

**आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ,कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK**

**श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**आयकर अपील सं/ITA No.281/CTK/2023**

**(निर्धारण वर्ष / Assessment Year :2015-2016)**

Mukund Prasad Mishra, Plot No.HG-821/822, CDA, Sec-10 Cuttack-753014	Vs	ACIT, Circle-2(1), Cuttack
PAN No. : <b>ADFPM 1834 Q</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>निर्धारिती की ओर से /Assessee by</b>	:	Shri K.K.Bal, Advocate
<b>राजस्व की ओर से /Revenue by</b>	:	Shri Charan Dass, Sr. DR
<b>सुनवाई की तारीख / Date of Hearing</b>	:	29/11/2023
<b>घोषणा की तारीख/Date of Pronouncement</b>	:	29/11/2023

**आदेश / O R D E R**

This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 27.06.2023, passed in DIN & Order No.ITBA/NFAC/S/250/2023-24/1053972764(1) for the assessment year 2015-2016.

2. It was submitted by the Id. AR that the assessee is a retired Judicial Officer. The assessee has filed his return of income for the relevant assessment year declaring Long Term Capital Gain of Rs.1,51,156/- and the total income of Rs.10,25,280/-. It was the submission that during the relevant assessment year the assessee has sold two properties one being a land at Bhubaneswar, Khurda for Rs.50 lakhs and another being a flat at Bidanasi, Cuttack for Rs.45,00,000/-. It was the submission that on the sale of the properties the assessee had claimed deduction u/s.54EC of the Act and also deduction on account of his deposit in the capital gains account scheme of 1988 with State Bank of India. It was the submission that the Id. AO held that the assessee having not invested the entire

capital gain on the sale of land in 54EC bonds, the proportionate deduction was only allowable. It was the submission that assessee's deposit in the capital gains account scheme of 1988 was not considered by the AO. It was the submission that the land having sold of Rs.60 lakhs, the cost of acquisition was Rs.3,33,721/- and the capital gains on the said sale was Rs.56,66,279/-. Out of the said amount the assessee has deposited Rs.50 lakhs in NHAI bond and has claimed deduction u/s.54EC. Out of the balance of Rs.6,66,279/-, the assessee had deposited an amount of Rs.5,15,123/- in the capital gain amount scheme of 1988 with the State Bank of India. It was the further submission that out of the flat sold for Rs.45 lakhs, the cost was adopted at Rs.27,49,123/- and the capital gains were determined at Rs.17,50,877/- and the assessee had deposited the entire amount of Rs.17,50,877/- in the capital gain account scheme of 1988 with State Bank of India. It was the submission that thus, the total amount deposited in the capital gain account scheme of 1988 with SBI was an amount of Rs.22,66,000/-. It was further the submission that as the assessee had not invested in any capital asset for the assessment year 2018-2019, the assessee had paid 20% of the said amount of Rs.22,66,000/- as capital gains tax to an extent of Rs.4,53,200/-. The Id. AR placed before me the copy of the tax paid in the assessment year 2018-2019 for Rs.4,53,200/-. It was the submission that thus the assessee having generated a total capital gains of Rs.74,17,156/- on the sale of two capital assets and the assessee having invested Rs.50 lakhs u/s.54EC NHAI bonds and the balance having been

deposited to an extent of Rs.22,66,000/- in the capital gain account scheme of 1988 with SBI. The capital gain liable to be taxed only on Rs.1,51,156/-, which has been disclosed by the assessee. It was the prayer that the order of the CIT(A) and that of the AO may be reversed.

3. in reply, Id.Sr. DR vehemently supported the order of the AO & Id. CIT(A). It was the submission that in regard to sale of flat there was no issues raised by the AO and the Id.CIT(A), insofar as the capital gains of Rs.17,50,877/- on the sale of flat had rightly been invested by the assessee in the long term capital gain account scheme 1988 with the State Bank of India. It was the submission that in respect of sale of land the assessee had invested only Rs.50 lakhs out of the capital gains of Rs.56,66,279/- and consequently the proportionate capital gains has been brought to tax by the AO and the same has been upheld by the Id. CIT(A). It was the submission that the benefit of the deposit in the long term capital gain account is not available in respect of capital gains arising out of the sale of land. It was the submission that the order of the AO and that of the Id. CIT(A) is liable to be upheld.

4. I have considered the rival submissions. As has been pointed out by the Id. Sr. DR the issue in dispute is in regard to the capital gains that has given rise on the sale of land at Bhubaneswar, Khurda. Admittedly, the capital gains that has arisen is of Rs.56,66,279/-. Out of the said amount, there is no dispute that the assessee has invested Rs.50 lakhs in the specified bond being the NHAI bond. In respect of the amount of Rs.6,66,279/-, which is the balance capital gains, admittedly, the said

amount has been deposited in the long term capital gain account scheme 1988 with State Bank of India. In the case of sale of land the provisions of Section 54E is very much available and the said provision permits the deposit in long term capital account scheme of 1988. The assessee has also deposited this amount of Rs.5,15,123/- in the long term capital gain account scheme 1988 with the State Bank of India. The deposit, admittedly, is more than 3 years, insofar as the assessee has paid the tax on the said deposit under the said scheme during the assessment year 2018-2019. This being so, I am of the view that the addition as made by the AO and as confirmed by the Id.CIT(A) is not on the right footing and consequently the same stands deleted.

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

Order dictated and pronounced in the open court on 29/11/2023.

**Sd/-**  
(जार्ज माथन)  
**(GEORGE MATHAN)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**कटक** Cuttack; दिनांक Dated 29/11/2023

*Prakash Kumar Mishra, Sr.P.S.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-  
Mukund Prasad Mishra,  
Plot No.HG-821/822, CDA, Sec-10  
Cuttack-753014
2. प्रत्यर्थी / The Respondent-  
ACIT, Circle-2(1), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,  
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)  
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack