

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA , JUDICIAL MEMBER  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 1858/DEL/2024  
Assessment Year: 2012-13**

<b>Partap Singh, H. No. B-183, Tyagi Market, Dabua Colony, Faridabad-121001. PAN: AUEPS 5977 Q</b>	<u>Vs</u>	Income Tax Officer, Ward-2(1), Faridabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Sh. M.K. Gupta, CA	
<b>Department represented by</b>	Shri Sanjay Kumar, Sr. DR	
<b>Date of hearing</b>	14.10.2024	
<b>Date of pronouncement</b>	23.10.2024	

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The assessee has come in appeal against the order dated 29.02.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. CIT(A), Faridabad/-11371/2019-20, for the assessment year 2012-13, arising out of the order dated 28.12.2019 u/s 147 read with section 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income Tax Officer, Ward-2(1), Faridabad (hereinafter referred in short as “Ld. AO”).

2. On hearing both the sides it comes up that case was reopened u/s 147 of the Act to enquire the source of investment for purchase of immovable property of Rs. 80,00,000/-. Assessee had not filed the return for the year under consideration and subsequently in response to the notice u/s 148 of the Act assessee filed the return. During the course of assessment proceedings it came up that assessee claimed to be not engaged in any business activities and had purchased two residential properties of Rs. 40,00,000/- each and investment was made out of the sale proceeds of land of Rs. 76,87,500/-. The assessee had claimed deduction u/s 54F of the Act in respect of capital gains against the entire sale consideration for purchase of properties during the year and the AO was not satisfied with the purchases of two properties and held that benefit of section 54F of the Act can be given in respect of “a residential house”, which means ‘one residential house’ therefore, capital gain was recalculated and addition of Rs. 21,36,483/- was made which is sustained by the learned CIT(Appeals) and forms part of ground no. 1 of the appeal before us, as follows:

*“7.2 In view of the foregoing discussions, and facts and material available on record, it is apparent that the assessee has completely failed to discharge his onus to explain the reasons for claiming deduction u/s 54F of the Act. On perusal of the claim made by the assessee and considering the relevant provisions of Income tax Act, it has been found that the assessee has claimed excess deduction of Rs.21,36,483/- u/s 54F of the Act, in its computation of total income and the same not allowable under the Act, and deserves to be added back to the taxable income of the assessee. However, the facts and circumstance of the case law quoted by the assessee are different &*

*distinguishable with the case of the assessee. Accordingly, addition of Rs.21,36,483/- is made on account of excess deductions u/s 54F of the Act, in respect of long term capital gain and added back to the total income of the assessee. I am satisfied that the assessee has concealed his income by furnishing inaccurate particulars of his income in respect of the amount as discussed above, in terms of section 271(1)(c) of the Act, penalty notice u/s 274 r.w.s. u/s 271(1)(c) of the Act, is being separately issued to the assessee. (Addition of Rs.21,36,483/-)”*

2.1 Secondly, the AO had examined the cash/credit entries in the bank account of the assessee with Union Bank of India and the basis of the number of transactions concluded that assessee was engaged in some kind of business activities. The relevant observations of the AO in para 8.1 to 8.3 are reproduced below:

*“8.1 The aforementioned tabular details of cash deposits, credit received through the cheques, NEFT/RTGS, is sufficient to prove that the assessee was engaged in some kind of business activities. But the income earned against the said credits has not been declared in his ITR, moreover, the assessee has not explained the narration and purpose of these cash deposit and credit entries. In the absence of any concrete reply, documentary evidence or plausible explanation the actual reasons of these transactions routed in the bank could not find out/ascertained. In the light of given facts and judicial pronouncements the amount of cash/credit entries to the tune of Rs. Rs.1,18,33,000/- remains unsubstantiated and unexplained.*

*8.2 Before I proceed to make estimation of income, I may refer to relevant legal propositions in this regard. In the case of Prabhat Kumar, where the assessee failed to produce the books of accounts, the Hon'ble Punjab & Haryana High court had held the action of the Assessing Officer in estimating the net profit at a rate of 12% as correct and making addition of the entire cash deposit/other credit may not be reasonable in view of the pattern of the cash deposit, withdrawals and other credit entries. Thus, in the circumstances of the case of the assessee, estimation of profit depends*

*upon the wisdom of the officer. Thus, there is no comparability of results of preceding years in absence of material regarding comparability.*

*8.3 In present case, though the assessee has failed to furnish his return of income u/s 139 of the Act, even than the turnover is evident from the material available on records which is Rs.1,18,33,000/-. The present section 44AD of the Act, also provided for a rate of 8% only for turnover upto 60 lacs (increased to Rs. 1 crore w.e.f. A.Y. 2013-14). In view of the above facts and discussed remarks the net profit at a rate of 12% (Rs.1,18,33,000/- @ 12%) comes to Rs.14,19,960/- on the receipts of the business declared in ITR and on undisclosed turnover of Rs.1,18,33,000/-, appears to me a fair assessment of Income in the present case after considering circumstances of the case. Since the assessee has failed to declare his actual income in his return of Income, I am satisfied that the assessee has concealed true particulars of his income in respect of the amount as discussed above. Thus, being satisfied, in terms of section 271(1)(c) of the Act, notice u/s 274 for penalty u/s 271(1)(c) of the Act, is being separately issued to the assessee.”*

2.2 Accordingly, addition of Rs. 14,19,960/- was made which has been sustained by the learned CIT(Appeals) for which assessee is in appeal raising following ground no. 2:

*“2. That ignoring facts and circumstances of the case Ld. CIT (Appeals) has erred in law and on facts in confirming addition of Rs. 14,19,960/- made by Ld. AO by treating 12% of credit entries of Rs. 1,18,33,000/- in saving bank account as business receipts by:- (a) Completely ignoring that said addition was done by AO without discussion in entire assessment proceedings, not even in show cause notice where first and last discussion on same is in assessment order only. (b) Completely ignoring that there was no business, even credit entries on account of dishonored cheques, loan refund, Loan taken etc. were treated as business receipts without referring any basis thereof particularly when same is not even the subject matter of 148.”*

3. As regards ground no. 1 on the basis of admitted facts it comes up that investment of Rs. 84.80 lakh was made in two floors of the same building which

assessee was using for residence. This aspect that the two floors of the same building were purchased from the same seller is not disputed. AO has allowed relief only in respect of one floor and before us several decisions have been referred to by learned AR wherein it is settled that the expression “*a residential house*” in section 54F(1) has to be understood in the sense that the building should be of residential nature and “a” should not be understood to indicate a singular number. Thus, even in case of purchases of two residential flats assessee is entitled to exemption u/s 54F. Reliance in this regard can be placed on the following judgments:

- Judgment of Hon’ble Andhra High Court dated 20.12.2012 in ITTA no. 410 of 2012 -The Commissioner of Income Tax v. Syed Ali Adil ;
- K.G. Vyas v. Seventh Income-Tax Officer [1986] 16 ITD 195 (MUM);
- Judgment of Hon’ble Delhi High Court dated 21.02.2013 in ITA 1237/2011 Commissioner of Income Tax v. Gita Duggal
- Judgment of Hon’ble Madras High Court dated 29.08.2016 in W.P. No. 28409 of 2015 - Shri G. Chinnadurai v. ITO

3.1 Thus, we are inclined to sustain ground no. 1 in favour of the assessee.

4. As regards ground no. 2 we find that during assessment proceedings the assessee had filed an affidavit, copy of which is available at pages no. 93-94 of the paper book wherein it was deposed that during financial year relevant to the present assessment year assessee was not involved in any business activity. We find that without any piece of evidence to the contrary the AO has inferred on the

basis of cash/credit entries in the bank account that assessee must have been engaged in business activities and such approach itself is not justified for making the addition.

4.1 Learned AR has established before us that notice u/s 142(1) was issued on 24.11.2019, a copy of which is available at page no. 91 of the paper book and in this only relevant question with regard to this issue raised was *“please witness the source of cash deposit amounting to Rs. 12,90,380/- made during the financial year 2011-12 with Union Bank of India”*.

4.2 As a matter of fact learned AR established that actual cash deposit was only of Rs. 7,38,000/-. However, without putting assessee to notice of the inference drawn by the AO that assessee was engaged in some sort of business activity a conclusion was drawn and addition was made by the learned AO on the basis of profit work out @ 12% of the cash/credit entries of Rs. 1,18,33,000/-. Thus, we find substance in ground no. 3 as raised before us wherein assessee has alleged that it was for the first time only in assessment order that the assessee was confronted by the opinion of AO discarding the claim of assessee that he was not engaged in any business activity.

5. Then before us learned AR has pointed out following details of the deposits:

(a) Credit of Cheques return	5,72,500
(b) Cash deposit in Bank	7,38,000
(c) Receipt from brother of assessee	35,50,000
(d) Share of Ancestral Agriculture Land from govt	14,02,500
(e) Credit of Repayment of Loan from friends & relatives Which were given/debited in Bank in same year	44,00,000
(f) Credit of Repayment of Loan from friends & relatives Which were given/debited in Bank Last year i.e. given/ Debited in Bank in FY 2010-11	<u>11,70,000</u>
	<u>1,18,33,000</u>

5.1 Thus, we find that AO has taken into consideration the credit of the cheque disowned of Rs. 5,72,500/- as business receipts; cash receipt of Rs. 19,37,500/- on sale of property as established by the copy of sale-deed, available at pages 66 of the paper book. There were receipt of Rs. 35,50,000/- by the assessee from his real brother through banking channel as a share of the compensation received on acquisition of ancestral rural agricultural land; and assessee himself had received Rs. 14,02,500/- from the Government of U.P. on the acquisition of ancestral rural agricultural land. Learned AR has also established that certain credit entries of Rs. 44,00,000/- which AO has treated as business receipts were counter entries of repayment of loan given/ debit in bank account during the same financial year from various persons.

6. As wholesome effect of the aforesaid discussion we are of the considered view that the AO has extended too far his jurisdiction of reassessment to examine

the cash deposits and treating it as business receipts, without any effective enquiry from the assessee. Thus, ground nos. 2 & 3 deserve to be allowed.

7. As a consequence of above, the appeal of assessee is allowed.

Order pronounced in open court on 23.10.2024.

**Sd/-**  
**(BRAJESH KUMAR SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI