IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.2434 & 2435/Del/2022
Assessment Year: 2011-12

DCIT, Central Circle-29, New Delhi.	Vs	Rita Chandiok L-41, Connaught Circus, Connaught Place, New Delhi – 110 001. PAN: AAAPC2224L
(Appellant)		(Respondent)

Assessee by	:	Shri Vinod Bindal, CA & Ms Rinky Sharma, ITP
Revenue by	:	Shri Vivek Vardhan, Sr. DR
Date of Hearing	:	19.01.2024
Date of Pronouncement	:	29.01.2024

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Revenue against the orders dated 05.03.2019 and 22.07.2022 of the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred to as the Ld. First Appellate Authority or in short Ld. 'FAA') in appeals No.41/18-19 and 10012/2019-20 arising out of the appeals before it against the orders dated 27.02.2014 and 31.03.2019 passed

u/ss. 143(3) and 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-31(1), New Delhi and ACIT, Circle 52(1) New Delhi (hereinafter referred to as the Ld. AO), respectively.

2. The assessee filed return declaring taxable income of Rs.27,37,571/- on 30.03.2012 which was processed u/s 143(1) of the Act and subsequently, the case was selected for scrutiny under CASS category and mandatory notices u/s 143(2) of the Act and u/s 142(1) of the Act were issued. The assessee, during the year under consideration has shown income from house property, capital gains and other sources. The issue examined was that the assessee had earned long-term capital gain of Rs.4,24,91,862/- which was claimed as exempt u/s 54 of the Act. The ld. AO raised a query to submit complete details of the capital gains and justify the exemption u/s 54 of the Act. The assessee submitted that she has 1/3 share in property No.C-94, Anand Niketan, New Delhi along with her mother and sister which they received from her maternal uncle Shri Brij Mohan Berry by way of gift. The said property was sold for Rs.12,96,00,000/- and the assessee got 1/3 share of this consideration being Rs.4,32,00,000/-. Thereafter, the assessee entered into an agreement with M/s B.I. Waverly (P) Ltd. on 31.03.2011 and acquired a residential apartment for a purchase consideration of Rs.12 crore out of which an amount of Rs.5,33,33,334/- was paid by the assessee on 23.03.2011 vide cheque No.575473 drawn on Canara Bank. The assessee further submitted that since she has invested more than

capital gain arising out of sale of residential property, the entire capital gain is exempt u/s 54 of the Act. The ld. AO on 05.12.2013 called further information from the assessee by way of copy of conveyance deed of the newly acquired asset and, in order to verify the genuineness of the claim, a notice u/s 133(6) of the Act was issued to M/s B.I. Waverly (P) Ltd., requiring this company to provide the following documents:-

(i) Copy of Registered agreement

(ii) Copy of approval obtained for development of the above said property and copy of completion certificate.

(iii) If the sale deed has been executed in favour of Smt. Rita Chandiok, a copy of such sale Deed. If not executed, the reasons thereof.

(iv) Copy of bank account statement for relevant period where the payment received from Smt. Rita Chandiok has been credited

(v) Whether, the payment has been refunded to Smt. Rita Chandiok? If yes, the details of the same.

3. The ld. AO in assessment order observes that no reply of the said notice was received and this fact was confronted to the assessee, who, by letter dated 06.01.2014, submitted a new address of M/s B.I. Waverly (P) Ltd. It was further submitted by her that the agreement with the said company was

terminated since the company did not receive the necessary sanction of building plans and the amount was received as refund from the said party. Necessary evidence in this regard was submitted to the ld. AO. The assessee further submitted that till March, 2012, the assessee waited, but, thereafter by letter dated 31.03.2012, the assessee terminated the agreement which was accepted by the said company and refunded the entire money along with compensation. A letter dated 30.05.2012 in that regard was submitted to the AO. The assessee submitted that thereafter, an agreement was entered into with Pioneer Urban Land & Infrastructure Ltd. for buying residential unit No.A-001 in Araya Sector 62, Gurgaon, Haryana, jointly with her mother Mrs. Swaran Arora. A copy of buyer's agreement dat.ed 20.12.2012 was submitted to the AO. The assessee claimed that she paid an amount of Rs.4,16,67,476/- for the purchase of the said property on 24.12.2012 and an amount of Rs.2.61 crores was paid by Mrs. Swaran Arora towards the purchase of the said property. The copies of the receipts were provided to the ld. AO. The assessee claims that the assessee had initially invested the amount of capital gain towards the purchase of residential property before the due date of filing the return of income. However, due to the circumstances beyond the control of the assessee, the said property could not be constructed and, therefore, the assessee had no option but to cancel the agreement, withdraw the money and invest in some other residential property in time to claim the exemption which the assessee did. However, the ld. AO concluded that the assessee has tried to mislead by submitting the copy of

agreement with M/s B.I. Waverly (P) Ltd. and it was only when inquiry was initiated with M/s B.I. Waverly (P) Ltd. the assessee has submitted agreement with M/s Pioneer Urban Land & Infrastructure Ltd. The ld. AO observed that as per section 54 of the Act, the assessee had to purchase new residential house within a period of one year before or two years after the date on which transfer took place to claim exemption u/s 54 of the Act and, therefore, as the assessee had sold her house on 08.11.2010, the investment in new house on 20.12.2012 is after a period of two years. Further, the assessee has only paid advance for acquiring the house property for the residential house. Thus, the assessee was asked to justify the claim for which the assessee relied on the Circular No.471 dated 15.10.1986 and Circular dated 672 dated 16.12.1993 claiming that the allotment of the flat to the assessee by builder is covered by this Circular for the purpose of section 54. Further, the assessee reasserted the circumstances under which the first deal did not materialize. The ld. AO, however, considered that the assessee has failed to substantiate how the scheme of other builders is similar to DDA. Otherwise also, the ld. AO mentions that the assessee was supposed to get the construction completed within three years from the date of sale of original asset and since the assessee sold her asset on 08.11.2010, construction of new residential house should have been completed by 07.11.2013. However, no proof was filed by the assessee. The ld. AO observed that at the time of order of 27.02.2014 also there was no evidence of completion of the construction. The ld. AO observed that it is assessee's own case that

when the apartment buyer agreement was executed, at that time itself, the assessee was informed that the scheduled date of completion of the construction is 31.03.2014 and the unit will be handed over for possession tentatively by February, 2016. Therefore, the assessee cannot take benefit of judicial precedence wherein the assessees were benefitted for delay in completion of construction beyond the control of the assessee. The ld. AO also examined the agreement of the assessee with M/s B.I. Waverly (P) Ltd. and, on the basis of the financials of the assessee, observed that this company had no capital work-in-progress as on 31.03.2011. This company had no inventory and no fixed assets, etc. This company had only mobilized funds and parked it with banks and has given loans and advances to others. Thus, the AO concluded that ostensibly, the assessee had tried to park her funds with the company in the garb of investment in house properties in order to claim exemption u/s 54 of the Act. The ld. AO concluded that this belief is supported by the fact that the amount was received back by the assessee in May, 2012 along with compensation of Rs.44 lakhs which is nothing but the interest on the deposit for one year. Accordingly, denying the benefit of exemption u/s 54 of the Act, an addition of Rs.4,24,91,862/- was made.

4. As the assessee approached the ld.CIT(A) in appeal against the order dated 27.02.2014 by order dated 20.03.2017, the assessee's appeal was allowed by the ld.CIT(A) with the direction to the assessee to submit completion

certificate or certificate of satisfactory progress of the construction at the earliest appropriate time and latest by 30.09.2017 failing which necessary action including the reopening of the case for taxability of the amount for assessment year relevant to the period of three years from the date of sale for taxing the amount and as per law. The AO, in pursuance of the aforesaid directions passed order dated 08.02.2018 in which exemption u/s 54 of the Act was denied for non-production of the requisite documents. The assessee preferred appeal before the ld.CIT(A) who sustained the findings of the AO and dismissed the appeal of the assessee.

5. The Assessing Officer in pursuance to the aforesaid directions again passed order dated 08.02.2018 in which the exemption u/s 54 of the Act was denied for non production of requisite documents. The appellant preferred appeal before Ld. CIT(A) who sustained the findings of the Assessing Officer and dismissed the appeal filed by the appellant. The appellant filed appeal before Tribunal against both the orders of Ld. CIT(A). Tribunal decided both the appeals filed by the appellant vide its order dated 03.06.2021. The relevant Para-14 of the order of Tribunal is reproduced as under:

> *"14. From the finding of the Assessing Officer, it is clear that one part of the direction was considered and another part regarding re-opening of the assessment or taxability of the correct Assessment Year was not considered. In our considered view, the Assessing Officer has failed to give appeal effect and Ld. CIT(A)mechanically sustained the finding of the Assessing Officer without giving any reason as to why the direction of Ld.CIT(A)regarding re-opening of the assessment for the purpose of taxability could not be given effect to. Under these undisputed facts, the*

finding of Ld. CIT(A) cannot be sustained; therefore, the impugned order is set aside. The Assessing Officer is hereby directed to give effect to the order of the Ld. CIT(A)in accordance with law. It is clarified that the Assessing Officer would be at liberty to re-open the assessment for the relevant Assessment Year as directed by the Ld.CIT(A)in the original appellate proceedings if law so permit. The grounds raised by the assessee are allowed in terms as indicated above. Thus, Grounds raised by the assessee are allowed."

6. The Assessing Officer in his order dated 05.10.2021 giving effect to the decision of the Tribunal held that the exemption u/s 54 of the Act was not allowable to the appellant for the Assessment Year 2011-12 as the assessee has failed to re-produce the completion certificate of the property against the purchase of which the exemption was claimed and further recorded that the effect to the original order of the Ld. CIT(A) was already given in his order dated 08.02.2018. He had also noted that capital gain arising in the said transfer has to be taxed in the Assessment Order 2011-12 itself and that there was no way for him to form reason to believe that the such capital gain had escaped assessment for any other Assessment Year. Accordingly, he had concluded that the order dated 08.02.2018 giving effect to the order of Ld. C1T(A) which was challenged by the appellant before the ITAT remains unaltered while giving effect to the order of the ITAT as well.

7. The assessee challenged the decision of the Assessing Officer before CIT(A) stating that AO has failed to give effect to the original order of Ld.

CIT(A) in compliance to the directions of the Tribunal. The Ld. CIT(A) in the in order challenged before us had made following observations;

8.6 I have carefully perused the submission of the appellant. It has been noted that the direction of Hon'ble ITAT is very clear that the Assessing Officer failed to give appeal effect to the order of Ld. CIT(A) dated 30.09.2017 and directed him to give effect to the said order in accordance with law. Hon'ble ITAT has further clarified that the AO would be at liberty to re-open the assessment for the relevant Assessment Year as directed by the Ld. CIT(A) in the original appellate proceeding if law so permits. So, the question here is whether the Assessing Officer has given effect to the order of Ld. CIT(A) in the original appellate proceeding, in compliance of the decision of Hon'ble ITAT.

8.7 On perusal of the appellate order dated 20.03.2017, it is noted that the Ld. CIT(A) in his order in appeal no. 43/1415A/11-12 vide Para 5.10.15 to 5.10.18 has given the following findings/directions:

"i) That the appellant is eligible for exemption u/s 54F (should have been Section 54).5

ii) The appellant should submit the completing certificate or certificate of satisfactory progress of the construction at the earliest appropriate time and latest by 30.09.2017, failing which the necessary action including re-opening of the case for taxability of the amount for

the Assessment Year relevant to the period at the end of 3 years from the date of sale for taxing the amount as per law.

8.8 In (i) above, it has been held that the appellant is eligible for exemption u/s 54. Therefore, the AO has no option but to allow exemption to the appellant in AY 2011-12. In (ii) above, it has been directed that Assessing Officer should re-open the case for the taxability of the amount for Assessment Year relevant to the period at the end of 3 years. Accordingly, the AO should re-open the relevant AY for bringing the amount in question to tax. It is not disputed here that the appellant failed to construct residential house within the stipulated period. As per the submission of the appellant as well as the finding of AO the new asset has not been constructed within the time mentioned in the Ld. CIT(A)'s order.

8.9 The appellant had challenged the second direction of CIT(A) before Hon'ble ITAT and the same was dismissed. Hon'ble ITAT had also clearly held that the Assessing Officer would be at liberty to re-open the assessment for the relevant Assessment Year as directed by the Ld. CIT(A) in original appellate proceedings if law so permits.

8.10 In view of the above facts and decisions of Ld. CIT(A) in original appellate proceedings and Honble ITAT, I am of the view that Assessing Officer should allow exemption u/s 54 of the Act in the A.Y. 2011-12 and reopen the relevant Assessment Year as per the direction in the appellate

order dated 20.03.2017 to tax the amount in question in accordance with law, including the provisions of Section 150."

8. The Revenue is in appeal raising the following grounds:-

"1. Whether on the facts & in the circumstances of the case, the Ld.CIT(A) has erred in law & on facts, ignoring all the facts as enumerated by the AO in details in its order u/s 254 of the Income-tax Act, 1961.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law & on facts, ignoring the fact that the assessee was very much aware about of the fact from the beginning that the possession of the flat in which such investment was made would not be handed over to him within the period of three years from the date of such transfer. The fact of which was established by the document i.e. copy of Certificate produced from the builder M/s Pioneer Urban Land and Infrastructure Ltd. The assessee has misrepresented the facts before various appellate authorities and the Department in order to escape such Capital Gain from taxation as per prevailing statutory laws. Section 54 of the Income-tax Act, 1961 is very clear w.r.t the conditions under which the benefit of such deduction can be given to the assessee. It does not provide for elapsement of a period of more than 6 years for investment in the new asset i.e residential house.

3. Whether on the facts & in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the fact that the assessee failed to fulfill the condition laid by the order of the Ld. CIT(A)-18, New Delhi in order to claim exemption u/s 54 of the Income-tax Act, 1961 at the time of passing of order u/s 250 of the Income-tax Act, 1961.

4. Whether on the facts & in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignored that the Ld. CIT(A)-18, New Delhi only discussed and produced his humble opinion, not his judgement w.r.t the para no. 5.10.15 of the appellate order dated 06.04.2017.

5 Whether on the facts & in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignored that it is crystal clear from the para no. 5.10.17 of the appellate order of the Ld. CIT(A)-18, New Delhi that both the AOs were not restricted only to re-open the case under the relevant section of the Income-tax Act, 1961 rather the AOs were directed to take 'necessary action in accordance with law' i.e. within the purview of Section 54 of the Income- tax Act, 1961 while passing order u/s 250 as well as order u/s 254 of the Income-tax Act, 1961.

6 Whether the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

7 Whether the grounds of appeal are without prejudice to each other.

8 Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal."

9. Heard and perused the record. The ld. DR heavily relied on the order of the ld.CIT(A).

9.1 The ld. AR has supported the findings of the ld.CIT(A) submitting that the Revenue has not challenged the first appellate order of the CIT(A) in which the directions were given and, therefore, the present appeal is not maintainable for challenging those directions.

10. We have given thoughtful consideration to the facts and circumstances of the case and are of the considered view that the ld.CIT(A) has duly taken into consideration the fact that in the earlier order dated 20.03.2017 a finding was given in favour of the assessee that the assessee is eligible for exemption u/s 54 of the Act and for that purpose, the then ld.CIT(A) passing the order dated 20.03.2017 has taken into consideration the genuineness of the transaction of purchase of the house and construction. Admittedly, that order dated 20.03.2017 was not challenged by the Revenue. Thus, the finding in favour of the assessee that she is eligible for exemption u/s 54 of the Act for the investment she has

made in the purchase of house from M/s Pioneer Urban Land & Infrastructure Ltd. stands final.

11. Further, it comes up that earlier when the assessee came before this Tribunal challenging the appeal arising out of effect giving order in the first round, the Tribunal has specifically taken note of the fact that AO had erred in not making the assessment as per the directions of the CIT(A) that in case the assessee fails to file the completion certificate by 30.09.2017, the AO will have recourse to reopening. It appears that the ld. AO while passing the present impugned order dated 05.10.2021 has gone ahead on the premises that the earlier assessment order dated 08.02.2018 had already given effect to the CIT(A) order dated 20.03.2017 and the capital gain was taxable in AY 2011-12 only. The grounds as stand raised before us now fail to point any error in the order of ld.CIT(A), when the Revenue had accepted the first round order of ld.CIT(A) dated 20.03.2017 and then the Tribunal's order dated 03.06.2021 giving specific direction to the AO that he has to reopen the assessment for the relevant assessment year. Thus the grounds raised have no substance. The appeal of the Revenue in ITA No.2434/Del/2022 is dismissed.

12. As the appeal of Revenue on merits and quantum of additions stand dismissed, consequently, the appeal of the Revenue in ITA No.2435/Del/2022

questioning the wisdom of the ld.CIT(A) for setting aside the penalty order u/s 271(1)(c) of the Act, is not left with any merit and the same is also dismissed.

Order pronounced in the open court on 29.01.2024.

Sd/-	Sd/-
(G.S. PANNU) VICE PRESIDENT	(ANUBHAV SHARMA) JUDICIAL MEMBER

Dated: 29th January, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi