

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3693/Mum./2023

(Assessment Year : 2013-14)

Mrs Nilima Avinash Pradhan
1704, Rustomjee Atelier,
A Wing, Majiwada, Thane-400601.
PAN – BZBPP6806J

..... Appellant

v/s

ITO, Ward-3(1)
Wagale Estate, Thane-400604.

..... Respondent

Assessee by : Shri Ratnakar Deshpande
Revenue by : Shri Ashok Kumar Ambastha

Date of Hearing – 10/04/2024

Date of Order – 06/05/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 17.08.2023, passed u/s 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds: –

"1 In the facts and circumstances of the case and in law, the learned CIT(Appeals) has erred in upholding the action of the Ld. Assessing Officer of disallowing the amount of Rs.37,72,062/- being deduction under section 54 without considering the fact that the amount of capital gain was already

invested for the purchase of a residential house within the time stipulated under section 54.

2. In the facts and circumstances of the case and in law, the learned CIT(Appeals) has erred in passing an order on the basis of surmises and conjectures without even conducting an in-depth inquiry into the facts of the matter and concluding without giving a fair opportunity of hearing thereby grossly violating the principles of Natural Justice."

3. We have considered the submission of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual and for the year under consideration did not file her return of income u/s 139(1) of the Act. Subsequently, on the basis of the information received in the AIMS module of the ITBA for the financial year 2012-13 that the assessee has sold an immovable property at Rs.63.50 lakh, notice u/s 148 of the Act was issued on 22.02.2020 and proceeding u/s 147 of the Act was initiated. On the basis of aforesaid information, it was noted that the assessee though has sold immovable property but has not filed any return of income and therefore the profit & gains on the sale of immovable property has remained unexplained/undisclosed. During the assessment proceedings u/s 147 of the Act, notice u/s 142(1) of the Act was issued to the assessee. However, no response was filed by the assessee. Since the assessee did not respond to various notices issued u/s 142(1) of the Act and the time period for the completion of the assessment was expiring, the Assessing Officer ("AO") chose to proceed u/s 144 of the Act and completed the assessment on the best judgment basis taking into consideration the material available on record. During the assessment proceeding, the AO also issued notice u/s 133(6) of the Act to the Sub-Registrar, Thane-1 calling for a copy of the agreement for sale of immovable property. However, no reply was received in response to the

same. Accordingly, the AO vide order dated 25.09.2021 passed u/s 147 read with section 144 of the Act computed the long-term capital gains on sale of immovable property at Rs.63,53,000/- by considering the indexed cost of acquisition at Rs. Nil.

4. In the appellate proceeding before the learned CIT(A), the assessee submitted that the assessee being a house-wife, did not have any taxable income for the assessment year 2013-14 or earlier years and therefore, she did not register herself on the Income-tax e-filing portal. It was further submitted that the assessee did not receive any of the notices including the show-cause notice issued by the AO since the same were sent in the years 2020 and 2021 to the address of the flat of the assessee which was sold in the year 2012. On merits, the assessee submitted that the flat in question was purchased by her on 25.04.2006 for a consideration of Rs.11,35,900/-. On 07.12.2012, the said flat was sold for a total consideration of Rs.63,50,000/-. Since the flat was held by the assessee as an owner for more than 36 months the assessee treated it as long-term capital assets having the benefit of indexation as per section 48 of the Act. Accordingly, the assessee computed the long-term capital gains arising from the flat at Rs.44,87,869/-. The assessee further submitted that on 29.12.2012 the assessee purchased a new flat for a total consideration of Rs.77 lakh. Since the new residential house property was purchased within a period of two years from the date of transfer of original assets, the assessee claimed that she is entitled to claim exemption u/s 54 of the Act in respect of the long-term capital gains arising from the sale of the original asset. Accordingly, as per the assessee, no taxable long-term

capital gains arose on the sale of original assets and therefore, the assessee did not earn any taxable income for the assessment year under consideration.

5. Since during the appellate proceedings, the assessee filed evidence in support of his submissions, the learned CIT(A) sought a remand report from the AO. However, even after the reminder, no report was furnished by the AO in response to the submission and evidence filed by the assessee. Accordingly, the learned CIT(A) proceeded to decide assessee's appeal on the basis of available on record after considering the submission of the assessee. The learned CIT(A), vide impugned order, held that in the purchase deed dated 29.12.2022 for the purchase of the new flat, the actual payment made is only Rs.5 lakh while the remaining amount is to be paid as the construction progresses. Accordingly, the learned CIT(A) concluded that the entire amount of long-term capital gains earned from the sale of original assets was not invested for the purchase of a new residential house within the period of two years from the sale of the property nor the balance amount was deposited in the bank account as per the Capital Gains Account Scheme. Therefore, it was held that the assessee is entitled to the benefit u/s 54 of the Act only to the extent of the investment and limited to her share in the original asset as a co-owner, i.e. 50%. Computing the assessee's share of long-term capital gains at Rs.22,43,935/- and after reducing the same by Rs.2,50,000/-, the learned CIT(A) held that the balance amount of Rs.19,93,935/- is only taxable in the hands of the assessee as long-term capital gains. Being aggrieved, the assessee is an appeal before us.

6. From the perusal of the material available on record, it is evident that due to non-receipt of the notices issued u/s 142(1) of the Act, no response/submission was filed by the assessee during the assessment proceedings. It is also evident that even during the appellate proceedings before the learned CIT(A), the AO did not file its remand report in response to the submission/evidence filed by the assessee. We find that the learned CIT(A) though considered the submission/evidence filed by the assessee, however, granted partial relief to the assessee by observing that the assessee has made only partial investment in the new house property and therefore is entitled to relief u/s 54 of the Act only limited to the payment made for the new flat as per the purchase deed. There is no material available on record to show that the assessee was put to notice or was granted the opportunity of hearing by the learned CIT(A) before arriving at the aforesaid conclusion. Accordingly, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after consideration of the details as may be furnished by the assessee. The assessee is directed to file her submission along with all the necessary supporting documents in respect of her claim u/s 54 of the Act before the AO. Needless to mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. Accordingly, the impugned order passed by the learned CIT(A) is set aside and the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/05/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/05/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar
ITAT, Mumbai