, since the cost of acquisition was paid by the assessee during the financial year 1992-93, we find that the assessee has rightly claimed indexation benefit from the year 1993-94. Before us it is claimed by the assessee that cost of 50% share of the acquisition is Rs.7,89,400/- and the same was found from the balance sheet as on 31/03/2014, and, therefore, indexation benefit should be given considering the cost of acquisition of Rs.7,89,400/- treating the period of acquisition as financial year 1993-94.

10. We notice that the consideration as per the deed of conveyance dated 21/01/2000, was passed on during the financial year 1993-94 but since this deed of conveyance was not placed before the lower authorities and also since the bifurcation of the cost of acquisition claimed by the assessee at Rs.7,89,400/- as against Rs.2,09,100/- adopted by the Assessing Officer was not available during the course of proceedings before the lower authorities, we deem it appropriate to restore this issue to the file of the Assessing Officer shall carry out necessary examination of the facts during deed of conveyance dt. 21/01/2000 as well as the proof of cost of acquisition claimed by the assessee and shall decide the issue in accordance with law. Further the indexation benefit for the cost incurred should be provided on the basis of year of incurring expenditure. Accordingly this issue is allowed for statistical purposes.

11. The last issue for our consideration is regarding the claim of deduction u/s 54F of the Act. We notice that the assessee claimed deduction of Rs.42,25,000/- u/s 54F of the Act for investment in new house property, which is 1/4th share of the total consideration paid for the purchase of house property at Rs.1,69,00,000/-. The deed of conveyance was dated 17/08/2016 and since the assessee has filed the return of income on 31/08/2018 and no proof was submitted regarding deposit of the sale consideration in the capital gains account with the scheduled bank, the said claim was denied. Even before the Id. CIT(A) the assessee failed to get relief.

11.1. Before us, the assessee has firstly brought to our attention copy of bank statement placed at page no. 102 of the paper book for the period 01/01/2015 to 10/06/2015 and we notice that the assessee has transferred Rs.50,00,000/- on 04/06/2015 in the capital gains account and Rs.30,00,000/- has been paid as advance to Siddharth Land and Building Pvt. Ltd. towards the purchase of flat. We, therefore, find that, out of the total sale consideration of Rs.1,12,50,000/-, the assessee deposited Rs.50,00,000/- with Rural Agricultural Corporation Bond in order to claim deduction u/s 54EC of the Act and against the remaining consideration of Rs.62,50,000/-, the assessee has deposited Rs.50,00,000/- in the capital gain account before the due date of filing the return of income and has also advanced Rs.30,00,000/- to Siddharth Land and Building Pvt. Ltd., from which the new house property was finally purchased on 17/08/2016. Therefore, since the

assessee has satisfied the conditions as provided u/s 54F of the Act, he is entitled for deduction at Rs.42,25,000/-. Thus, finding of the Id. CIT(A) is set aside and this issue is decided in favour of the assessee.

12. Remaining grounds/issues are general and consequential in nature.

13. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 22nd June, 2023 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 22/06/2023

Sd/-

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata