

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND**

SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 2936 /DEL/2018

Assessment Year: 2012-13

Mr. Shekhar Bharti R/o 124, Bhagirathi Puram, Jakhan, Dehradun (UK) C/o. Plot no. B-18, Flat No. B-5, Shalimar Garden Extn-II, Sahibabad, Ghaziabad (UP) PAN : AADPB7162M	<u>Vs</u>	Income Tax Officer, Ward- 2(3), Ghaziabad
APPELLANT		RESPONDENT
Assessee represented by	Sh. Rohit Tiwari, Adv. And Ms. Tanya, Adv.	
Department represented by	Sh. Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	11.07.2023	
Date of pronouncement	21. 09. 2013	

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 02.01.2018 of CIT(A)-Ghaziabad (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 65/2015-16/GZB, A.Y. 2012-13 arising out of an appeal before it against the order dated 18.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-2(3), Ghaziabad (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that assessee is a salaried employee. That assessee had purchased a residential house in F.Y. 2002-03 on 16-08-2002. Assessee claims that the said house was in a very poor condition and after getting the sale deed registered assessee got the house repaired & renovated, for this work assessee spent total amount of Rs. 1,69,000/- during the F.Y. 2002-03. That assessee further got the said house constructed in F.Y. 2004-05 and spent Rs. 5,40,000/- for this work. The assessee claims that the source of the investment made in construction of the said house was from the past savings of the assessee & through his retirement benefits as assessee retired from Maruti Udyog Ltd. That thereafter assessee again made construction & got the house repaired & renovated in F.Y. 2006-07 and spent Rs. 14,33,950.00 during the F.Y. 2006-07 and for this assessee took loan of Rs. 12,00,000/- for the said purpose from Centurion Bank of Punjab.

2.1 Assessee claimed that the total covered area when house was purchased was a ground floor measuring 63.97 sq. mtr. & at the time of sale deed dt. 04-01-2012 ground floor covered area was 185.79 sq. mtr. & first floor constructed area was also mentioned 32.51 sq. mtr. in the registered sale deed dt. 04-01-2012.

2.2 Assessee sold his residential house in F.Y. 2011-12 for Rs. 1,19,00,000/-. Assessee filed his Income Tax Return for the F.Y. 2011-12 (i.e. A.Y. 2012-13) declaring total taxable income of Rs. 3,06,760/- and disclosed capital gains on sale of this house in his Income Tax Return & claimed exemption U/s 54 of the Income Tax Act, 1961. The case was selected for scrutiny. Ld. AO examined the availability of funds and being dissatisfied of the evidence filed had disallowed the addition of the construction costs and further disallowed the investment of the sale proceeds to recompute the disallowance.

2.3 The assessee challenged the disallowance of claim of exemption **u/s 54F** before Ld. CIT(A) with reference to addition made by appellant to

property in FY 2002-03, 2004-05, 2006-07. During the course of remand proceedings, the AO admitted change in the covered area between sale and purchase of the property, however requested to not to allow cost of improvement subsequent to purchase, as assessee failed to substantiate year wise cost of construction claimed. Ld. CIT(A) observed assessee had furnished evidence of having undertaken the construction out of loan received from bank during F.Y. 2006-07. However, concluded that no supporting evidence of year wise investment has been given in the property sold during the year required for computation of capital gain. Even the source of investment in the property has not been substantiated. The two valuation reports given by the appellant were disbelieved on basis of inconsistency. Ld. CIT(A) held that assessee has failed to establish the breakup of year wise cost incurred to increase to covered area especially keeping in view the fact that no bills and vouchers, source of investment or justifiable valuation reports have been given by the appellant either during appellate/remand proceedings or during assessment proceedings. Further that the assessee had failed to discharge the primary onus and burden of proof justifying computation of capital gain as Ld. CIT(A) held assessee is not stating the facts completely and clearly during appellate proceedings. However, Ld. CIT(A) benefited the assessee holding that it is also a material fact that appellant had made additional construction of $218.3 - 63.97 = 154.33$ square meters. Since assessee has not been able to prove the year of investment or the cost thereof the additional construction evaluated in the year of sale, as per sale deed was computed at the rate of Rs. 8,000/square meter. Thus a relief of Rs. $8,000 \times 154.33 = \text{Rs. } 12,34,640/-$ was given to the appellant out of capital gain added by AO. Thus the capital gain computed by AO was reduced by a sum of Rs. 12,34,640/- .

2.4 Further assessee had challenged the undisclosed investment added by the AO in respect to exemption u/s 54F claimed by the appellant. Ld. CIT(A) observed that that AO has logically related the investment and availability of funds with the appellant, while holding that appellant failed to substantiate source of claim of investment in the said property for the purpose of section 54F. The affidavits given during appellate proceedings are not backed by any evidence, thus do not have any evidentiary value. Thus in view of aforesaid the addition made on account of undisclosed investment was also upheld.

3. Assessee has challenged the CIT(A) order by raising following grounds;

“1. That after having regard to the facts & circumstances of the case, the Ld. CIT (A) has erred in law and on facts was not deleting the additions of 15,03,000/-

2. That in any view of the matter & in any case, the action of Ld. CIT (A) in not

reversing the action of Ld. AO in making impugned addition of 15,03,000/- is bad in law & against the facts & circumstances of the case.

3. That after having regard to the facts & circumstances of the case, the Ld. CIT (A) has erred in law and on facts was not deleting the additions of Rs.74,85,320/-.

4. That in any view of the matter & in any case, the action of Ld. CIT (A) in not

reversing the action of Ld. AO in making impugned addition of Rs. 2 74,85,320/- is bad in law & against the facts & circumstances of the case.

5. That any view of the matter & any case, the action of the Ld. AO in making of impugned addition 87,19,960/- partly reversing by the CIT (A) as erred in law & against the facts & circumstances of the case.

6. That having regard to facts & circumstances of the case, Ld. CIT (A) has erred in law & on facts in confirming the action of the Ld. AO was not providing proper opportunity to the assessee at the times of scrutiny proceedings against the provision of Income Tax Act, 1961.

7. That the applicant carves the leave to add amend, modify, delete any of the grounds of appeal before or at the times of hearing and all the above grounds are without prejudice to each other.”

4. Heard and perused the record.

4.1 Ld. AR submitted that in the FY 2003-04 assessee had invested Rs.1,69,900/- towards the construction and repair. In support of that assessee has provided the valuation report dated 09.08.2002 which shows the valuation of the construction amount at page number 14 of the paperbook. Then in the FY 2004-05 assessee invested Rs. 5,40,000/- towards the construction and repair. In support of that assessee has provided the valuation report dated 14.07.2005 which shows the valuation of the construction amount at page number 14 of the paperbook. In the FY 2006-07 assessee invested Rs. 14,33,950/- towards the construction and repair for which assessee has taken loan Rs. 12,00,000/- and Rs 2,33,950 was from our past savings. The assessee has provided the revised computation where the assessee has explained the computation of the capital gain { *page no 30 of the paperbook*).

4.2.1 As with regard to the second point it was submitted that the AO has denied the exemption claimed under section 54F where the amount of 59.81 lacs and 25 lacs were reinvested in the stipulated time period. It was submitted that the AO added Rs. 15,03,000 to the assessee's income ignoring that the amount Rs.4,35,000/- was contributed by the assessee's wife and Rs. 8,25,000/- from his mother and rest was from the assessee's past savings. Ld. AR submitted that the assessee has submitted affidavits from the wife and mother to support their claims at page 144-146 of the paper book.

4.3 Ld. DR relied the orders of Ld. Tax authorities below.

5. Appreciating the matter on record, it can be observed that Ld. CIT(A) has taken into consideration the remand report of the Assessing officer wherein he has admitted that when the assessee purchased the property covered area was 63.97 Square Meters while at the time of sale the constructed area was 218.3 Square meter. This certainly establishes addition of substantial construction.

These two tax Authorities have fallen in error in not taking a rational view of the issue by accepting the explanation of the assessee with regard to the constructions and repairs done after acquiring the house in the year 2002. The claim of assessee being specific of the fact that the retirement benefits and housing loan from ICICI bank were used for the construction in the year 2004-2005 and the loan taken from Centurion bank and use of savings for construction and renovation done in the year 2006-07 cannot be said to be not believable and on the scale of probability deserved to be accepted as there was substantial increase in the covered area also. However, in spite of accepting the addition in the covered area the valuation report submitted by the assessee were discredited without resorting to any remedy of getting the report of DVO. There has to be some reason backed by logic or prudence, if not evidence as basis to discredit the valuation report filed by the assessee. Thus, the Ld. CIT(A) has fallen in error in giving a part relief to the assessee.

6. However, with regard to addition of Rs. 15,03,000/-, there are no evidences except self serving affidavits of family members. Ld. CIT(A) has rightly observed that AO has logically related the investment and availability of funds with the appellant, while holding that appellant failed to substantiate source of claim of investment in the said property for the purpose of section 54F.

7. In the light of aforesaid discussion, **the appeal is allowed partly by rejecting ground no. 1 and 2 and allowing ground no. 3,4 and 5.**

Order pronounced in the open court on 21st September, 2023.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated :21. 09.2023

Binita, Sr. PS

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER