

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1721/Del/2023 : Asstt. Year: 2020-21

Navin Puri, C/o Suresh Kumar Gupta, E-5, 3 rd Floor, Defence Colony, New Delhi-110024 (APPELLANT)	Vs	DCIT, Circle-2(2)(2), International Taxation, New Delhi (RESPONDENT)
PAN No. AEKPP3790G		

**Assessee by : Sh. Suresh Gupta, CA &
Sh. A. K. Srivastava, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 11.10.2023

Date of Pronouncement: 04.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order dated 28.04.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. That the assessee declared long term capital gain on sale of his ½ share in a residential house for Rs.1,05,00,000/-, which was purchased at the cost being ½ of (Rs.19,35,870/- as per conveyance deed plus Rs.5,20,347/- interest on home loan from HDFC for pre-construction period).

On above brief case facts, Ld. AO grossly erred in considering only the part cost of Rs.19,35,870/- as per conveyance deed and completely ignoring the other part of cost being interest of Rs.5,20,347/-,

impugned order being completely silent / non-speaking and is apparently against the specific directions of Hon'ble Dispute Resolution Panel.

2. That the assessee sold a residential house on 19.03.2020, claimed deduction u/s 54 of the Act against investment in the other house, the construction of which was completed on 20.08.2021 (within 3 years of sale of the house)

On the above brief case facts, Ld. AO grossly erred in disallowing the claim u/s 54 of the Act, which finding is against the statutory provisions and also the specific directions of Hon'ble Dispute Resolution Panel.

3. That on facts of the case, the Ld. AO grossly erred in not following the directions issued by the Hon'ble Dispute Resolution Panel, which as such were binding on the Ld. AO.

4. That on facts and circumstances of the case and in law, Ld. AO grossly erred in not following the judgments of jurisdictional High Court, orders of the ITAT, cited and relied upon by the Appellant and so directed to be considered by the Hon'ble Dispute Resolution Panel."

3. The assessee filed return of income on 20.03.2021 declaring income of Rs.13,62,230/- claiming refund of Rs.15,93,340/-. During the year, the assessee earned income from salary, Long Term Capital Gain and income from other sources.

4. During the relevant Assessment Year, the assessee had sold a residential property and shown a sale consideration of Rs.1,05,00,000/-, assessee having ½ share in the property. The Assessing Officer computed the Long Term Capital Gain as under:

Sale value of the Property	Rs. 1,05,00,000/-
Less: Indexed cost of acquisition Rs. 34,87,256/- (disallowed)	NIL
Balance	Rs. 1,05,00,000/-
Less Deduction u/s 54 (disallowed)	Nil
Long Term Capital Gain	Rs. 1,05,00,000/-
Capital Gain declared in ITR	Rs. 10,96,378/-
Addition	Rs. 94,03,622/-

5. The AO made addition to the LTCG computed by the assessee owing to failure of the assessee to provide details of cost of acquisition alongwith bank statement as proof of payments made for the purchase of property.

6. Aggrieved, the assessee filed objections before the Id. DRP. The Id. DRP referred the issue to the AO.

7. The Id. DRP literally has thrown the ball back into the Court of the Assessing Officer holding as under:

*"In view of the above discussion, the panel is of the **view** that the **AO must verify** the assessee's contentions **as per the Judicial Pronouncements** filed by him in terms of the **factual similarity** and **also the revenue's stand** as to acceptance or otherwise of these judicial pronouncements and **also the CBDT's cited instruction/circular** by passing and **speaking and reasoned** order. This grounds of objection, is **disposed off accordingly.**"*

8. Consequent to the order of the Id. DRP, the AO passed the final Assessment Order making addition of Rs.67,39,496/-.

Sale value of the Property	Rs. 1,05,00,000/-
Less: Indexed cost of acquisition Rs. 34,87,256/- (disallowed)	Rs.26,64,125/-
Balance	Rs. 78,35,875/-
Less Deduction u/s 54 (disallowed)	Nil
Long Term Capital Gain	Rs. 78,35,875/0
Capital Gain declared in ITR	Rs. 10,96,378/-
Addition	Rs. 67,39,496/-

9. Aggrieved, the assessee filed appeal before us.

10. Heard the arguments of both the parties and perused the material available on record.

11. From the record, we find that,

1. Conveyance deed date of old property – 24.01.2003
2. Date of sale of old property – 19.03.2020
3. Indexed cost of acquisition – Cost Rs.17,20,300 + Reg. Fee- Rs.2,15,570 = Rs.19,35,870/- *Indexation = 'Y'
4. Date of possession letter of new property – 20.08.2021
5. The sale value of the property – Rs.1,05,00,000/- = 'M'
6. Long Term Capital Gain = M – Y = 'Z'
7. Eligible Deduction u/s 54 = Amount invested in new house on or before 31.03.2023 = 'A'

12. Hence, the AO is directed to re-compute the taxable Long Term Capital Gain as 'Z' – 'A'.

13. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 04/01/2024.

Sd/-

(Saktijit Dey)
Vice President

Dated: 04/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR