

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 825/KOL/2024
Assessment Year: 2018-19

Prashant Sharma.....*Appellant*
[PAN: AWAPS 7311 Q]

Vs.

CIT(A)(NFAC), Income Tax Department.....*Respondent*

Appearances:

Assessee represented by: Amit Agrawal, Adv.

Department represented by: Nicholash Murud, Addl. CIT, DR.

Date of concluding the hearing : July 11th, 2024

Date of pronouncing the order : September 11th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 22.02.2024 arising out of the assessment order framed u/s 143(3)/143(3A)/143(3B) of the Act dated 12.03.2021.

1.1. The brief facts of the case of the appellant are that assessee filed his return of income for AY 2018-19 declaring total income of Rs. 3,86,700/-. The

case of the assessee was selected for scrutiny through CASS. The assessee in his return of income under 'long-term capital gain' has shown an amount of Rs. 10 Lakh as full consideration. However, the assessee did not mention the value of the property as per stamp valuation authority as Rs. 35,22,150/-. The Assessing Officer (hereinafter referred to as ld. 'AO') after going over the computation of the total income, relevant pages of the bank statement and the copy of purchase and sale deed with respect to his claim submitted by the assessee, found that assessee has sold a flat bearing No. 21J, South Sinthee Road, PS-Sinthee, Kolkata-700050. The assessee has stated that at the time of purchase of the property out of the total purchase consideration of Rs. 9,37,355/- his share of contribution is only Rs. 2,37,355/- and the balance amount of Rs. 7 Lakh was contributed by his spouse Mrs. Arthi Sharma. It is for the case of the assessee that the said property was sold during the FY 2017-18 for a consideration of Rs. 27 Lakh (Market value of Rs. 35,22,150/-). Out of the sale consideration of Rs. 27 Lakh the assessee has offered Rs. 10 Lakh as share of sale consideration. The assessee was claiming deduction u/s 54F of the Act. The ld. AO after going over the documents filed by the assessee disallowed the claim of the assessee u/s 54F of the Act on this ground that the assessee changed his stand whenever he was required to substantiate his claim as at first time claim of the assessee for deduction u/s 54F of the Act and at the other hand, claim of deduction u/s 54GB of the Act. The said order has been challenged by the assessee before the ld. CIT(A) wherein also ld. CIT(A) dismissed the appeal on the ground that the request to allow the exemption u/s 54 of the Act by the assessee is disallowed as assessee is changing his stand whenever he is required to substantiate his claim and moreover, any claim has to be made only through a valid return of income. Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. The ld. Counsel for the assessee challenges the impugned order thereby submitting that the ld. CIT(A) has misdirected himself in law by not allowing the claim of exemption u/s 54 of the Act on account of long-term capital gain arisen on from sale of a residential flat during the year which was re-invested

for purchase of flat in confirming the assessment order dated 12.03.2021, passed by Ld. Additional/Joint/Deputy/Assistant commissioner of Income Tax/Income Tax Officer. It has further been submitted that exemption otherwise available to the appellant cannot be denied merely on this ground that the claim was not made under proper Section in the return of income i.e. u/s 54F instead of section 54 in the income tax of the Act. The learned counsel further argued that CIT(A) did not appreciate the fact that long-term capital gain arising from sale of residential flat when re-invested in purchase of the flat is allowable u/s 54 of the Act. Ld. Counsel for the assessee filed several decisions of the Coordinate Bench of ITAT which are as follows:

- a) *Income-tax Officer, Ward-1(3), Nashik v. Anirudha Ashok Jajoo IT APPEAL NO. 1924 (PN.) OF 2013 order dated 25.01.2015 (Pune - Tribunal)*
- b) *Assistant Commissioner of Income-tax, Ahmednagar vs Smt. Asha Ashok Boob IT Appeal No. 69 (Pn.) Of 2014 order dated- 20-05-2015 (Pune - Tribunal)*
- c) *Satish S. Prabhu v. Assistant Commissioner of Income-tax Circle-27(3), Mumbai IT APPEAL NO. 1843 (MUM.) OF 2017 order dated 06.11.2019 (Tribunal Mumbai)*
- d) *Income Tax Officer International Taxation Ward 3(1)(1), Mumbai Vs. Armine Hamied Khan ITA No.: 834/Mum/2022 order dated 30/08/2022 (Tribunal Mumbai)*

1.3. Contrary to that the ld. D/R supports the impugned order.

2. We have perused the impugned order and find that the claim of the assessee has been disallowed by the AO only on this ground that he mentioned the wrong Section 54F of the Act. We further find that assessee has again filed a wrong Section for deduction u/s 54GB of the Act though he is entitled to disallowance u/s 54 of the Act. We have also perused the order of the ld. CIT(A) and it appears to us that he has also dismissed the appeal thereby giving finding that request of the appellant to allow the exemption u/s 54 of the Act is hereby denied as we agree with the contention of the ld. AO

that the assessee changed his stand whenever he was required to substantiate his claim. The sole issue in this case is that regarding the wrong mentioning of Section in the income tax return. There is no dispute that assessee is not entitled to claim deduction, only dispute is that he mentioned wrong Section i.e. Section 54F of the Act instead of Section 54 of the Act. In this context we have perused cited decisions and find that the Coordinate Bench of ITAT, Pune in the case of *Anirudha Ashok Jajoo (supra)* has held as under:

“Section 54, read with section 54D, of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residential house (Deduction wrongly claimed) - Assessment year 2009-10 - Whether where assessee fulfilled conditions prescribed in section 54 for claiming deduction, merely because assessee had inadvertently made claim under a wrong section i.e., section 54D, same could not be a ground to deny benefit of deduction which was otherwise allowable to him - Held, yes”

2.1. We further find that Coordinate Bench of ITAT, Pune has also discussed the case of Coordinate Bench of ITAT, Indore in the case of *Paramjeet Singh Chhabra vs. ITO* reported in [2013] 35 taxmann.com 612 which reads thus-

“(1) Even if a wrong section was mentioned by the assessee in the return, it was duty of the AO to assist the taxpayer in a reasonable way and provide the relief if due to the assessee. This attitude rather would help the revenue in assessing the income correctly;

(2) A correct advice by the department would inspire the confidence of public at large. Even identical guidelines or instructions have been issued from time-to-time by the CBDT to its Officers;

(3) If due to ignorance a wrong section had been mentioned by the assessee, AO ought to have advised the assessee about the correct claim and assessed the tax legitimately. This was the clear intention of the Legislature.”

2.2. It is needless to discuss the other cited decisions as the ratios laid down are same that the assessee made claim of deduction wrongly u/s 54 of the Act, same could not be denied benefit of deduction.

3. Keeping in view the above cited decisions and facts of the case, we are of this view that claim of the assessee cannot be denied only on this ground that he mentioned a wrong Section. Accordingly, the orders passed by the Id. CIT(A) and Id. AO are set aside. The case is remanded back to the file of Id.

AO with this direction to dispose off the case of the assessee by invoking provisions of Section which the assessee is entitled to get. The assessee is directed to place the matter before the ld. AO by mentioning correct Section.

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

Order pronounced in the open Court on 11th September, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 11.09.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Prashant Sharma, 9/3A, Sree Apartment, Ganapati Sur Sarani, South Sinthee Road, Kolkata, West Bengal, 700050.**
2. **CIT(A)(NFAC), Income Tax Department.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata