

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO. 1646/MUM/2023 : A.Y : 2011-12**

Income Tax Officer-19(3)(1),  
Mumbai. (Appellant) Vs. Reema Vivek Kothar  
122 122, Kalpvriksha Apartments,  
Ridge Road, Mumbai 400 006.  
**PAN : AALPK2958G** (Respondent)

**Appellant by : Ms. Mahita Nair**

**Respondent by : Shri Vijay Mehta**

**Date of Hearing : 26/03/2024**

**Date of Pronouncement : 05/04/2024**

**ORDER**

**PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :**

The challenge in this appeal by the Revenue, is to the order dated 14.03.2023 passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) ('CIT(A)' for short) thereby deleting the addition made by the Assessing Officer ('AO') after disallowing the claim for exemption under Section 54F of the Income Tax Act, 1961 ('Act' for short).

2. The brief facts are that the assessee filed her Return of Income (RoI) for assessment year 2011-12 on 31.07.2012 declaring a total income of Rs.46,94,000/-. The case was selected for scrutiny. In compliance with the statutory notice, assessee appeared and furnished certain details as required.

The AO found that the assessee had claimed deduction under Section 54F of the Act towards Long Term Capital Gains (LTCG) on the ground of purchase of new residential premises from R.A. Associates within the stipulated period. The AO, however, came to the conclusion that the assessee is not entitled to the exemption on the following grounds –

- (i) Assessee purchased the property from a source in which her relatives were Partners and the payment is not shown to be genuine;
- (ii) Construction is not completed and the possession of the property is not delivered by the builder, i.e. R.A. Associates;
- (iii) Allotment letter dated 11.12.2010 was issued by the builder without execution of any formal agreement and was notarized after 2 years of its issuance, i.e. on 11.10.2012;
- (iv) Assessee has paid an amount of Rs.7,12,61,076/- as against the cost of property which was Rs.5,99,50,000/-, which was not acceptable; and,
- (v) No Service Tax/VAT was paid.

In other words, refusing to accept the genuineness of the transaction for various reasons, the exemption was denied and a sum of Rs.7,00,37,872/- was added back to the income of the assessee.

3. Feeling aggrieved, the assessee carried the matter in appeal before the CIT(A) on the following grounds :-

*"1. The assessment order passed by the learned Assessing Officer is bad in law and bad in facts.*

2. *The assessment order passed is ab-initio void, inasmuch as same has been passed in pursuance of a notice issued u/s 143(2) of the I.T. Act, 1961, in contravention of the instruction of Central Board of Direct Taxes.*
  3. *The learned Assessing Officer has grossly erred in rejecting appellant's claim u/s 54 of the IT Act, 1961 at Rs 6,29,77,500/- even though the conditions for availing the exemption/deduction were substantially complied with by the appellant.*
  4. *The learned Assessing Officer has grossly erred in rejecting appellant's claim u/s 54 of the I.T. Act. 1961, at Rs 6,29,77,500/- by placing reliance on the materials gathered u/s 132(6)/131 of the I.T. Act. 1961, without providing an opportunity of being heard, prior to making use of said material.*
  5. *Having regard to facts of the case, provisions of law and judicial prepositions, the Assessing Officer ought to have accepted appellant's claim of deduction/exemption u/s 54 of the I.T. Act, 1961.*
  6. *The learned Assessing Officer has grossly erred in not allowing deduction for an aggregated amount of Rs 15,57,922/- (indexed value Rs 30,92,480/-) being partial cost of acquisition of transferred property to society/ developer, even though sufficient proofs were submitted in support of the said claim.*
  7. *The learned Assessing Officer has grossly erred in not allowing deduction of Rs 10,00,000/- being payment made to Society in connection with the transfer of property as per rules and regulations of said Society.*
  8. *The learned Assessing officer has grossly erred in holding that the transferred property was acquired by the assessee in F.Y 2007-08 as against the correct year of acquisition F.Y 2005-06 and has further erred in applying index rate 711/551 as against correct index rate 711/497. Reasons assigned for the impugned action are wrong, contrary to the provisions of law and in contradiction to the binding decision of jurisdictional high court."*
4. The CIT(A) by virtue of the impugned order dated 14.03.2023 has allowed the appeal thereby deleting the addition. Hence this appeal.
5. We have heard the parties. Perused record.

6. At the outset, it may be noted that the CIT(A) has not dealt with the grounds pertaining to deduction of an aggregate amount of Rs.15,57,922/-, being partial cost of acquisition of the transferred property to society/developer as well as the deduction of Rs.10,00,000/- being payment made to the society in connection with the transfer of property and the rival contentions as to whether the year of acquisition has to be taken as 2005-06 as against 2007-08. We find that although specific grounds were raised before the CIT(A) in this regard, the CIT(A) has merely observed in para 16 stating that “ground nos. 2 to 8 are accordingly allowed”. The learned counsel for respondent-assessee has, in all fairness, not disputed that the order of CIT(A) is silent on ground nos. 2 to 8 as raised (corresponding to ground nos. 3 to 5 as raised in this appeal). He, however, submitted that in the event this Tribunal is inclined to remand the matter back, it may be limited to ground nos. 3 to 5. This according to the learned counsel is necessary on account of the fact that the finding recorded in respect of admissibility of exemption/deduction towards LTCG does not call for any interference.

7. The learned CIT-DR, on the contrary, submitted that even the deletion made by the CIT(A) is unwarranted and the AO was justified in refusing the exemption/deduction and the addition was rightly made.

8. We have carefully considered the rival circumstances and the submissions made. As noticed earlier, the CIT(A) has not dealt with the rival contentions which arise out of ground nos. 3 to 5, as raised in this appeal (which were also raised before him). The only question is whether the entire appeal has to be restored back to the file of CIT(A) or it may be limited only to ground nos. 3 to 5. We are not inclined to accede to the request on behalf of the respondent-

assessee for a limited remand for more reasons than one. This is on account of the fact that normally the Tribunal would be slow in making such partial remand, particularly when the entire matter could be more appropriately dealt with by the First Appellate Authority. Secondly, we also find from perusal of the impugned order that CIT(A) has only dealt with the ground whether purchase from related party/builder is permissible and about the absence of requirement for completion of the construction/handing over of possession within the stipulated time. There are certain other issues on which the AO has refused to grant exemption, particularly the amount paid being in excess of cost of property, etc. In our considered view, it would be appropriate that all the issues in the appeal are restored back to the file of CIT(A) for disposal according to law. In the wake of the view which we are inclined to take, we have refrained from making any observations on the merits of the rival contentions advanced before us. In that view of the matter, the appeal is allowed. Impugned order is set-aside. The appeal filed by the Revenue is restored back to the file of CIT(A) for disposal according to law. Needless to mention that we have not made any observation on the merits and all such issues are left open to be decided by the CIT(A) on their own merits and in accordance with law.

9. In the result, appeal of the Revenue is allowed in the aforesaid terms.

Order pronounced in the open court on 05/04/2024.

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Mumbai; Dated : 05/04/2024

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)  
ITAT, Mumbai