

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1661/KOL/2024
(Assessment Year: 2018-19)**

Rahul Saraf (HUF)
4/1, Red Cross Place, Kolkata-
700001, West Bengal

(Appellant)

Vs.

ACIT, Circle-40
Income Tax office, 3,
Government Place (West),
Kolkata-700001, West Bengal

(Respondent)

PAN No. AADHR2300F

**ITA No. 1238/KOL/2024
(Assessment Year: 2012-13)**

DCIT,
5TH Floor, Room No.516,
Aaykar Bhavan Poorva,
110, Shantipally, Kolkata-700107
West Bengal

(Appellant)

Vs.

Rahul Saraf
33, Hungerford Street, Kolkata-
700017, West Bengal

(Respondent)

PAN No. AKOPS6728D

Assessee by : Shri Somitra Choudhury &
Shri Pranabash Sarkar, ARs
Revenue by : Shri Raja Sengupta, DR

Date of hearing: 10.12.2024

Date of pronouncement : 16.12.2024

ORDER

Per Rajesh Kumar, AM:

These are the cross appeals preferred by the assessee as well as Revenue against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 12.06.2024



for the AY 2018-19 & Commissioner of Income-tax (Appeals), Kolkata-21 [the Id. CIT (A)] dated 17.07.2023.

ITA No. 1661/KOL/2024 for A.Y. 2018-19 (Assessee's appeal)

02. At the outset, the Id. Counsel for the assessee submitted that the assessee could not file the necessary details before the Id. AO as well as before the Id. CIT (A). The Id. Authorized Representative submitted that though the case was completely *ex-parte* before the Id. CIT (A) due to outbreak of fire in the premises of the assessee. However, certain details were filed before the Id. AO during the assessment proceedings. The Id. Authorized Representative submitted that there are two effective issue raised by the assessee (i) is for allowing deduction u/s 24A and 24B aggregating to ₹95,75,028/- and (ii), restricting the disallowance u/s 14A read with section 8D of the Rules to the actual amount of dividend income earned during the year. The Id. AR relied on the decision of Ahmedabad Bench in the case of *J.B. Patel & Co. Vs. DCIT (2009) 118 ITD 556 (Ahmedabad- ITAT)* so far as the deduction u/s 24A and 24B of the Act are concerned. So far as the second issue is concerned, the Id. Authorized Representative submitted that the issue is no longer *res-Integra* and the disallowance to be confined to the amount of exempt during the year.
03. The Id. DR on the other hand, strongly opposed to the arguments of the Id. Authorized Representative by submitting that the case was totally non-represented before the Id. CIT (A), and therefore, same may be restored to the file of the Id. CIT (A) instead of Id. AO.
04. After hearing the rival contentions and perusing the materials available on record, we find that the issue at hand required to be examined in the level of the Id. AO. Insofar as the first issue is

concerned which is in relation to deduction u/s 24A and 24B of the Act, we restore the same to the file of the Id. AO with a direction to decide these issues in the light of decision in the case of *J.B. Patel & Co. Vs. DCIT* (supra) and so far as the second issue is concerned, disallowance u/s 14A has to be confined to the amount of exempt income earned during the year. With these observations, we restore the issue back to the file of the Id. AO for fresh adjudication in terms of our observations made hereinabove and after allowing reasonable opportunity of hearing to the assessee. The appeal is allowed for statistical purposes.

ITA No. 1238/Kol/2024 A.Y. 2012-13 (Revenue's Appeal):

05. Revenue has raised following grounds of appeal:-

"1. Whether the Ld.CIT(A) has erred in law and facts by allowing the claim of the assessee of Rs. 5,46,83,932/- for deduction under section 54 of the Act despite the non-existence of any residential property on the plot of land sold by the assessee?

2. Whether the Ld.CIT(A) has erred in law by failing to provide opportunity to the assessing officer to cross-examine the documents produced by the assessee before him in contravention of Rule 46A of the income Tax Rules, 1962?"

06. The issue raised in ground no.1 is against the order of Id. CIT (A) allowing the claim of the assessee of ₹5,46,83,932/- u/s 54 of the Act despite non-existence of residential property on the plot of land sold by the assessee and the issue in ground no. 2 is against the order of Id. CIT (A) failing to provide the opportunity to the AO to cross examine the documents produced by the assessee before him in contravention of Rule 46A of the Income Tax Rules, 1963 (the Rules).

07. The facts in brief are that a search and seizure action u/s 132(1) of the Act was conducted on 24.01.2012 in the office and residential premises of the assessee. The assessee filed the return of income for



the relevant assessment year on 31.07.2012, declaring total income of ₹6,23,49,640/-. Subsequently, statutory notices were issued and served upon the assessee along with questionnaires. During the assessment proceedings, the Id. AO observed that the assessee has sold his property at 52/5A and 52/6A, Ballygunge Circular Road, Kolkata-700019 consisting of 26 Cottahs 8 Chatak and 36 sq.ft to Aakash Devcon Pvt. Ltd., M/s Swadhin Devcon Pvt. Ltd., M/s Sunrise Devcon Pvt. Ltd. and M/s Hope Realcon Pvt. Ltd. and others for a consideration of ₹15,37,30,949/- vide conveyance deed, which was executed on 02.02.2012. The said land was purchased by the assessee in A.Y. 2008-09. According to the Id. AO, the sale deed of conveyance did not indicate any major construction of habitable building on the said land. The Id. AO however after taking into account the contentions of the assessee made during the assessment proceedings noted that the claim of the assessee of exemption u/s 54F of the Act in respect of long term capital gain at ₹5,46,83,932/- is not allowable and accordingly, rejected the claim either u/s 54 or u/s 54F of the Act and added the entire amount to the income of the assessee besides making addition of sum of ₹1,28,17,282/- in respect of long term capital gain on sale of part of land at 52/5A in the assessment framed under section 143(3) of the Act on 28.08.2014.

08. In the appellate proceedings, the Id. CIT (A) partly allowed the appeal of the assessee by directing the Id. AO to allow the deduction u/s 54 of the Act as the assessee had already constructed the residential house on the said land over a period of time and the expenses incurred by the assessee in different assessment years commencing from A.Y. 2008-09 to 2011-12, were accepted by the revenue.



09. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has sold a property situated at 52/5A and 52/6A, Ballygunge Circular Road, Kolkata-700019 consisting of 26 Cottahs 8 Chatak and 36 sq.ft to Aakash Devcon Pvt. Ltd., M/s Swadhin Devcon Pvt. Ltd., M/s Sunrise Devcon Pvt. Ltd. and M/s Hope Realcon Pvt. Ltd. in two parts. First part comprising of 26 cottah 8 chattaks, 36 sq.fts has been sold to Akash Devcon Pvt Ltd and others on 02.02.2012 for a consideration of Rs. 15,37,30,949/- through a deed of conveyance executed on 02.02.2012 - registered on 06.02.2012, which is the issue before us. As regards the second part of sale of land, the Id. AO has made an addition of long term of ₹ 1,28,17,288/-, which was already confirmed by Id. CIT (A) and the Tribunal has deleted the addition vide order dated 10.05.2024. Now the issue before us is only qua the sale of property of land and building to Akash Devcon Pvt Ltd and others. We note that the assessee has accepted the land value and construction at ₹1,41,56,418/- as against ₹3,28,31,314/- by disallowing ₹1,86,74,896/- certain expenditure such as lift, granite, marble, electrical items etc simply on the ground that labor charges are too low and it is not clear whether building is used by appellant for his residence or not and as the AO has concluded that these expenses cannot be incurred on an incomplete structure and also that assessee has failed to corroborate with the cogent evidences, thereby he computed the long term capital gain at ₹5,46,83,932/- and no deduction was disallowed either u/s 54 or 54F of the Act. We note that the Id. CIT (A) passed a very comprehensive and speaking order while allowing the appeal of the assessee dealing with the each and every aspect of the matter. We note that the house was under construction even at the time of search as is apparent from the seized



document qua 55/2 page no. 9, wherein the details of expenses were found to have incurred during A.Y. 2008-09 to 2009-10. The assessee had provided documents / papers in relation expenses incurred on the said house. The Id. CIT (A) further controverted the finding of the Id. AO that there was no residential house on the larger part of the land. The Id. CIT (A) on page no.46 of the appellate order noted that the Id. AO's reasoning for reaching the said conclusion was that the labour spent was very less for the building size and also that materials cost incurred was too low considering the size of the building. The Id CIT(A) further noted that the AO also noted that no valuation report was furnished by the assessee and on page no.47 the AO disallowed without giving any reasons the expenditure on construction to the tune of ₹1,86,74,896/- out of the total expenditure of ₹3,28,31,314/-, the details whereof yearwise wise is available at page No.41 of the appellate order. We note that during the year only ₹11,13,862/- was incurred and all other expenses were incurred during earlier assessment years. Thereafter the Id. CIT (A) even noted that the Id. AO has wrongly given finding that the assessee has not given any proof of allotment of residential houses to the assessee which would qualify for deduction u/s 54 of the Act. Thus, he denied the claim u/s 54 of the Act, erroneously. The Id. CIT (A) noted that at page no.44 of the appellate order and after examination of assessment folder. The Id CIT(A) noted that in reply to AO's query dated 11.02.2014, raised during the assessment, the assessee filed a letter dated 06.03.2014, which was found to be present inside the assessment folder. The Id. CIT (A) further noted that in this letter the appellant had given detailed working of long-term capital gain on sale of impugned property. The Id. CIT (A) further noted that a letter was found annexed thereto regarding allotment/ agreement of apartment



no.e-235 on the 35/36 and 37th Floor and also right to use the fourth floor, number of car parking at Atmosphere Tower and even the payments details were given by the Id. CIT (A) on page no.49 and 50. The Id. CIT (A) observed that there is no doubt that investments made by the assessee were out of capital gain from sale of immovable property of 52/5A, Ballygunge Circular road along with building thereon to the tune of ₹15.84 crores by end of F.Y. 2012-13 out of which Rs. 8.44 Cr was paid in the instant assessment year. The Id CIT(A) also noted that the said property stands completed and the possession was given to assessee vide possession letter dated 10.9.2021. Thereafter, on page no.51, the Id. CIT (A) noted that there is no basis for AO's contention that no agreement has been furnished by the assessee in relation to purchase of residential property from Forum Projects Pvt Ltd. The Id. CIT (A) further noted that the payments were made through banking channel and ₹8.44 crores has been paid within the impugned assessment year and total of ₹15.84 crores by end of A.Y. 2012-13. Therefore, within the stipulated period of 1 year before and two years after the sale the said immovable property. The assessee has invested an amount on 15.84 crores and therefore, the Id. AO's contention is wrong that assessee is not entitled to deduction us/ 54 of the Act. Finally, the Id. CIT (A) after relying on the decision of Hon'ble Delhi High Court in case of CIT Vs. R.L Sood[2000] 245 ITR 727 (Delhi), directed the Id. AO to allow the benefit of Section 54 of the Act to the assessee by allowing the appeal of the assessee. So far as the second ground is concerned, the appellate authority gave a clear-cut finding that the evidences which Revenue was claiming to have been accepted in violation of Rule 46A of the rules, while in fact available in assessment folder and the Id. CIT (A) has given a clear cut finding in the appellate order. Consider



the facts we do not find any infirmity in the order of the Id. Commissioner of Income-tax (Appeals). Accordingly, the order of Id. CIT (A) is upholding by dismissing the appeal of the Revenue.

010. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.12.2024.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 16.12.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata