

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.416/Ind/2022
Assessment Year: 2017-18

Shri Suman Kumar Anand, 22,Lala Lajpat Rai Colony, Raisen Road, Bhopal	<u>बनाम/</u> Vs.	Principal CIT-1, Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AEBPA7192N		
Assessee by	Ms. Nisha Lahoti and Shri Vijay Bansal, ARs	
Revenue by	Shri P.K.Mishra, CIT DR	
Date of Hearing	20.07.2023	
Date of Pronouncement	21.07.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 24.02.2022 passed by learned Pr. Commissioner of Income-Tax-1, Bhopal ["Ld. PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 02.12.2019 passed by learned DCIT/ACIT-5(1), Bhopal ["Ld. AO"] u/s 143(3) of the Act for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on the grounds raised in Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The Registry has informed that the present appeal is delayed by 232 days (the assessee has calculated 289 days). Ld. AR submitted that the assessee has filed an application supported by an affidavit duly notarized praying for condonation of delay. The reason of delay averred in the affidavit is such that whenever the assessee enquired from his counsel about compliance of matter, the counsel informed that all compliances have been done. This way, despite repeated reminders the Counsel did not give proper feedback. Ultimately, the assessee approached another counsel, who verified on the portal of Income-tax Department and found that the revision-order, which is impugned order in present appeal, had already been passed on 24.02.2012. Immediately thereafter, the assessee, on the advice of new counsel, arranged to file appeal without further delay. Thus, Ld. AR prays that the assessee was not aware of the impugned order having been passed by department and that is the precise reason leading to delay in filing appeal. Ld. AR submitted that the delay is not because of any lethargy, negligence or malafide intention of assessee. Ld. DR for Revenue did not have any serious objection against the submissions and prayer made by assessee in affidavit; in fact he fairly submitted that the department served impugned order electronically on 24.02.2022 (i.e. from the same day on which the order was passed) to assessee but it might have happened that the assessee had not checked the income-tax portal; hence the same may not have reached to the knowledge of assessee. Being so and keeping in mind the objective to impart justice, the delay is condoned and hearing is proceeded.

4. The factual background of present case is such that the assessee filed return of income of relevant AY 2017-18 on 31.10.2017. In the return so filed, the assessee declared sale of a land for Rs. 2,91,00,000/- on 04.03.2017 resulting into a capital gain of Rs. 2,66,42,340/-. From such capital gain, the assessee claimed exemption u/s 54F based on Investment made in a residential plot amounting to Rs. 2,12,87,525/- (+) Deposit of Rs. 40,00,000/- in Capital Gain Deposit Scheme, 1988, with an objective to construct a residential house property within a period of 3 years. The AO accepted the exemption claimed by assessee and allowed same while passing assessment-order.

5. Subsequently, Ld. PCIT examined the records of assessment proceedings and found that during assessment-proceeding, the assessee had not furnished any documentary-proof in support of completion of construction of residential house within a period of 3 years. Therefore, the AO has not verified the claim assessee for exemption u/s 54F. Accordingly, the PCIT termed the assessment-order as erroneous-cum-prejudicial to the interest of revenue and initiated action of revision u/s 263. Finally, Ld. PCIT passed the impugned revision-order thereby he set aside the assessment-order with a direction to AO to make de novo assessment after proper examination and verification.

6. Aggrieved, the assessee has come in this appeal before us.

7. Ld. AR for assessee made a straight forward argument that even if it is assumed that the assessee had not completed construction within the period of 3 years from sale of original asset (the period of 3 years ended on 03.03.2020), it cannot disturb the exemption u/s 54F rightly claimed by assessee in AY 2017-18 on the strength of investment made in residential plot (+) deposit made in Capital Gain Deposit Scheme, 1988 for construction of residential house on the said plot. Ld. AR submitted that in a worst case, it may lead to re-taxability/withdrawal of exemption on expiry of 3 years i.e. in the previous year 2019-20 relevant to assessment year 2020-21 but certainly it cannot affect the exemption allowed in AY 2017-18. To support this, Ld. AR relied upon decision of *ITAT, Pune Bench in Smt. Pratima C. Joshi vs. DCIT (2021) 125 Taxman.com 272*. Then, Ld. AR further submitted a very important fact that as directed by Ld. PCIT in the impugned order, the AO has already completed assessment de novo vide assessment-order on 21.02.2023, copy placed at page nos. 56 to 62 of the paper book, in which the AO has again examined the claim of assessee, accepted the aforesaid proposition submitted by assessee and allowed exemption u/s 54F although the AO has reduced the quantum of exemption by Rs. 10,98,653/- to set right a calculation mistake which had crept into original assessment-order. With these submissions, Ld. AR prayed to pass an appropriate order as warranted in the present situation.

8. Ld. DR dutifully supported the revision-order although he could not contradict the submissions made by Ld. AR.

9. We have considered submissions of both sides and perused the revision-order as well as the aforesaid consequential assessment-order passed by AO in pursuance of direction given by PCIT. We find that in the consequential assessment-order framed de novo, the AO has accepted assessee's submissions and again allowed exemption u/s 54F although he has reduced the quantum of exemption by Rs. 10,98,653/- so as to set right some calculation-mistake as pointed by Ld. AR. But the fact remains that the AO has accepted the exemption u/s 54F and allowed the same. Faced with this situation, we do not find any grievance subsisting to the assessee from revision-order when the AO has allowed exemption u/s 54F even while carrying out the direction given by PCIT. When it so, the present appeal filed by the assessee becomes infructuous liable to be dismissed. We order accordingly.

10. Resultantly, this appeal is dismissed.

Order pronounced in the open court on 21/07/2023.

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

दिनांक /Dated : 21.07.2023

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore