

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 2153/Mum/2024 (A.Y. 2018-19)

Shubangi Janak Shah Damul Niwas, Bazar Galli, Marve Road Malvani Village Malad West Mumbai-400 095. PAN : CPYPS7871G (Appellant)	Vs.	ITO 41(3)(4) Kautilya Bhavan G Block, Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Rohan Navinchandra
Department by	Shri Manish Ajudiya
Date of Hearing	15.07.2024
Date of Pronouncement	26.08.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above captioned case, the appeal relates to claim of appellant u/s. 54F of the Income Tax Act (the Act for short).

2. From the assessment order, it can be observed that the appellant entered into a development agreement with M/s. Gurukrupa Developers with respect to appellant's ancestral property situated at Taluka Borivali, Mumbai. The appellant was requested to file complete copy of all sale deeds pertaining to sale of ancestral property and also sale deed with respect to transfer of Flat 304 and Flat H-2002. But the appellant has not filed copy of initial development deed and complete copies of registered sale deed with respect to transfer of above two flats in the name of appellant. The learned Assessing Officer (Ld. AO for short) has mentioned in paragraph 5 that these two documents are crucial to work out capital gain accrued to the appellant. The

appellant submitted copy of Deed of Confirmation and not Deed of Development which contains terms and conditions regarding allotment of flats to appellant. Claim of appellant u/s. 54F cannot be finalised without cost of acquisition admitted by the appellant. The appellant initially objected for calling particulars by the Ld. AO because assessment is of limited scrutiny and not complete one. But the Ld. AO informed the appellant that the scrutiny is a complete scrutiny and he was required to file all documents for computing claim of exemption u/s. 54F. The appellant replied that the property given to the developer is ancestral land and hence no records are available. The appellant could not give any reply for computing cost of acquisition of those properties at Rs. 17,16,980/- based on which capital gains were computed. As the appellant has not given basis of this cost of acquisition, the Ld. AO took the cost of acquisition as 'Nil' and the entire amount of sale consideration of Rs. 61,31,911/- as income and added the same while completing assessment.

3. The appellant filed an appeal before the Ld. CIT(A) with some delay. The delay was condoned by the Ld. CIT(A) and he proceeded to pass an appellate order. From the order of the Ld. CIT(A), it is observed that four opportunities were given and since there is no reply from the appellant, addition of the Ld. AO was confirmed.

4. Before the ITAT, Mumbai, the appellant filed an appeal with the following grounds of appeal :-

“The appellant objects to the order dated 21 December 2023 passed under Section 250 of the Income tax Act by the Commissioner of Income tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] for the aforesaid assessment year on the following among other grounds:

1. The learned CIT(A) erred in dismissing the appeal without deciding anything on the merits of the case.
2. The learned CIT(A) erred in confirming the action of the Assessing Officer (AO) in framing the assessment beyond the jurisdiction and scope of the Notice on which the assessment was opened.

3. The learned CIT(A) erred in confirming the action of AO in holding that the Assessee has sold the flats during the said year.
 4. The learned CIT(A) erred in confirming the AO has erred in making computations under the head of Capital Gains.
 5. The learned CIT(A) erred in confirming the AO's action of making additions without considering the facts and issues involved.
 6. Each one of the above grounds of appeal is without prejudice to the above.”
5. During the appellate proceedings before the ITAT, learned AR of the appellant pleaded for giving one more opportunity so that all the required details would be filed before the Ld. CIT(A).
6. Per contra, ld DR opposed giving an opportunity to the appellant because appellant was not giving any particulars required for claim of section 54 either before the Ld. AO or before the Ld. CIT(A).
7. Both the parties are heard. In view of the peculiar facts and circumstances, it is decided to give one more opportunity to the appellant and the matter is remitted back to the file of the Ld. CIT(A). The appellant is directed to cooperate with the lower authorities and file all the required particulars/documents regarding claim of 54F.
8. The appeal is allowed for statistical purposes.

Order pronounced in the open court on 26th August, 2024.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 26.08.2024

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai