

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 246/CHD/2021

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Bhupinder Singh, Vill Hundewala, Tehsil Jagadhri, Distt. Yamunanagar	बनाम	The ITO, Ward 3, Yamunanagar
स्थायी लेखा सं./PAN NO: DALPS2562D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : None

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT

सुनवाई की तारीख/Date of Hearing : 29.10.2024

उद्घोषणा की तारीख/Date of Pronouncement : 12.11.2024

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 18.06.2019 passed by the Commissioner of Income Tax (Appeals)-4, (Camp office at Panchkula), Ludhiana for the Assessment Year 2007-08.

2. The Assessee in this appeal has taken following effective grounds of appeal:

1. *That the orders of ld. CIT(A) are illegal, erroneous and perverse and thus needs to be quashed.*
2. *That the ld. CIT(A) is not justified in concurring with the order passed by the Assessing Officer, while confirming the quantum addition to the extent of Rs. 12,89,513/- and taxes imposed by Assessing Officer without considering the facts and circumstances and the contentions of the appellant and also without granting sufficient opportunity to the appellant.*

3. No one has put in appearance on behalf of the Assessee despite notice. However, a perusal of the case file and record reveals that the small issue is involved in this appeal which can be effectively decided after hearing the ld. DR. We, therefore, proceed to decide the appeal of the Assessee on merit.

4. The brief facts of the case are that the Assessee is a co-sharer in a plot which was sold during the year under consideration. The Assessing Officer (A.O.) calculated the share of the Assessee as 1/5th share in the said plot and charged the sale consideration to capital gains tax. Being aggrieved, the Assessee preferred appeal

before the Id. CIT(A) and pleaded that the share of the Assessee was $2/15^{\text{th}}$ in the sold property and not $1/5^{\text{th}}$ as determined by the A.O. The Assessee has further taken the plea that the Assessee was entitled to exemption u/s 54F of the Income Tax Act, 1961 (in short 'the Act').

5. So far as the plea with regard to the share of the Assessee in the said property was concerned, the Id. CIT(A) directed to rework the Long Term Capital Gain by taking the sale consideration at Rs. 12,89,513/- being $2/15^{\text{th}}$ share in the total sale consideration and according allowed the said ground of appeal. However, so far as the claim of the Assessee for deduction u/s 54F / 54B is concerned, the Id. CIT(A) rejected the same on the ground that the Assessee had not claimed the same in the return of income.

6. It has been held time and again that the income Tax authorities should charge legitimate tax from the tax payers. It has also been held time and again that if the Assessee has failed to make a claim in the return of income, to which he is otherwise entitled to, the A.O. should assist such an Assessee to make proper claim. The Income Tax Authorities should not penalize the taxpayers for their bona fide mistakes. Further, the Hon'ble Supreme Court in the case

of 'NTPC vs. CIT' 229 ITR 383, has held that a bonafide /legal claim which could not be made before the lower authorizes, can be made before the appellate authority. In view of this, we direct he A.O. to examine the claim of the Assessee regarding deduction u/s 54F /54B, as the case may be, and if the Assessee is found entitled to the same, the same may be granted to the Assessee, irrespective of the fact that the same was not claimed in the return of income.

7. In the result, the appeal of the Assessee is treated as allowed for statistical purposes.

Order pronounced on 12.11.2024.

Sd/-
(SANJAY GARG)
Judicial Member

Dated : 12.11.2024

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar