

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 1086/Del/2020 : Asstt. Year : 2014-15

Neeraj Bhardwaj, H.No. 314, Main Chowk, Near PNB, Burari, Delhi-110084 (APPELLANT)	Vs	Income Tax Officer, Ward-39(1), New Delhi-110002 (RESPONDENT)
PAN No. APDPB0280P		

**Assessee by : Sh. Tushal Gupta, Adv.
Revenue by : Sh. Akhilesh Kumar Yadav, Sr. DR**

Date of Hearing: 05.12.2024	Date of Pronouncement: 13.12.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2014-15, arises against the CIT(A)-13, Delhi's DIN & order No. ITBA/APL/S/250/2019-20/1024600279(1) dated 03.02.2020 in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "The Act").

2. Heard both the parties at length. Case file perused.
3. The assessee raised the following substantive grounds in the instant appeal:

"1. That on the facts and circumstances of the case, assessment completed u/s 143(3) is totally void, illegal & bad in law.

2. That on the facts and circumstances of the case, order passed u/s 143(3) is totally void, illegal & bad in law

3. That on the facts and circumstances of the case, order passed u/s 250 is totally void, illegal & bad in law.

4. That on the facts and circumstances of the case, the Id. CIT(A) erred in disallowing the construction cost claimed by the assessee amounting to Rs.27,50,000/-."

4. Learned counsel is indeed very fair at the outset in not contesting the assessee's former three substantive grounds. Rejected accordingly subject to all just exception.

5. Next comes the assessee's fourth substantive ground challenging disallowance/addition of construction cost amounting to Rs.27,50,000/-. It is evident from a perusal of the case file that the assessee infact had purchased a capital asset for Rs.50,00,000/- in A.Y. 2007-08 which stood sold in A.Y. 2012-13 for Rs.1,54,60,000/-. The admitted indexed cost of acquisition thereof was Rs.77,31,397/- which resulted in net long term capital gains of Rs.77,68,603/-. We further note that the assessee thereafter purchased/re-invested the said capital gains on 05.02.2013 in purchasing 1120 sq. yrd. for Rs.1,00,00,000/- and section 54 deduction is not in dispute. He thereafter sold half of the said area admeasuring 560 sq. yrd. for Rs.75,00,000/-.

5.1 It is this last transaction which admittedly resulted in the learned Assessing Officer making short term capital gains addition of Rs.75,00,000/- in assessment order dated 30.12.2016 which represented the entire sale consideration received/realized on 09.01.2014.

6. The assessee preferred appeal wherein the learned CIT(A) has issued the following directions to the Assessing Officer:

"4.5 As far as violation of section 54 is concerned, the long term capital gains has to be treated as income during the year in which the property was sold i.e. AY 2013-14 and taxed as long term capital gains, while withdrawing the benefit of exemption u/s 54. Since, the appellant was required to invest the capital gains of

Rs.77,68,603/- and property to the extent of Rs.50 lacs was disposed while retaining the balance investment of Rs. 50 lacs, there was a violation of the provisions of section 54 to the extent of Rs. 77,68,603 - Rs.50,00,000 = Rs.27,68,603 which would be taxable as long term capital gains in the assessment year 2013-14 i.e. the year in which the capital gains arose on sale of the immovable property. Accordingly, the AO is directed to examine this issue and after due application of mind independently and in case, the conditions under relevant sections are found to be satisfied, the proceedings may be initiated for re-assessing the case for AY 2013-14, notwithstanding anything contained in section 149 subject to the provisions of section 150(2). This may be treated as direction u/s 150(1) of the Act."

7. Mr. Yadav vehemently argues that the learned CIT(A) has rightly exercised his section 251(1) jurisdiction in the given circumstances of the case whilst directing the Assessing Officer to re-compute the assessee's section 54 deduction.

8. We are of the considered view that the learned CIT(A) foregoing directions are not sustainable in law as such a proposed enhancement, for the purpose of re-computing section 54 deduction already accepted in the preceding A.Y. 2013-14, could not be reopened since amounting to a new head of income as per CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC), CIT vs. Sardari Lal & Co. (2001) 251 ITR 864 (Delhi HC) and CIT Vs. Union Tyres (1999) 240 ITR 556 (Del.).

9. Mr. Yadav lastly reiterates the Revenue stand that even the learned Assessing Officer had fairly made the assessee's impugned addition of Rs.75,00,000/- u/s 54(i) of the Act once the his capital gains were already more than the re-investment of Rs.1,00,00,000/- (supra) forming subject matter of deduction u/s 54 of the Act. We are of the considered view that the learned CIT(A)'s foregoing discussion has already reversed the said assessment findings and therefore, our instant adjudication is confined to the correctness thereof only which

are not sustainable in law. The assessee succeeds in his fourth substantive ground therefore.

8. This assessee's appeal is partly allowed in above terms.
Order Pronounced in the Open Court on 13/12/2024.

Sd/-

(M. Balaganesh)
Accountant Member
Dated: 13/12/2024

Sd/-

(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR