

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.303/RPR/2024
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Naresh Kumar Shrivastava
House No.2, Phase-II,
Harsh Vihar Colony,
Daldalshivni Road, Mowa,
Raipur-492 007
PAN: AJJPS8997C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.08.2024
घोषणा की तारीख / Date of Pronouncement : 23.08.2024

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 01.05.2024, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 29.03.2016 for the assessment year 2008-09. The assessee has assailed the impugned order on the following effective ground of appeal:

"1. On the facts and in the circumstances of the case, the Learned AO had erred on facts and in law in making addition of Rs.74,46,583/- on account of Long Term Capital Gain by invoking Section 50C of the Income Tax Act, 1961 and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the addition to the extent of Rs.5,33,251/- (Rs.74,46,583 — 69,13,333/-) disregarding the provisions of Section 54F as the actual sale consideration amounting to Rs.21,75,000/- (being 1/6th of Rs.1,30,50,000/-) stood reinvested which entitles the assessee for exemption u/s 54F from whole amount of Long Term Capital Gain, more particularly, when the deemed sale consideration u/s 50C is not reckoned as full value of consideration received for the purposes of Section 54F, hence, it is prayed that the addition of Rs.5,33,251 confirmed by the Learned CIT (Appeals) may kindly be deleted."

Also, the assessee has raised an additional ground of appeal which reads as under:

"Additional Ground of Appeal No.1:

On the facts and in the circumstances of the case, the Learned A.O has &red on facts and in law in assessing capital gain in the year under consideration as the transfer of capital asset took place in the F.Y 2005-06 relevant to A. Y 2006-07 in terms of provisions of Section 45 r.w.s. 2(47).of the Income tax Act, 1961 inasmuch as the assessee had entered into an agreement for sale of capital asset vide agreement dated 04.03.2006, therefore, the reassessment proceedings initiated for the year under consideration is illegal, void-ab-initio inasmuch as no transfer of capital asset took place in the year under consideration and as such, the reassessment proceedings have been initiated based on non-existing or incorrect facts and therefore, void-ab-initio. It is prayed that the reassessment proceedings initiated against the assessee for alleged escapement of income from capital gain may kindly be held to be illegal as the transfer of capital asset had taken place in the F.Y.2005-06 relevant to A.Y. 2006-07 and consequential enhancement of Rs.5,33,251/- confirmed by the Learned CIT (Appeal) may kindly be directed to be deleted."

2. Succinctly stated, the assessee had filed his return of income for the A.Y.2008-09 on 31.03.2009, declaring an income of Rs.90,000/-. Thereafter, the case of the assessee was reopened u/s. 147 of the Act. Notice u/s. 148 of the Act dated 27.03.2015 was issued by the A.O. In compliance, the assessee submitted that his original return of income may be considered as a return filed in response to notice u/s. 148 of the Act.

3. During the course of the assessment proceedings, the A.O observed that the assessee along with his five other family members had during the subject year sold an immovable property situated at Labhandi, Raipur for a consideration of Rs.1,30,50,000/-. The assessee who had 1/6th share in the aforementioned property offered as his income Long Term Capital Gain (LTCG) arising on the aforesaid sale transaction as his share of income,

and claimed deduction u/s. 54F of the Act. The A.O observed that at the time of registration of the sale deed, the Sub-registrar had held the market value of the subject property at Rs.5,75,11,000/- (@ Rs.85,00,000/- per hectare) for the purpose of stamp duty valuation. It was further observed by him that the aforementioned valuation was upheld by Collector of Stamp, Raipur. On further challenge before the Board of Revenue, the valuation of the property was scaled down to Rs.2,19,89,500/- (@ Rs.32,50,000/- per hectare). The State of Chhattisgarh challenged the order of Board of Revenue before the Hon'ble High Court of Chhattisgarh in W.P C No.7438 of 2009 dated 20.09.2011 pursuant where to, the matter was remitted back to the file of the Court of Collector of stamp for assessing the market value of the property afresh. The A.O observed that as till the passing of the assessment order the issue was still pending before the Collector of Stamps for fresh valuation of the property, thus, held the market value of the property at Rs.5,75,11,000/-, i.e. as was adopted by the Collector of Stamps initially and calculated the LTCG accordingly. Thus, the A.O applying the provisions of Section 50C of the Act made an addition in the hands of the assessee of Rs.74,46,583/- on account of LTCG.

4. The assessee being aggrieved with the order passed by the A.O u/s. 147 r.w.s. 143(3) of the Act dated 29.03.2016 carried the matter in appeal before the CIT(Appeals). After deliberating at length, the CIT(Appeals)

partly allowed the appeal. The CIT(Appeals) observed that as the final valuation order was passed by the Collector of Stamps, according to which, the valuation of the property was determined at Rs.1,60,31,000/-, therefore, calculation of the LTCG had to be made accordingly. The CIT(Appeals) based on his aforesaid view sustained the addition on account of LTCG to the extent of Rs.5,33,251/-.

5. Apropos the claim of the assessee that as he had received 1/6th portion of the actual sale consideration, i.e. an amount of Rs.21,75,000/-, and had invested the entire amount for construction of new house property, therefore, he should be allowed deduction u/s.54 of the Act in respect of the entire amount of LTCG, the CIT(Appeals) did not find favour with the same. It was observed by him that as per Section 54F of the Act, it was only the actual investment in purchase/construction of property that would be eligible for deduction u/s. 54F of the Act, therefore, the assessee could not have been given benefit of amount of investment which was not actually made by him. The CIT(Appeals) rejected the contentions advanced by the assessee as regards the claim of deduction u/s. 54F of the Act. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

" 5. Decision

As mentioned in the facts of the case, the assessment was completed considering the market value of the concerned

property at Rs.5,75,11,000/- under the provisions of sec. 50C of the Act, whereas sale consideration of the said property was Rs.1,30,50,000/-. The above valuation of property for stamp duty purpose was subject matter of a series of litigation. Till the passing of the Assessment order, final order for valuation of the property was pending before the Court of Collector of Stamps, Raipur. In absence of this final valuation order, the Assessing Officer consciously adopted the valuation last adopted by the sub-registrar and accordingly, calculated the Long Term Capital Gain and made the above additions. However, as the final valuation order has now been passed by the Collector of Stamps, according to which, the valuation of property has been determined at Rs. 1,60,31,000/-, calculation of LTCG has to be made accordingly. The appellant has furnished a calculation based on the above facts, which is found to be correct. Thus the LTCG is to be determined as under:

Full value of consideration:	Rs. 1,60,31,000/-
Less: Indexed cost of acquisition	Rs. 10,46,900/-
Long Term Capital Gain	Rs.1,49,84,100/-
Appellant's share(1/6th)	Rs. 24,97,350/-
Less: Exemption u/s 54F as allowed by the AO	Rs. 19,64,099/-
Taxable LTCG	Rs.5,33,251/-

Thus, the addition on account of Long Term Capital gain is sustained to the extent of Rs. 5,33,251/- and the appellant gets a relief of Rs. 69,13,333/-.

5.2 The appellant has further contended that since he had received the 116th portion of actual sale consideration, i.e. a total of Rs.21,75,000/- and he invested the entire amount for construction of new house property, he should be allowed deduction u/s. 54F of the Act in respect of entire LTCG, calculated on deemed valuation. This contention of the appellant cannot be accepted. As the provisions of section 54F of the Act is quite clear that the actual investment in purchase/constructed property would only be eligible for deduction u/s.54F of the Act. The appellant cannot be given the benefit of the amount of investment, which he actually did not make.

6. Based on the above discussion, the appeal is partly allowed."

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. Controversy involved in the present appeal lies in a narrow compass, i.e. as to where the LTCG on sale of the property is to be worked out as per the deeming provisions of Section 50C of the Act, then, whether the assessee's claim for deduction u/s. 54F of the Act would be looked into based on the investment of the actual sale consideration or the deemed sale consideration adopted for the purpose of Section 50C of the Act?

9. Before proceeding any further, we deem it fit to cull out Section 54F of the Act, which reads as under:

"**54F.** (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

- (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or
 - (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
 - (iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
- (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation.—For the purposes of this section,—

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

- (2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.
- (3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.
- (4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid."

(emphasis supplied by us)

10. On a careful perusal of the aforesaid statutory provision, we find that the same therein contemplates that the quantification of claim of deduction would be based on the amount of the "net consideration" of the original asset which is invested by the assessee towards purchase/construction of a new asset, i.e. the residential house. Also, we find that "Explanation" to Section 54F of the Act defines the term "net consideration", as the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. We, thus, are of a firm conviction that it is the actual sale consideration received or accruing as a result of the transfer of the capital asset which is invested towards purchase/construction of the new asset,

i.e. residential house which would form the basis for quantification of the deduction u/s. 54F of the Act.

11. At this stage, it would be relevant to point out that the term "net consideration" (supra) does not make any reference to the deemed sale consideration of the property, i.e. the value adopted or assessed or assessable by any authority of State government for the purpose of payment of stamp duty in respect of such transfer, as provided in Section 50C of the Act. Accordingly, the Ld. AR's contention that now when the assessee had invested his actual share of sale consideration, i.e. Rs.21,75,000/- towards construction of new asset, i.e. residential house, he should be allowed deduction u/s. 54F of the Act in respect of the entire LTCG, merits acceptance.

12. Although we principally concur with the aforesaid contention of the Ld. AR, but as claim of deduction u/s. 54F of the Act is subject to satisfaction of certain conditions contemplated in the said statutory provision, therefore, the A.O is directed to re-compute the LTCG which is liable to be brought to tax in the hands of the assessee after reworking out the deduction u/s. 54F of the Act in terms of our aforesaid observations. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of our aforesaid observations.

13. The Ld. AR after arguing for some time as regards the additional ground of appeal raised before us, had thereafter, sought liberty for not pressing the same. Accordingly, the **Additional ground of appeal** raised by the assessee is dismissed as not pressed.

14. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 23rd day of August, 2024.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd August, 2024.

*****SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.