

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Shri Pradip Kumar Kedia, Accountant Member**

ITA No. 7810/Del/2019  
(Assessment Year: 2016-17)

Sachin Wadhwa, C-51, Gulmohar Park, New Delhi (Appellant) <b>PAN:AAPW7923N</b>	Vs. ACIT, Circle-32(1), New Delhi (Respondent)
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Assessee by :	Shri Jatin Gupta, CA
Revenue by :	Shri S. L. Anuragi, Sr. DR
Date of Hearing	31/05/2023
Date of pronouncement	18/07/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This appeal is preferred by the assessee against the order of the Id CIT(A)-32(1), Delhi dated 26.11.2018 for AY 2016-17.
2. The assessee has raised the following grounds of appeal:-  
*"1. Learned assessing officer has erred Additions of Rs 29,03,672/- as sale consideration u/s 45 by treating unsecured loan from father of the assessee as compensation."*
3. The Id counsel submitted that the Id CIT(A) has erred in disallowing the loss of Rs. 29,03,672/- on the ground that the appellant has not filed income tax return for the respective years in which payment was made to the builder and without appreciating the fact payment of said amount has been actually made by the father of the assessee on behalf of the assessee to the builder. The Id counsel submitted that therefore, the loss incurred to the assessee may kindly be allowed on lum sum basis on sale of rights in the plot.

4. Replying to the above, the Id Sr. DR supported the orders of the authorities below to submit that the AO has categorically considered the submissions of the assessee and thereafter recorded on verified conclusion that the impugned amount of claimed loss is not allowable to the assessee as the assessee claims to have made investment of Rs. 37 lakhs towards purchase of property but has not even filed his return of income for AY 2013-14 and AY 2014-15 as reflected in the records in the department which put question mark on genuineness and creditworthiness of the assessee. Ld Sr. DR submitted that the short term capital loss that has been claimed by the assessee was a fabrication an afterthought as the assessee received same amount as his total consideration as the cost of acquisition borne by him thus resulting is no profit no loss transaction.

5. On careful consideration of the above submission, first of all, we note some glaring facts pertaining to issue that on 22.08.2015 the assessee along with his father Sh. Lalit Wadhwa sold the rights that they held in the property allotted to the them bearing Flat NO. 5-D-4, 32 in Ireo Pvt. Ltd Project situated at Sector 2, Gwal Pahari Gurgaon to Ms. Mona Kumbhat for a total consideration of Rs. 3,70,11,959/-. In the said property the assessee was holding 25,988% of the rights and the father Sh. Lalit Wadhwa 74.012% of the rights and the buyer paid a total sum of Rs. 1,42,37,600/- to the assessee and his father as against the total investment amount of Rs. 2,54,11,112/- which was paid by the assessee and his father to the said builder company towards allotment of said plot and balance amount of Rs. 1,11,73,413/- was short term capital loss. The AO asked the assessee to submit detailed computation of capital gain and loss claimed by him in his ITR with all supportive documents to substantiate the cost of acquisition claimed by him. The AO also took significant note of the fact that the assessee revised his computation of capital loss in the course of proceedings in which claimed a new cost of acquisition of Rs. 66,03,672.90/- as against the

earlier cost of acquisition claimed by him in his ITR amounting to Rs. 64,26,994.50/- to claim capital loss of Rs. 42,26,994/-, which was subsequently reduced to short term capital loss of Rs. 29,03,672/-.

6. The main controversy for adjudication is that the assessee claims that he was having 25.98% share in the property and paid Rs. 37 lakhs and balance amount of Rs. 29,03,673/- was paid on his behalf by his father Sh. Lalit Wadhwa. Further, as per the assessee the assessee received sales consideration of Rs. 37 lakhs from the purchaser leaving short term capital loss of Rs. 29,03,673/- and the same may kindly be allowed. From the copies of the Form 26QB we note that for AY 2016-17 the assessee deposited TDS amount of Rs. 37 lakhs against the advance payment of Rs. 37 lakhs to the builder and father of the assessee Sh. Lalit Wadhwa joint purchaser deposited Rs. 1,05,377/- TDS on advance amount of Rs. 1,05,37,699/- but we are not able to see any document or Form 26QB which could reveal that on behalf of the assessee his father Sachin Wadhwa also paid Rs. 29,03,673/-. For claiming short term capital loss onus was on the shoulder of the assessee to show that either from own funds or on behalf of the assessee his father Sh. Lalit Wadhwa has paid to the builder total amount of Rs. 66,03,673/- out of which Rs. 37 lakhs was paid by him and remaining amount of Rs. 29,03,673/- was paid by his father on his behalf.

7. It is pertinent to mention that originally the assessee filed computation of income showing capital loss of Rs. 47,26,994/- which was revised subsequently by claiming short term capital loss of Rs. 29,03,673/-. It is pertinent to mentioned that copies of Form 26QB shows payment of Rs. 37 lakhs by the assessee Sh. Sachin Wadhwa and Rs. 1,05,37,699/- by his father Sh. Lalit Wadhwa and there is no other document or agreement except a balance confirmation letter filed dated 21.11.2018 issued by father of assessee Sh. Lalit Wadhwa addres to the AO, to show that the father of assessee has paid additional amount of Rs. 29,03,673/- on behalf of the assessee. On being asked by the

bench, the Id counsel of the assessee, except said confirmation letter, could not show us any other documentary evidence to establish the factum of payment of Rs. 29,03,673/- on behalf of the assessee by his father Sh. Lalit Wadhwa. Therefore, we are unable to agree with claim of Short term capital loss of Rs. 29,03,673/-.

8. On the other hand, at the cost of repetition we note that the assessee and his father jointly sustained short term capital loss of Rs. 1,11,73,413/- on the investment of Rs. 2,54,11,112/- and selling rights in the property for total consideration of Rs. 1,44,37,699/-. In the said investment the assessee contributed Rs. 37,00,000/- and his father Sh. Lalit Wadhwa contributed remaining amount of Rs. 2,17,11,112/- and total loss on said property transaction was Rs. 1,11,73,413/- which has to be borne by the joint investors in the ratio of amount of investment. Therefore, the AO is directed to allow short term capital loss and to calculate loss in the ratio of their contribution to the total investment i.e. Rs. 37,00,000/- : 2,17,11,112/-. Accordingly, sole ground of assessee is partly allowed.

9. In the result, appeal is partly allowed.

Order pronounced in the open court on 18/07/2023.

**-Sd/-**  
**(Pradip Kumar Kedia)**  
**ACCOUNTANT MEMBER**

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 18/07/2023  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi