

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2550/Mum./2023

(Assessment Year : 2011-12)

Shri Himanshu Manoranjan Bhatt
703, Shankardeep CHS Ltd.
B. Bhargav Road, Santacruz (West)
Mumbai 400 054 PAN – AGHPB8388H

..... Appellant

v/s

Income Tax Officer
Ward-22(1)(5), Mumbai

..... Respondent

Assessee by : Shri Shirish Shah
Revenue by : Shri P.D. Choughule

Date of Hearing – 30/10/2023

Date of Order – 08/11/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 31/05/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:-

"1. *The learned Commissioner of Income Tax (Appeals), Income Tax Department, NFAC, Delhi, [CIT(A)] has erred on the facts and circumstances of the case and in law in upholding the notice u/s 148 in order. Therefore, the order should be set aside.*

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs. 72,83,143/- being LTCG on sale of flat and the said addition should be deleted.

3. Without prejudice to above, the Appellant hereby advances a claim of exemption u/s 54 of the Act for the LTCG on sale of flat Rs. 72,83,143/- reinvested in the new flat as per the provisions of the law. The Appellant prays to allow the said claim.

4. The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal."

3. The brief facts of the case are that the assessee is an individual and for the year under consideration filed its return of income physically on 03/11/2011 declaring a total income of Rs. 1,33,532. Subsequently, on the basis of information received from the ITD system under the NMS module that during the year under consideration, the assessee has purchased immovable property valued at Rs. 1,46,88,500, sold immovable property at Rs. 1,27,00,000 and received contract receipts of Rs. 50,000, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 29/03/2018. In response to the above notice, the assessee filed a letter stating that the return original filed on 03/11/2011 declaring a total income of Rs. 1,33,532 be treated as a return filed in response to the notice issued under section 148 of the Act. Accordingly, notice under section 143(2) of the Act was issued and served on the assessee. Since the assessee has sold the property and also purchased the new property but did not offer any long-term capital gain in the return of income, the Assessing Officer ("AO") referred the computation to DVO, which was not received till the completion of assessment proceedings. During the assessment proceedings, the assessee submitted that he had entered into two registered agreement for the sale and purchase of a flats in the same

assessment year and thus fulfilled the provisions of section 54 of the Act. It was further submitted that due to oversight the same was not reflected in his return of income. The AO vide order dated 28/12/2018 passed under section 143(3) read with section 147 of the Act held that the assessee was bound to declare capital gain on the sale of property and claim of exemption is a secondary part. It was further held that the assessee did not declare the transaction of sale and purchase of property by computing capital gain in his return of income and the Revenue cannot allow exemption suo moto unless the same was claimed by the assessee. Accordingly, the AO added the long-term capital gains of Rs. 72,83,143 to the total income of the assessee as the assessee failed to declare the same in his original return of income as well as in the return of income filed in response to notice issued under section 148 of the Act.

4. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the initiation of proceedings under section 148 of the Act as well as upheld the addition made on account of long-term capital gains of Rs. 72,83,143 not offered for taxation in the return of income. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. As per the assessee, in response to the notice issued under section 148 of the Act, he filed a letter stating that the return of income originally filed on 03/11/2011 declaring a total income of Rs. 1,33,532 be treated as a return filed in response to the notice issued under section 148 of the Act. It is the plea of the assessee that subsequently the assessee also

e-filed a return on 20/04/2018, which was revised on 20/11/2018 declaring income of Rs. 1,33,532 after claiming exemption under section 54 of the Act for Rs. 72,83,143 being long term capital gains on the sale of Flat No. 203 in a building known as Kartikeyan. Accordingly, it is the plea of the assessee that the working of the said long-term capital gains and the exemption thereof are disclosed in the revised return of income, however, the Revenue did not grant any benefit of exemption claimed under section 54 of the Act and proceeded to made an addition of Rs. 72,83,143 being long term capital gains to the total income of the assessee.

6. In the present case, it is undisputed that the sale of immovable property and subsequent purchase of immovable property were not disclosed by the assessee in his original return of income physically filed on 03/11/2011. Therefore, we are of the considered view that the reassessment proceedings were validly initiated by the AO under section 147 of the Act on the basis of information received from the ITD system under the NMS module, which constitutes tangible material under section 147 of the Act. Accordingly, reassessment proceedings initiated under section 147 and issuance of notice under section 148 of the Act are upheld. As a result, ground no. 1 raised in assessee's appeal is dismissed.

7. However, at the same time, it is also evident from the reasons recorded by the AO while reopening the assessment, as noted on page 1 of the assessment order, that the assessee purchased immovable property valued at Rs. 1,46,88,500 and sold immovable property at Rs. 1,27,00,000, during the year under consideration. Thus, when such are the facts, we are of the

considered view that the AO was also required to grant the benefit of section 54 of the Act to the assessee while computing the income under the head "capital gains". However, as evident from the record, despite noting the aforesaid reasons for reopening the assessment, the AO merely computed the long-term capital gains and added the same to the total income of the assessee, without granting the benefit of section 54 of the Act as provided under the law. Therefore, in view of the facts and circumstances as noted above, we deem it appropriate to restore the computation of income under the head "capital gains" to the file of the AO for *de novo* adjudication as per law after verification of the claim of exemption under section 54 of the Act. The assessee is directed to furnish all the documents/information in support of his claim under section 54 of the Act. As a result, grounds no. 2 and 3 raised in assessee's appeal are allowed for statistical purposes.

8. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 08/11/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 08/11/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai