

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 509/Kol/2023
Assessment Year : 2016-17

Saroj Rawat	Vs.	ITO, Ward-28(4), Kolkata
PAN: ADIPR 9795 E		
Appellant		Respondent

Date of Hearing	06.07.2023
Date of Pronouncement	31.07.2023
For the Assessee	Shri Manish Tiwari, AR
For the Revenue	Shri Kausik Kumar Das, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the assessee against the order dated 23.03.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

- "1. That on the facts and in the circumstances of the case, ld. CIT(A) erred in confirming the action of AO who disallowed a sum of Rs. 5,47,152/- on account of various expenditure incurred towards cost of acquisition of flat and brokerage paid towards sale of flat.*
- 2. That the appellant craves leave to add, alter, adduce or amend any ground on or at the time of hearing of the appeal."*

2. Brief facts of the case are that the assessee is an individual having income from salary, capital gains and income from other sources etc. and maintained proper books of accounts. The assessee filed its return of income for the A.Y. 2016-17 by declaring total income at Rs. 12,59,260/-. In the course of assessment proceeding, the ld. assessing officer passed an order u/s 143(3) of the Act and assessed the total income of Rs. 18,80,820/- thereby

making an addition of Rs. 5,47,152/- towards expenditure incurred for the purpose of acquisition of flats and brokerage paid to the broker which was disallowed by the AO by stating that notice u/s 133(6) was issued to the Emami Realty Ltd. and consequent to that there was no confirmation of amount of Rs. 5,47,152/- received from Emami Realty Ltd.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved by the above order, assessee is in appeal before the Tribunal raising two grounds. However, effective issue for adjudication before us is regarding confirmation of Rs. 5,47,152/- sustained by ld. CIT(A) against the addition made by the AO on account of various expenditure incurred towards cost of acquisition of flats and brokerage paid towards sale of flat by the assessee.

5. At the time of hearing, ld. AR in order to substantiate his claim he submitted that an amount of Rs. 5,47,152/- factored while calculating the cost of acquisition of property towards expenses incurred by assessee on account of assigning/name transfer charges paid to Emami Realty Ltd. amounting to Rs. 3,19,152/- and brokerage charges paid to Jones Lang LaSalle Residential Private Limited (JLLRPL) amounting to Rs. 2,28,000/- respectively towards sale of flat Unit No. C-3/1201 at Emami City, Jessore Road, Kolkata-700028. Further, he contended that the aforesaid sum of Rs. 5,47,152/- have duly been paid by the assessee through demand draft and account payee cheque in the following manner:

<i>Name of payee</i>	<i>Amount</i>	<i>Mode of payment</i>	<i>Date of payment</i>	<i>Drawn on</i>
<i>Emami Realty Ltd.</i>	<i>109440/-</i>	<i>D.D. No. 772500</i>	<i>30.07.2015</i>	<i>Oriental Bank of Commerce</i>
<i>Emami Realty Ltd.</i>	<i>209712/-</i>	<i>D.D. No. 722501</i>	<i>30.07.2015</i>	<i>Oriental Bank of Commerce</i>
<i>Jones Lang LaSalle Residential Private Limited</i>	<i>228000/-</i>	<i>Ch. No. 819683</i>	<i>19.08.2015</i>	<i>Oriental Bank of Commerce</i>

The ld. AR in order to prove the above fact he placed before us a paper book containing almost 46 pages and in page no. 41-43 furnished the copy of bank draft by which assessee has made payment to Emami Realty Ltd. of Rs. 1,09,440/- and Rs. 2,09,712/- respectively and at page 44 to 46, he furnished the bill and fee confirmation of tax invoice receipt from Jones Lang LaSalle Residential Private Limited and from it is crystal clear the aforesaid amount were paid to the respective parties while the assessee has sold the flat to one Mrs. Jesal Desai for a sum of Rs. 43,11,176/- towards sale consideration. However, the claim of assessee was not considered by ld. AO and the ld. CIT(A) also dismissed the claim made by assessee by sustaining the order of AO, therefore, the ld. counsel prayed before the bench for consideration of the various documents furnished before the bench in relation to amount of Rs. 5,47,152/-. In such situation, claim of the assessee may be allowed by this Tribunal by deleting the addition made by the AO while framing the assessment u/s 143(3) of the Act.

6. On the other hand, ld. DR supported the decision passed by the authorities below. We after hearing the rival submission of the parties and perusal of the material available on record and also going through the various documents filed by the ld. AR of the assessee to substantiate towards cost of acquisition of property as

well as brokerage paid to various parties through demand draft and account payee cheque as those were placed before us in paper book from page 41 to 46 respectively. We after examining the above documents placed before us find that such expenses were in fact made by the assessee and in order to prove the fact assessee by placing supported document before us as evidence, hence the claim of assessee is hereby allowed and the addition of Rs. 5,47,152/- made by the AO and subsequently affirmed by the ld. CIT(A) is hereby set aside. In terms of above, the ground taken by the assessee is hereby allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.07.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 31.07.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Saroj Rawat, 582, B Block-N, New Alipore, Kolkata-700053.
2. Respondent – ITO, Ward-28(4), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata