

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT  
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.195/Bang/2024
Assessment Years : 2017-18

Rashmi Ravikiran, No.1954, 2 <sup>nd</sup> Stage, 'E' Block, Rajajinagar, Bengaluru-560 010.  <b>PAN – AFOPR 8485 F</b>	Vs.	The Asst. Commissioner of Income Tax, Circle - 2(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravindra Hegde, C.A
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	14.05.2024
Date of Pronouncement	:	16.05.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 06/12/2023 in DIN No. ITBA/ NFAC/ S/ 250/2023-24/1058525276(1) for the assessment year 2017-18.

2. In the present case, the assessee filed the return of income declaring long term capital gain amounting to Rs. 3,02,97,479 only. The assessee while calculating the long term capital gain has claimed the deduction of the following expenses:-

<b>SN</b>	<b>Particulars</b>	<b>Amount (in Rs.)</b>
1.	Indexed cost of improvement	82,84,000/-
2.	Deduction u/s 54F	1,81,04,677/-

3. The AO during the assessment proceedings required the assessee to justify the claim for the indexed cost of improvement and deduction u/s 54F of the Act but the assessee failed to comply with the same. Therefore, the AO disallowed the same and added to the total income of the assessee.

4. On appeal before the Id. CIT(A), the assessee failed to justify the claim based on documentary evidence even though various opportunities of hearing were granted by the Id. CIT(A).

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

6. The Id. AR before us filed a paper book running from 1 to 50 pages and other details showing the cost of construction on the piece of land purchased by the assessee along with the layout plan of the property approved by the Government agencies. It was the contention of the Id. AR that the relevant supporting details justifying the indexed cost of improvement and deduction u/s 54F of the Act were not available during the proceeding before the respective lower authorities. Therefore, the assessee failed to furnish the same. The Id. AR further has undertaken the responsibility of furnishing all the necessary supporting

details before the AO, if the matter is set aside to him for fresh adjudication as per the provisions of law.

7. On the other hand, the Id. DR opposed setting aside the issue to the file of the AO on the reasoning that the assessee has already been offered sufficient opportunities by the respective authorities to raise his contentions, but he failed to avail the same. The Id. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. Undeniably, it is the responsibility of the assessee to furnish the supporting evidences to justify the claim. It is also seen that sufficient opportunities were also granted by the authorities below. However, we find certain undisputed facts as detailed below:-

- 1) The assessee has furnished the details of the construction cost supported by the ledger on the letter head of Consulting Civil Engineer running into 4 pages, which is available on the record.
- 2) There is an approval plan for the construction of residential unit duly signed by the Government agencies.
- 3) The assessee has purchased the piece of land for the purpose of the construction, which was also admitted by the AO in his order.
- 4) There was money deposit in the capital gain account scheme, which is evident from the findings of the Id. CIT(A)

8.1 From the above details, it transpired that the Id. CIT(A) knew there was money deposited in the capital gain account scheme, but the Id. CIT(A) has not given any benefit to the assessee for the same.

9. Thus, upon reading of the above stated facts, it appears that the income of the assessee has been calculated without the legitimate deduction for which, the assessee was entitled under the provisions of law.

10. It is also pertinent to note that the Hon'ble Supreme Court in the case of **Cognizance for Extension of Limitation, In** reported in 125 taxmann.com 151 has held as under:

*2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.*

11. Admittedly, when the matter was pending before the Id. CIT(A), the COVID pandemic was at its peak and, therefore, there were genuine difficulties with the assessee in furnishing the necessary details as required by the Id. CIT(A). Thus, considering the facts stated above, we find that it is a fit case for setting aside to the level of the AO for fresh adjudication as per the provisions of law.

12. It is also seen that the assessee in the appeal has raised various grounds challenging the validity of the assessment framed u/s 143(3) of the Act. However, at the time of hearing, the Id. Counsel for the assessee has not advanced any argument qua to these grounds of appeal. Nonetheless, these grounds of appeal go to the root of the matter and being legal in nature, we allow the liberty to raise the same

before the authorities below, if so desired by the assessee in view of the judgment of the Hon'ble Supreme Court in the case of NTPC Ltd. reported in 229 ITR 383. In view of the above facts, we are setting the issue to the file of the AO for fresh adjudication as per the provisions of law. Hence, the ground of appeal raised by the assessee is allowed for statistical purposes.

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

Order pronounced in court on 16<sup>th</sup> day of May, 2024

Sd/-

**(GEORGE GEORGE K)**  
Vice President

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore,  
Dated, 16<sup>th</sup> May, 2024  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore