

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1094/Del/2023 : Asstt. Year : 2016-17

Abha Agarwal, 19, Delhi Road, Royal Enclave, Moradabad, Uttar Pradesh-244001	Vs.	ACIT, Circle-II, Moradabad, U.P.-244001
(APPELLANT)		(RESPONDENT)
PAN No. ABBPA5692C		

**Assessee by : Sh. Sumit Lal Chandani, Adv. &
Sh. Abhinav Gaur, Adv.**

Revenue by : Sh. Kanav Bali, Sr. DR

Date of Hearing: 18.04.2024

Date of Pronouncement: 19.06.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 21.02.2023.

2. Following grounds have been raised by the assessee:

"1. That The Learned Commissioner of Income Tax Appeals (NFAC) has erred in law and on facts in confirming penalty of Rs.15,00,000/- levied by the Assessing officer, u/s 271(1)(c) of the Income Tax Act 1961.

2. That The Learned Commissioner of Income Tax Appeals (NFAC) has further erred in confirming the said penalty levied by the Assessing officer, on account of withdrawal of deduction u/s 54 claimed by the counsel of the assessee while filing the return of income of the assessee.

3. That The Learned Commissioner of Income Tax Appeals (NFAC) has further erred in law and on facts in Brushing

aside the submissions of the assessee, with total disregard to the facts and circumstances of the case."

Excerpts from the record of the Revenue

3. The brief facts of the case are that the assessee is an individual and filed return of Income on 25.01.2017 declaring total income of Rs.1,24,92,580/-. The case was selected for limited scrutiny and assessment was completed u/s 143(3) on 13.12.2018, assessing total income at Rs. 1,67,86,180/-. Addition to the tune of Rs.42,93,595/-has been made on account of inadmissible claim of long term capital gain.

4. During the Assessment Year 2016-17 i.e. previous year 2015-16, the assessee had sold certain immovable properties (five vacant plots of land situate at different locations) for cumulative consideration of Rs.492,00,17,000/-. In this transaction, the assessee earned Long Term Capital Gain (LTCG) of Rs.4,23,36,686/-. The assessee claimed to have reinvested part of such LTCG into acquisition of a residential house property and in "specified bonds issued by REC Limited". The amount invested into "specified bonds issued by REC Limited" was Rs.50,00,000/-. Upto this point there is no dispute as far as facts disclosed by the assessee and facts admitted by the AO are concerned.

5. Two issues of divergence emerged during the assessment proceedings. In the IT return, the assessee had claimed to have invested Rs.2,61,05,330/- out of LTCG earned towards the acquisition of house property. However, during the scrutiny assessment it was established that the total amount invested towards acquisition of house property was actually

Rs.2,53,75,000/- (i.e. actual value of purchase at Rs.2,41,76,000/- and stamp duty Rs.11,99,000/- totaling to Rs.2,53,75,000/-). The assessee has not protested this factum determined during the assessment proceedings. The AO made the quantum addition pursuant to such detection.

6. Another issue of divergence which has been observed during the assessment proceedings pertains to the provision in the Income Tax statute under which claim of deduction, on account of reinvestment of part LTCG was made. The assessee made the claim of deduction u/s 54 whereas as per the AO the right provision for making such claim of deduction should have been u/s 54F.

7. Based on such issues, penalty proceedings u/s 271(1)(c) were initiated by the AO.

8. The assessee had earned LTCG of Rs.4,23,36,686/- during the year after selling her assets. The assessee claimed to have reinvested part of such LTCG as under:-

- i) Amount of Rs.50,00,000/- into "specified bonds issued by REC Limited" and claimed deduction u/s 54EC.
- ii) Amount of Rs.2,61,05,330/- towards acquisition of house property and claim deduction u/s 54.

9. As far as claim of deduction u/s 54EC based on investment of Rs.50,00,000/- into specified bonds issued by REC Limited is concerned, the fact remains undisputed by the AO. The claim of Rs.2,61,05,330/- as amount invested towards acquisition of house property was proved to be incorrect during the scrutiny

assessment proceedings. Actually amount invested into acquisition of house property, including the stamp duty paid towards it, came to be determined at Rs.2,53,75,000/-, i.e. actual value of purchase at Rs.2,41,76,000/- and stamp duty Rs.11,99,000/- totaling to Rs.2,53,75,000/-.

10. Thus, the claim of assessee u/s 54 was found to be erroneous on two counts:-

- i) It was based on incorrect amount of reinvestment i.e. Rs.2,61,05,330/- rather than the correct amount of Rs.2,53,75,000/-.
- ii) The LTCG was earned by the assessee on sale of vacant plots of land and deduction was claimed u/s 54. The section 54 actually provides deduction on account of LTCG arising from sale of property used for residence. The AO rather allowed the deduction u/s 54F. The assessee has accepted it and has not raised any appeal against it.

11. Having gone through the facts, we find that deduction u/s 54EC of Rs.50,00,000/- has been allowed by the AO himself, hence, this issue need not be interfered with.

12. With regard to claim of deduction u/s 54F, the assessee has shown purchase of property for Rs.2,61,76,000/- against the total value of investment of Rs.2,53,75,000/-. Thus, there is a difference of Rs.7,30,330/-. During the arguments, the Id. AR submitted that the brokerage paid and other documentation expenses have not been considered by the AO, hence, the same

needs to be considered and there was no furnishing of inaccurate particulars of income or concealment of income. The penalty has been levied for "concealment of income". The notice and the penalty proceedings were also issued for "concealment of income". The Id. DR supported the order of the Id. CIT(A). We find it as a case of claim of expenditure involved in purchase of property and no case of "concealment of income" arises. Hence, the penalty levied is hereby obliterated.

13. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 19/06/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 19/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR