

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, AM & Shri Manomohan Das, JM

ITA No.792/Coch/2022: Asst.Year:2014-2015

Ravi Chandy 28/89 Kalluvettamkulathil House, Janatha Road, Vytilla Kochi – 682 019. [PAN: ADRPC6869R]	vs.	The Assistant Commissioner of Income-tax, Non-Corporate Circle 1(1) Kochi.
(Appellant)		(Respondent)

Appellant by: Sri.Athul M.V., Advocate
Respondent by: Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing : 18.08.2023	Date of Pronouncement: 31.08.2023
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ORDER

Per Sanjay Arora, AM:

This is an appeal by the Assessee directed against the order dated 23.5.2022 by the National Faceless Appeal Centre, Delhi (CIT(A)), dismissing the assessee's appeal contesting his assessment under section 147 r/ws.144B of the Income-tax Act, 1961 ('the Act') dated 28.3.2022 for assessment year (AY) 2014-15.

2. Explaining the facts of the case, it was submitted by Shri Athul, the learned counsel for the assessee, that the assessment in the first instance was framed on 19.9.2016 (copy on record), denying the assessee deduction u/s.54F, claimed with reference to investment in a residential house at Rs.2,05,74,406, to the extent of 50% thereof inasmuch as the said investment was in the joint names of the assessee and his daughter, Sara Jake Punnan, marked as purchaser no.2 in the sale deed dated 16.10.2015, so that she was an equal owner of the said property. The assessee carried the matter in appeal. However, before the same could be disposed of, he settled his dispute under Direct Tax Vivad Se Vishwas Act, 2020 (DSV Act), paying the disputed tax at Rs.7,15,410. The Id. CIT(A), vide order dated 12.3.2021 (Ann.

1), accordingly, dismissed the assessee's appeal as infructuous, making reference to certificate in Form 5 issued under DSV Act on 05.3.2021 (copy on record). Subsequently, notice u/s.148(1) was issued on 31.3.2021, proposing to restrict the deduction u/s.54F, as against the investment of Rs.205.74 lakh, to the value stated in the conveyance deed, i.e., Rs.62.93 lakh. Assessment was made accordingly on 28/3/2022. In appeal, vide the impugned order the Id. CIT(A) dismissed the assessee's appeal as the assessee had, as per the Revenue's system data base, settled the tax dispute under DSV Act. The issue arising in the instant proceedings is entirely different, and there is no question of the same having been resolved. The same, it was prayed, be accordingly set aside, and the appeal restored to the file of the first appellate authority for a decision on merits.

3. We have heard the parties, and perused the material on record.

3.1 The appellate order under challenge, we are afraid, is wholly unmaintainable in law. It is firstly, an *ex parte* order. We say so as there is no reference therein to any hearing opportunity being extended to the assessee, or of his submissions being, despite the said opportunity, having not been made. Two, it does not address the grounds of appeal raised before the first appellate authority. It, treating the appeal as withdrawn, fails to consider that while the assessee opted for Vivad Se Vishwas Scheme on 19.6.2020, paying tax on 05.3.2021 on its acceptance, the instant proceedings were initiated only at the instance of the Revenue vide notice u/s.148(1) dated 31.3.2021. If the matter had been, as claimed, settled under DSV Act, it is the notice u/s.148(1) and the ensuing proceedings that stand to be cancelled/quashed, and not the assessee's appeal preferred on being aggrieved by such notice, and the proceedings initiated thus. In fact, both the notice and the proceedings are valid, and so is the assessee's appeal, being *qua* a wholly different matter, i.e., which of the two values, as stated in the conveyance deed, or in the Agreement between the parties, is to be considered for the purpose of deduction u/s. 54F, which speaks of 'cost of the asset'; the assessee claiming to have paid a higher sum. The facts as recorded by the

AO at para 6 of his order,also being *qua* the issue of valuation, agree with that stated by the assessee. That is, the impugned order is *de hors* the assessment order.

3.2 The assessee on being asked by the Bench during hearing to make out a *prima facie* case, adduced a receipt dated 04/2/2014 from the Builder, M/s. Kent Constructions (P.) Ltd., for a sum of Rs.2,05,74,06, further clarifying that the value stated in the conveyance deed is with reference to the stamp value.

4. In view of the foregoing, we, setting aside the impugned order, restore the appeal back to Id. CIT(A) for a decision, issuing clear findings, on merits, in accordance with law, allowing the assessee a reasonable opportunity of being heard. We may though clarify that we may not be construed as having in any manner expressed any view in the matter. We decide accordingly.

5. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced on August 31, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: August 31, 2023
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

Assistant Registrar
ITAT, Cochin