

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.711/Kol/2023
Assessment Year: 2016-17**

Alok Ghosh 9/B, Flat No. 2A, 2 nd Floor, RC Enclave, Roy Bahadur Road, Kolkata-700053. (PAN: AEAPG9370H)	Vs.	Income Tax Officer, Ward- 28(4), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Rip Das, FCA

Respondent by : Ms. Monalisha Pal Mukherjee, JCIT

Date of Hearing : 29.08.2023

Date of Pronouncement : 31.08.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2023-24/1052967502(1) dated 18.05.2023 passed against the assessment order by ITO, Ward-28(4) u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 04.12.2018 for AY 2016-17.

2. Grounds raised by the assessee are reproduced as under:

"1. That the Assessment Order passed by the Learned Income Tax Officer, Ward - 28(4) / Kolkata, u/s 143(3) of the Income Tax Act, 1961 as well as the confirmation / modification of the same in the Appeal Order passed u/s 250 of the Act is unlawful, unwarranted and against natural justice.

2. That your appellant submits that correct computation of Long Term Capital Gain be directed to be computed by considering the Indexed Cost of both the properties sold as per the provisions of section 48(2) of the Act and so also proper deduction u/s 54 of the Act be allowed for investment in new house

property. Hence it is prayed that arbitrary addition of Rs.13,23,960/- be directed to be deleted from the head of "Long Term Capital Gain" by making correct computation by allowing indexation benefit u/s 48(2) and deduction u/s 54 of the Act. [Relief Claimed - Deletion of Rs.13,23,960/-]."

3. Brief facts of the case noted from the statement of facts furnished by the assessee are as under:

"1. Your appellant is an individual deriving income from Pension, Long Term Capital Gain (hereinafter referred to as LTCG) and Income from Other Sources comprising of Savings Bank Interest, Interest on Bank FDR, etc. During the year under consideration, your appellant filed his return of income u/s 139(1) declaring a Total Income of Rs.4,39,460/-, inter-alia claiming deduction of Rs.54,39,000/- under the head of "Long Term Capital Gain" by virtue of sale of 2 (two) House Properties.

2. However, the said declared income was recomputed at Rs.17,63,420/- in the Assessment Order passed u/s 143(3) of the Income Tax Act, 1961 dated 04.12.2018 passed by the Learned Income Tax Officer, Ward - 28(4), Kolkata (hereinafter referred to as Ld. ITO) by disallowing the entire claim of deduction preferred u/s 54 of the Act, without stating any sustainable reason thereof.

3. Being aggrieved by the said Order passed u/s 143(3), your appellant preferred an Appeal before the Learned Commissioner of Income Tax (Appeals) - 8, Kolkata on 18.12.2018. The Appeal Order was passed on 18.05.2023 by the Learned Commissioner of Income Tax, NFAC, Delhi [hereinafter referred to as Ld. CIT(A)] by modifying / upholding the order passed u/s 143(3) of the Act. The Learned CIT (A), while passing order u/s 250 has stated that response has been submitted by the appellant but no written submission has been filed. 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 during the year under consideration he had sold 2 (two) house properties, one located at Behala, Kolkata - 700 034 and the second one located at Durgapur, West Bengal, and subsequently proceeds have been invested for purchase of a new house property to the extent of the Long Term Capital Gain and duly availed claim u/s 54 of the Income Tax Act, 1961, which will be evident from the attached copy of the Computation of Income.

5. That your appellant submits that if any wrong calculation has been made and I or computation of Long Term Capital Gain reflected at the time of filing his return of income, then the Ld. Assessing Officer should correct the said mistake and pass a correct assessment order and so also the same prevails for the Ld. Appellate Authority.

6. Your appellant submits that the indexed cost of both the old Flats / Building sold has not been properly appraised and allowed as a deduction u/s. 48(2) of the Act from the Sale Consideration received from sale of both the Flat/Building to your appellant. So, also the deduction available u/s 54 of the Act for investment in a new Flat has also not been properly appraised by both the lower Authorities and allowed as a deduction. Your appellant submits that the computation of Long Term Capital Gain be directed to be correctly framed as per the provisions of Law.”

4. Before us, Ld. Counsel for the assessee pointed out that Ld. AO has computed long term capital gain on the sale transaction of two house properties in contravention to the provisions of the Act and adopted his own methodology to arrive at taxable long term capital gain. For this, he referred to para 5 of the impugned assessment order wherein the total sales value of both the house properties taken together is at a value of Rs. 85 lakhs. However, instead of deducting cost of acquisition with indexation, Ld. AO has taken the amount of “loan to HDFC” of Rs.10,39,000/-. Ld. AO has allowed the claim of commission or brokerage of Rs. 1 lakh and has also given a deduction for investment in new house property. Since no deduction was given for the cost of acquisition with their indexation, assessee went in appeal before the Ld. CIT(A).

5. Ld. Counsel referred to para 7.30 of the order of Ld. CIT(A) to point out that he had opined about committing of mistake by the Ld. AO in allowing deduction of Rs.10.39,000/- of loan to HDFC. In this respect, Ld. CIT(A) noted that such a mistake committed by Ld. AO is a prima facie mistake, apparent from record, amenable for rectification u/s. 154 of the Act. He thus, directed the Ld. AO to rectify the said mistake by invoking the provisions of section 154 after affording an opportunity of being heard to the assessee.

5. Ld. Sr. DR. pointed the fact that assessee suo moto computed long term capital gain arising from sale of two properties without

claiming any deduction u/s. 48 of the Act towards cost of acquisition with indexation. He referred to income tax return filed in Form ITR-2 dated 06.07.2016 wherein no claim is made towards cost of acquisition with indexation. On this fact, Ld. CIT(A) held that assessee is not entitled to claim deduction u/s. 48 for the first time, during the course of assessment proceedings unless made by way of filing revised return u/s. 139(5) of the Act. He thus, held that since assessee has not filed any revised return for the purpose of claiming deduction of cost of acquisition with indexation u/s. 48 of the Act, claim of the assessee is not admitted.

6. Ld. Counsel for the assessee referred to computation of income placed at page 3 of the paper book to submit that assessee had claimed deduction and offered Rs.31,000/- as income from capital gain which was subjected to tax @ 20%. He admitted that there was mistake in claiming the correct deduction towards cost of acquisition with indexation from the full value of sale consideration of the two house properties which was corrected in the course of assessment proceedings as well as before the Ld. CIT(A). In this respect Ld. Counsel referred to the correct computation of income which included claim of cost of acquisition with indexation, placed at page 4 of the paper book. He thus, prayed that the matter may be remitted back to the file of Ld. AO who can examine and verify the details furnished by the assessee, substantiating the claim since all the relevant documents are placed in the paper book, corroborating the cost of acquisition with indexation and claim of deduction u/s. 54 for investment made in new house property.

7. On confrontation of the prayer made by the Ld. Counsel to the Ld. Sr. DR, he did not raise any objection on the same. Considering

the facts on record and the submissions made before us as well as corroborative evidence placed in the paper book, we find it proper to remit the matter back to the file of Ld. AO for verification and examination of the material available on record and allow the claim of the assessee in accordance with the provisions of law. Needless to say that assessee be given reasonable opportunity of being heard to make any further submission to substantiate his claim. Assessee is also directed to be diligent in attending the proceeding before the Ld. AO for the expeditious disposal of the matter.

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

Order is pronounced in the open court on 31st August, 2023

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 31st August, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata