

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.178/Ind/2022
(Assessment Years: 2011-12)

Sandhya Garg 30, Subhash Grih Nirman Society, Priydarshini Colony Jabalpur (Appellant / Assessee)	Vs.	ITO war,2(4) Bhopal (Respondent/ Revenue)
PAN: AGTPG7994G		
Assessee by	Shri Manoj Kumar Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	29.02.2024	
Date of Pronouncement	29.02.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi dated 29.04.2023 for A.Y. 2011-12. The assessee has raised following grounds of appeal:

- “1. Under the facts and in the circumstances of the case, Id.CIT(A),NFAC erred in confirming addition of Rs.75470/- u/s 69 of the Act treating the amount as undisclosed investments.*
- 2. Under the facts and in the circumstances of the case, Id. CIT (A) NFAC erred in confirming addition of Rs.387607/- as long term capital gain*

ignoring the actual cost of acquisition and cost of improvement incurred by the assessee on impugned shop.

3. Considering the fact that Furniture sold for Rs.400000/- was personal assets of the assessee comprising Sofa Set, Beds, Almirhas etc, and were acquired at a cost of Rs.485500/- as declared in the return, ld CIT (A) erred in confirming addition of Income of Rs.400000/- on sale of Furniture and Fixtures as income from other sources. Furniture used for personal purposes is not a capital asset, therefore, not liable for capital gain."

2. Ground no.1 is regarding addition made by the AO of Rs.75470/- on account of undisclosed/unexplained investments in FDRs.

3. At the time of hearing Ld. AR of the assessee has stated as bar that the assessee does not press this issue due to smallness of addition. Ld. DR has raised no objection if this ground of appeal is dismissed as not pressed. Accordingly ground no.1 of the assessee's appeal is dismissed being not pressed.

4. Ground no.2 is regarding the addition made by the AO on account of long term capital gain arising from sale of shop.

5. Ld. AR of the assessee has submitted that the AO while making addition has not considered the cost of construction of the house for the purpose of deduction u/s 54F of the Act. He has submitted that the assessee has purchased plot of land in question for a consideration of Rs.3,60,000/- as per the letter of allotment dated 11.12.2010 on which the assessee constructed a house for a total cost of Rs.7,20,000/-. However, the AO while passing assessment order has allowed only the cost of plot of land as exemption u/s 54F of the Act but has not allowed cost of construction of the house. He

has referred to the receipts of contractor for construction of the house at page no.17 to 19 of the paper book and submitted that the assessee has now filed the additional evidences in support of cost of construction of the house. Thus, the Ld. AR has submitted that the total investment for deduction u/s 54F ought to have been Rs.10,80,000/- instead of Rs.3,60,000/- allowed by the AO.

6. On the other hand Ld. DR has submitted that before the AO the assessee has not claimed any deduction u/s 54F in respect of the cost of construction of the house. Therefore, in absence of any claim as well as supporting evidence for construction of house the AO was not supposed to allow the said deduction. Thus, the Ld. DR has submitted that the evidence first time produced by the assessee requires to be verified and examined at the level of the AO.

7. We have considered rival submission as well as relevant material on record. The assessee has sold a shop during the year under consideration for a consideration of Rs.10,20,000/-. The AO has allowed the index cost of acquisition of shop of Rs.4,20,971/- and computed the long term capital gain at Rs.5,99,029/- against which an exemption u/s 54F was also allowed by the AO for the cost of plot of land purchased by the assessee of Rs.3,60,000/-. The AO has computed the proportionate exemption as the assessee has not invested the full amount of net consideration in purchase or construction of the new house. Thus, the AO has allowed the exemption u/s 54F proportionately of Rs.2,11,422/- and then

assessed the capital gain to tax at Rs.3,87,607/-. The assessee filed the appeal before the CIT(A) but due to non-representation on behalf of the assessee the CIT(A) has dismissed the appeal of the assessee while passing ex-parte order and confirmation addition made by the AO. Before the tribunal the assessee has filed the copies of receipt issued by the contractor for a construction of the house. It is pertinent to notice that these receipts filed before the Tribunal are in the nature of additional evidences as these were not filed before the authorities below. Accordingly in the facts and circumstances of the case when the CIT(A) has passed ex-parte order and assessee has filed additional evidence in support of the claim of deduction u/s 54F towards cost of construction for new house the impugned order of the CIT(A) is set aside qua this issue and this issue is remanded to the record of the AO for fresh adjudication as per law after verification/examination of the supporting evidence filed by the assessee.

8. Ground no.3 is regarding the addition made by the AO on account of sale consideration of furniture. The AO noted that during the year under consideration the assessee has sold the furniture for Rs.4 lakhs and shown capital loss of Rs.3,19,147/- on sale of furniture. The AO did not allow the capital loss claimed by the assessee on account of sale of furniture in the absence of any supporting documentary evidences and consequently entire sale consideration of Rs.4 lakhs is added as undisclosed income of the assessee. The CIT(A) has passed the impugned order ex-parte due to non-prosecution on behalf of the assessee.

9. Before the tribunal Ld. AR has referred to the copies of purchase bills of furniture placed at page no. 20-22A of the paper book as well as copies of the sale bills for furniture placed at page no.23-24A of the paper book. Thus, Ld. AR has submitted that the assessee has now filed the purchase bills as well as sale bills which shows that there is no loss on sale of these furniture by the assessee. However, the AO has completely disallowed cost of purchase of the furniture and made the addition for the entire sale consideration of the furniture which is highly arbitrary and unjustified. Thus, the Ld. AR has submitted that the addition made by the AO be deleted.

10. On the other hand, Ld. DR has submitted that no evidence was filed by the assessee either before the AO or before the CIT(A) and first time the assessee has filed the purchase bills before the tribunal which is additional evidence requires to be verified and examined at the level of the AO.

11. We have considered rival submission as well as relevant material on record. The AO has made addition on account of sale of furniture as under:

“Apart from above, assessee has sold her furniture at Rs.4.00 lakhs, and shown capital loss of Rs.3,19,147/- on sale of furniture. Receipts of the same are placed on record which has been considered. However, the assessee has not produced any purchase bill as to when the same have been purchased to substantiate the claim. In the absence of any documentary evidence in support of above, Rs.4.00 lakhs is treated as undisclosed income and the same is added to the total income of the assessee. I am satisfied that the assessee has concealed the particulars of income to the extent of Rs.4.00 lakhs, therefore, penalty proceedings u / s 271(1)(c) is initiated separately.”

11.1.Thus, the assessee claimed capital loss of Rs.3,19,147/- on sale of furniture which has disallowed by the AO for want of documentary evidences being purchased bills in support of the said claim of loss. Now the assessee has filed the purchase bills as well as the sale bills of the furniture sold by the assessee which is additional evidence first time filed by the assessee before the Tribunal. It is noted that the CIT(A) has confirmed this addition by passing ex-party order and the assessee has now filed additional evidences which required to be verified and examined at the level of the AO. Therefore, in the facts and circumstances of the case and interest of justice the impugned order of the CIT(A) qua this issue is set aside and this issue is remanded to the record of the AO for fresh adjudication after verification and consideration of the additional evidences filed by the assessee.

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on conclusion of hearing on
29 .02.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 29.02.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore