



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.264/LKW/2024
Assessment Year: 2017-18

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| Firoz Ahmad B-1174, Indira Nagar, Lucknow-226016. | v. | Income Tax Officer-1(4) Pratyaksh Kar Bhawan, Lucknow-226001. |
| PAN:ADYPA2072K | | |
| (Appellant) | | (Respondent) |

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|------------------------|---|----|------|
| Appellant by: | None (Adj. Application filed) | | |
| Respondent by: | Shri Sanjeev Krishna Sharma, Addl. CIT(DR) | | |
| Date of hearing: | 14 | 11 | 2024 |
| Date of pronouncement: | 26 | 11 | 2024 |

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) dated 28.02.2024 pertaining to the assessment year 2017-18. The assessee has raised the following grounds of appeal are as under: -

"1. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has erred in law and on facts and circumstances of the case in confirming the disallowance of cost of acquisition (unindexed) of Property No 1 amounting to Rs18,200/- claimed u/s 48 of the Income Tax Act 1961.

2. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has erred in law and on facts and circumstances of the case in confirming the disallowance of cost of improvement (indexed) in relation to Property No 1 amounting to Rs 77,1475/- claimed u/s 48 of the Income Tax Act 1961.

3. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has erred in law and on facts and circumstances of the case in not considering the fact that the appellant had not received an amount of Rs 25,00,000/- out of the total sale consideration of Rs 117,00,000/-, thereby reducing the total sale consideration in relation to Property No 1 to Rs 92,00,000/-.

4. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has erred in law and on facts and circumstances of the case in confirming the Sale consideration of Property No 2 at Rs 79,73,000/- by application of Section 50C of the Act.

5. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has erred in law and on facts and circumstances Of the case in confirming the disallowance of the entire cost of improvement (indexed) in relation to Property No 2 amounting to Rs. 5,31,375/- claimed u/s 48 of the Income Tax Act 1961.

6. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has erred in law and on facts and circumstances of the case in confirming the disallowance of Exemption claimed u/s 54 of the Income Tax Act 1961 amounting to Rs1,03,26,884/-.

7. That the learned Commissioner of Income Tax (Appeals) NFAC, Delhi has failed to appreciate the documentary evidences and details placed by the appellant on record.

8. That on the facts and circumstances of the case, the Order passed by the learned Commissioner of Income Tax, (Appeals) NFAC was passed without providing proper opportunity to the appellant, which is against the principles of natural justice and therefore, the same is void-ab-initio and bad in law.

9. That the appellant craves leave to add, alter, amend or withdraw any or all the grounds of appeal on or before the hearing.”

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. The application seeking adjournment was filed on behalf of the assessee stating that certain documents essential for the pleading of appeal are still under assimilation. It is seen from the record that the multiple adjournments have been sought on behalf of the assessee starting from 24.07.2024 when the similar request was made the matter was fixed for hearing on 29.08.2024. Vide application dated 29.08.2024, the request was made seeking adjournment on the ground of non-availability of the Ld. Authorized Representative (“AR”) of the assessee. The matter was adjourned to 02.09.2024, yet again identical request was made without any change in the reason seeking adjournment; the matter was adjourned to 14.11.2024. On this date also, the same request is made on behalf of the assessee. The assessee failed to explain that the despite having been given sufficient opportunity, he is seeking adjournment on the ground that the certain documents are assimilation without stating what are the documents which are necessary and material for adjudication of the present appeal. The request made by the assessee cannot be entertained. We, therefore, reject the

application seeking adjournment and proceed to decide the appeal in the absence of the assessee on the basis of the material available on record.

3. The facts giving rise to the present appeal are that the assessee filed his return of income on 29.03.2018 declaring total income of Rs.28,67,530/-. The case was selected through Computer Assisted Scrutiny Selection (CASS) for limited scrutiny for verifying the deduction/exemption from capital gains in respect of 'sale of the property' and 'investment in the immovable property'. The Assessing Officer issued statutory notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter "the Act") dated 09.08.2018. Thereafter, the detailed questionnaire along with notice issued u/s 142(1) of the Act dated 27.08.2019. During the assessment proceedings, the assessee was called upon to furnish the supporting evidences. It is observed by the Assessing Officer that the assessee failed to furnish the requisite evidence in support of his claim regarding deduction u/s 54 of the Act. Therefore, in the absence of the relevant material/evidence, the Assessing Officer declined the claim of deduction and made an addition of the same. Thus, he assessed income at Rs.1,84,38,720/- after adding the Long Term Capital Gain (LTCG). Aggrieved, the assessee appeal before the Ld. CIT(A), before him also, the assessee failed to support his claim by filing the supporting evidences. Therefore, the Ld. CIT(A) dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

4. Apropos to the grounds of appeal, Ld. Departmental Representative (DR) supported the orders of the lower authorities and contended that there was no representation on behalf of the assessee and he grossly failed to furnish evidences despite having

given opportunity and to explain the allowability of deduction as claimed in the grounds of appeal.

5. We have heard the Ld. DR and perused the material available on records. We find that the Ld. CIT(A) as decided the appeal without adverting to the grounds taken by the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under: -

“5.2 I have perused the appellant's submission with regard to property no. 1. It is seen that the appellant has made no submission with regard to the denial of the cost of construction/improvement as claimed by him of Rs.35,15,000/-. He has not submitted any evidence in support of the same, in fact he has not even raised the issue in his submission, meaning thereby, to that extent, there is acceptance with regard to calculation of LTCG for property 1 as done by the AO. On the contrary, in his submission he has made reference to totally unrelated and a de novo issue with regard to purported receipt of lesser sale consideration. This reference is also not in accordance with his grounds and is liable to be summarily rejected. Without prejudice to the above, it is seen that the he has made an unsubstantiated claim and there is no merit in this claim now being made as the sale price as per deed is Rs. 1,17,00,000/-(being 50% of share). Accordingly, I find no reason to entertain the aforesaid claim of the appellant, not backed by any evidence whatsoever. In light of the above discussion, the calculation of LTCG for the property 1 to the tune of Rs.1,12,14,642/- as per the assessment order is confirmed.

5.3. With regard to property 2, the appellant has made no submission with regard to denial of cost of improvement in the assessment order. With regard to invocation of section 50C in his case, the appellant has submitted that since the Stamp duty value of the property is more than 110% of the actual consideration, the property will be revalued by government valuation officer. At the onset there is no such mandate as per law and the appellant's contention is summarily rejected. It is also noted that during the entire assessment proceedings, despite having been provided plethora of opportunities, the appellant has not made any such request for reference for valuation. The assessment order has details of all the opportunities provided and the conduct of the appellant in being selective in his response and non-furnishing of details during the proceedings. It is amply clear that the appellant has not put forth any reasonable cause for not objecting to Invocation of section 50C of the Act and/or requesting for valuation by government authorized valuer. Since the appellant has not made out any case of compelling circumstances which prevented him from disputing the invocation of section 50C of the Act, I find no reason to interfere with the decision of the AO, which is as per law. Further even in this case, the appellant has in his submission made a cryptic reference to some purported lesser receipt of sale consideration, which are not as per his grounds nor are backed by any evidences to be considered. Furthermore, the appellant has made no submission with regard to the claim of exemption u/s 54 of the Act which was denied by the AO. The appellant has not produced any evidence as to why his claim may be entertained. In view of the above, the LTCG as calculated by the AO for property 2 stands confirmed. In summary, the addition of Rs.1,55,71,193/-, being Long-term capital gain, as per the assessment order is confirmed and all the Grounds are dismissed.”

6. It is transpired from the records that before the assessing authority, the assessee had claimed cost of improvement regarding construction of house qua property no. 1. And regarding property no. 2 also the assessee has made similar claims. The claim of the assessee was rejected on the basis that no evidence was furnished. We are conscious of the facts that it

is incumbent upon the assessee to prove the claim made in respect of the cost of improvement but it is equally well settled that the Assessing Officer before taking adverse view should make independent inquiry. Looking to the facts and material placed before us, we are of the considered view that the Assessing Officer ought to have made some inquiry regarding the cost of improvement incurred by the assessee with regard to the property in the question. We, therefore, to sub-serve the interests of principle of natural justice and to be fair with both the parties, deem it necessary and expedient under the facts of the present case to set aside the assessment to the file of the Assessing Officer to frame denovo assessment, after giving reasonable opportunity to the assessee. The AO shall make necessary inquiry and assessee would co-operate and furnish requisite details about the cost of improvement incurred by him. If assessee fails to bring the requisite evidence on record, the AO shall be free to take adverse view. Grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 26/11/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 26/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

By order

// True Copy//

Assistant Registrar