

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

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 647/CHD/2023

निर्धारण वर्ष / Assessment Year : 2008-09

Sher Singh, Jaroda Jagadhri, Yamunanagar 135001	बनाम	The ITO, Ward-4, Yamunanagar
स्थायी लेखा सं./PAN NO: AJHPS05405C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Ms. Kamakshi Mahajan, CA

राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 07.11.2024

उदघोषणा की तारीख/Date of Pronouncement : 03.12.2024

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 29.08.2023 passed by the Ld. Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'], for the Assessment Year 2008-09.

2. The Assessee in this appeal is aggrieved by the action of the CIT(A) in confirming the additon made by the Assessing Officer

(A.O.) of Rs. 46,08,371/- on account of capital gains from sale of agricultural land.

3. At the outset, the Id. Counsel for the Assessee has submitted that the A.O. while making the impugned additon has wrongly and illegally denied the claim of deduction u/s 54F of the Income Tax Act, 1961 (in short 'the Act'). She in this respect, has submitted that the Assessee had constructed a residential house and spent Rs. 55,82,750/-. A valuation report from the approved valuer in this respect was also submitted before the Assessing Officer. However, the Assessing Officer deputed the Income Tax Inspector, who estimated the cost of construction at Rs. 25 lacs. The A.O., therefore, allowed deduction u/s 54F of the Act to the extent of Rs. 25 lacs and computed the Long Term Capital Gains at Rs. 21,08,371/-.

4. In appeal, the Id. CIT(A) rejected the claim of the Assessee u/s 54F of the Act, observing that the Assessee had construed the house on the land which was owned by his mother Jabra Devi. He, therefore, enhanced the income of the Assessee at Rs. 46,08,371/-.

5. I have heard the rival contentions and gone thought the record. In the case in hand, there is no dispute about the fact that the Assessee had constructed a house out of sale proceeds of the

agricultural land. The said fact has already been verified by the Assessing Officer by sending Inspector at the house of the Assessee. There is also no plea that the Assessee is not residing in the said house or that the said house has not been constructed by the Assessee. It is also not the case of the Revenue that the Assessee is not residing with his mother. Merely because the plot of land on which the house has been constructed still stands in the name of the mother of the Assessee that, in my view, cannot be a ground to reject the claim of the Assessee u/s 54F of the Act, when, it has otherwise been proved on the file that the house has been constructed by the Assessee and the Assessee is residing in the said house along with his mother.

6. So far as the quantum of deduction is concerned, the Assessee has furnished the valuation report from the approved valuer regarding the cost of construction. The Income Tax Inspector is not a qualified or technical person to assess the cost of construction. Moreover, the cost of construction cannot be assessed by just visiting the house without comparing the item wise details with the market price. It is a technical work which could have been got done by the Assessing Officer from Government valuer. However, no such exercise has been got done by the A.O. Under the circumstances, the report submitted by the approved valuer, who is a technically

qualified person in the said field, is to be given credence. In view of this, it is held that the A.O. is not justified in estimating the cost of construction at Rs. 25 lacs at the report of the Inspector. Therefore, the cost of construction is directed to be taken as per the approved valuer's report at Rs. 55,82,750/-. Under the circumstances, after giving deduction u/s 54F of the Act to that extent, there will be no net capital gains. Accordingly, the addition made by the A.O. is ordered to be deleted.

7. In the result, the appeal of the Assessee stands allowed.

Order pronounced on 03.12.2024.

Sd/-
(SANJAY GARG)
Judicial Member

“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