

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**I.T.A No.4887/Del/2018  
निर्धारणवर्ष/Assessment Year:2014-15**

Ranjan Rhode, C/o S.K. Mahajan, 41/2943, 1 <sup>st</sup> Floor, Beadon Pura, Karol Bagh, New Delhi.	<b>बनाम Vs.</b>	ITO (International Taxation), Ward 3(1)(2), New Delhi.
<b>PAN No. AACPR4951K</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

Assessee by	<b>Dr. Rakesh Gupta, Adv.</b>
Revenue by	<b>Shri Vivek Vardhan, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	03.01.2024
उद्घोषणाकीतारीख/Pronouncement on	21.03.2024

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-43, New Delhi dated 25.04.2018 for the AY 2014-15.

The assessee raised the following grounds in his appeal: -

1. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned assessment order u/s!44 is bad in law and against the facts and circumstances of the case.*

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the most of the action of Ld. AO in framing the impugned assessment order.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in taking and allowing the addition in building of Rs.269868/- instead of actual amount of addition made in the building claimed by the assessee and further erred in calculating the capital gain on the said amount and impugned addition has been made by recording incorrect facts and findings and without considering the evidences and submissions filed by the assessee and without bringing any contrary material on records.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not allowing the deduction u/s 54 of income tax act 1961 for investment in residential property by the assessee and calculate the capital gain accordingly which is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts by not allowing the expenses of Rs.7,50,000/- that too without consideration the submissions of assessee and Ld.CIT(Appeals) order to this extent is non speaking and has further erred in not allowing brokerage expenses of Rs.7,00,000/- and that too without any basis.*
6. *That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging the interest as per law.*
7. *That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. We have heard rival submissions, perused the orders of the authorities below and the evidences produced. The only issue to be decided is whether the assessee is entitled for deduction u/s 54 of the Act and also the cost of improvement while computing the long term capital gains. Perusal of the assessment order passed u/s 144 of the Act dated 15.12.2016 shows that the assessee did not respond to the notices issued and did not file requisite details in respect of his claim for deduction u/s 54 of the Act and the evidences for cost of improvement. The AO computed the long term capital gain denying the claim for deduction u/s 54 of the Act. The Assessing Officer also denied cost of improvement in the absence of evidences furnished by the assessee.

3. Before the Ld.CIT(A) the assessee furnished additional evidences and the Ld.CIT(A) admitted the additional evidences and called for report from the AO. However, the AO did not provide any report/comments on the additional evidences furnished by assessee. The Ld.CIT(A) without waiting for the report/comments of the AO proceeded with the appeal and sustained the disallowance made u/s 54 of the Act and also denied cost of improvement observing that the assessee has not purchased any residential property within a period of one year before the sale and

has not constructed any residential property within a period of three years from such sale. Ld. CIT(A) also denied the cost of improvement observing that the payments made towards wooden furniture, brokerage and commission, photocopies of the documents are only self serving evidence and do not substantiate the claim of the assessee.

4. On the other hand, it is the contention of the Ld. Counsel that copy of receipt of Shri Anil Kumar Duggal for wooden/furnishing work for Rs.7,50,000/- was produced. It is also submitted that copy of receipt of Shri Anil Kumar Duggal paid on account of commission for Rs.7 lakhs was produced, copy of bank statement of the assessee showing the payment to Shri Anil Kumar Duggal was also furnished and, therefore, the genuineness of incurring of expenses towards wooden/furnishing work and commission expenses cannot be doubted.

5. It is also the contention of the Ld. Counsel that exemption u/s 54 of the Act was denied on the ground that house has been purchased more than one year before the transfer of residential house. It is the contention of the Ld. Counsel that assessee sold residential house on 25.03.2014 and booked a residential house from the builder vide agreement dated 22.02.2012 according to

which the builder was to hand over possession in 40 months. The assessee kept on paying the builder for the construction of the house till 25.03.2017 and paid an aggregate amount of Rs.1,77,93,204/-, therefore, it is the submission that the assessee having invested Rs.1,77,93,204/- in construction of house and paid substantial amount assessee fulfills the condition u/s 54 of the Act. Various case laws have been relied on for the propositions that booking through builder is treated as construction and not purchase even in case of construction investment made prior to the date of sale is also to be taken into account if substantial payments have been made to the builder and yet builder does not construct in three years exemption u/s 54 of the Act cannot be denied, it was not required to deposit the amount of capital gain in the capital gain bank account scheme.

6. We observe that the assessment was made *ex parte* u/s 144 of the Act as best judgment assessment in the absence of details furnished by the assessee and the Ld.CIT(A) also disposed of the appeal without receiving the report/comments of the AO on the additional evidences. Therefore, on hearing both the sides and perusing the orders of the authorities below and the evidences produced, we are of the view that the matter should go back to the

AO for fresh adjudication and in accordance with law. Thus, this appeal is restored to the file of the AO for *denovo* adjudication in accordance with law after providing adequate opportunity of being heard to the assessee.

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

Order pronounced in the open court on 21/03/2024

Sd/-  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 21.03.2024

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**