

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

IT(IT)A No.1363/Bang/2024
Assessment Year: 2019-20

Shri. Ashish Malhotra, 5105, Nandi Deepa Apartments, Doddakamanahalli Road, Bannerghatta Road, Bengaluru – 560 076. <b>PAN : AFRPM 7739 N</b>	Vs.	ACIT (International Taxation), Circle – 1(2), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	S/Shri. Nithin Surana, CA and Vikdram Dang, CA
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	22.08.2024
Date of Pronouncement	:	23.08.2024

**ORDER**

**Per Waseem Ahmed, Accountant Member -**

This appeal arises from the Order of Id. CIT(A) dated 24/05/2024 and relates to the Assessment Year 2019-20.

2. The first issue raised by the assessee is that the CIT(A) erred in confirming the addition made by the AO taking the deemed rent of Rs. 4,32,000/- whereas the property was purchased on 15.03.2019.

3. The necessary facts are that the assessee in the present case is an NRI and has offered income under the capital gain, income from house property and income from other sources. The AO during the assessment proceedings found that the assessee owns a flat bearing No. H-18, Shivaji Park, New Delhi which was deemed to be let out under section 23 of the Act. Accordingly, the AO calculated deemed rental income based on the gross rent value taken from 99

acres.com at Rs. 4,32,000/- which was taken as the annual value of the property under section 23 of the Act and reduced by 30% of the annual value as provided under section 24 of the Act. Thus, the AO determined the deemed rental income at Rs. 3,02,400/- and added to the total income of the assessee. On appeal, the CIT(A) confirmed the Order of the AO.

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

5. The learned AR before us filed a Paper Book running from pages 27 to 229 and contended that the property in dispute was purchased on 15.03.2019 and therefore, the deemed rent for the same cannot be calculated for the entire year. The learned AR in support of his contention, drawn our attention to pages 114 to 122 where the copy of sale deed was placed.

5.1 On the contrary, the learned DR contended that the matter can be set aside to the file of the AO to verify whether the property in dispute was purchased by the assessee on 15.03.2019.

5.2 In rejoinder, the learned AR submitted that the copy of the sale deed was very much available before the authorities below. Furthermore, the assessee has already calculated deemed rental income of Rs. 5,000/- for the same property which has been offered to tax and the same has not been disputed by the authorities below. Thus, learned AR contended that no addition is warranted.

6. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the sale deed for the property in dispute, we note that it was purchased on 15.03.2019 and therefore at the most deemed rent can be worked out for 15 days only. Further, we find that the authorities below have erred in calculating the deemed rent for the property in dispute for the entire year. Likewise, the deemed rent declared by the assessee

was not disputed by the authorities below. Accordingly, we set aside the finding of the Id. CIT(A) and direct the AO to delete the addition made by him.

7. The next issue raised by the assessee in ground No. 3 is that Id. CIT(A) erred in not allowing the exemption under section 54 of the Act for Rs. 24,10,000/- with respect to property purchased in the year under consideration.

8. The assessee in the year under consideration has claimed a deduction under section 54 of the Act against purchase of plot of land. According to the AO, the purchase of plot is not eligible for deduction under section 54 of the Act. Thus, the AO disallowed the same and added to the total income of the assessee. On appeal, the Id. CIT(A) confirmed the Order of the AO by observing as under:

*“5.3 From the sale proceeds, the assessee purchased two properties namely., a plot in Faridabad for Rs. 1,07,25,000/- and 50% share in a flat in Shivaji Park, New Delhi for Rs. 24,10,000/-The assessee originally in the ITR claimed that the plot in Faridabad was to be used for construction of a pers home and accordingly deduction u/s 54 was claimed. However, due to covid and other reasons the construction could not be taken up within the stipulated time period of two years and hence the assessee's claim under section 54 could not materialise. Now the assessee wants to claim the deduction u/s 54 in respect of 50% share in a flat in Shivaji Park, New Delhi. The assessee relied on jurisdiction Karnataka High Court decision in the case of Arun K Thiagarajan vs. CIT. That case dealt with the issue weather deduction u/s 54 could be availed by investing the sale proceeds in two residential homes for A.Y. 2 03-04 in the light of clarificatory amendment to section 54 from A.Y. 2015-16 restricting the benefit under section 54 to one residential house. The facts of the case pertaining to the assessee are completely different from the facts dealt by High Court in that case. The assessee will not succeed on this ground.”*

9. Being aggrieved by the Order of CIT(A), assessee is in appeal before us.

10. The learned AR before us contended that the assessee made the investment in the piece of land with the fair intention to construct the residential house but failed to do so on account of unavoidable circumstances such as covid. Furthermore, assessee was based in USA, therefore he could not travel to India for the construction of the house. According to the learned AR, assessee should

be allowed deduction of Rs.1 Crore under section 54 of the Act and made references to various case laws in support of his arguments.

10.1 On the other hand, the learned DR vehemently supported the orders of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. It is the admitted position of law that the investment in the land is not eligible for deduction under section 54 of the Act unless a residential house is constructed thereon. Even now there is no construction activity on such piece of land which is established from the statement furnished by the learned AR appearing on behalf of the assessee. Accordingly, we do not find any reason to interfere in the finding of the Id. CIT(A). However, we find force in the alternate argument advanced by the learned AR that there is another flat purchased by the assessee for Rs. 24,10,000/- which could be considered for the purpose of deduction under section 54 of the Act. This fact has also been admitted by the Id. CIT(A) that the assessee has purchased a residential flat in New Delhi. Accordingly, we direct the AO to allow the benefit of deduction under section 54 of the Act for the residential flat purchased by the assessee. Hence, ground of appeal of the assessee is partly allowed.

12. Regarding the other ground raised in the memorandum of appeal of the assessee, learned AR has not pointed out any grievance to the assessee. As such these grounds are general in nature and therefore do not require any separate adjudication. Thus, we dismiss the same as infructuous.

13. In the result, the appeal filed by the assessee is partly allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(YOGESH KUMAR U.S.)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore.

Dated: 23.08.2024.

/NS/\*

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|---------------|------------------------|
| 1. Appellants | 2. Respondent          |
| 3. DRP        | 4. CIT                 |
| 5. CIT(A)     | 6. DR,ITAT, Bangalore. |
| 7. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore.