

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH MUMBAI**

BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 5007/Mum/2024
(Assessment Year: 2011-12)**

Vilas Raju Mehabubani, Australia 103, Borivali Linking view Chs, Linking road, Near Yogi Nagar Borivali (W), 400092.	Vs.	ITO, Ward 42(1)(5) Room No. 945, Kautilya Bhavan, C- 41 to C-43, G Block, BKC
PAN/GIR No. ANGPM0424R		
(Applicant)		(Respondent)

Assessee by	Shri Manish Seth
Revenue by	Shri Vithal Machindra Bhosale, Sr. DR

Date of Hearing	16.12.2024
Date of Pronouncement	19.12.2024

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 15.07.2024, passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre, Delhi / (‘Ld. CIT(A)’), for the assessment year 2018-19. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs.43,35,000/- in the hands of the assessee by not allowing deduction u/s 54 of*

the Income Tax Act 1961, as the new residential house was purchased in the name of Vikas Raju Mehabubani, being brother of the appellant.

a. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) ought to have considered that the full investment of Rs. 40,00,000/- in the new residential house purchased is made by the appellant and not by his brother Vikas Raju Mehabubani

b. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) ought to have considered that the original flat which was sold was purchased by appellant jointly with his mother Saroj Raju Mehabubani. The appellant purchased new residential house in the name of his brother Vikas Raju Mehabubani jointly with his mother Saroj Raju Mehabubani and to that extent the deduction u/s 54 is allowable since section 54 does not specify that the new residential house should have been purchased in the name of the assessee but it only specifies that the assessee should have invested in the new residential house which your appellant has done

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) ought to have considered that non issuance of notice u/s 143(2) makes the assessment proceeding illegal and void ab-initio.

3. The assessee craves Your Honour leave to add, alter or amend or delete any of the above grounds.

2. Ground No.1 raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the additions in the hands of the assessee by not allowing deduction u/s 54 of the Act, as the new residential house was purchased in the name of Vikas Raju being the brother of the assessee.

3. In order to substantiate this ground, Ld. AR reiterated the same arguments as was raised by him before the revenue

authorities and also draw my attention towards statement of facts filed before the Bench which contains sequence of events, wherein it has been specifically mentioned that after selling the flat, the assessee purchased new residential flat in the name of his brother i.e Vikas jointly with Saroj Raju for Rs. 40,00,000/-.

4. Whereas, on the contrary Ld. CIT(A) has held that the assessee has not reinvested the sale consideration received from sale of immovable property in purchase of new residential house, therefore not entitled for exemption u/s 54 of the Act.

5. The fact remains that Ld. CIT(A) has not considered or specifically dealt with or adjudicated the facts and the contentions of the Ld. AR to the effect that he had purchased new residential flat in the name of his brother Vikas jointly with Saroj Raju for a consideration of Rs. 40,00,000/-.

6. Since in my considered view, main defence / plea raised by the assessee remained un-adjudicated, therefore I am of the view that the present grounds need to be sent back to the file of CIT(A) with a direction to adjudicate the same on merits. After, considering the above factual and legal position. Thus the Bench feels that the ends of justice would be met only if the matter is restored back to the file of the CIT(A) to decide the matter afresh. Thus the appeal of the assessee is restored to the file of CIT(A) to decide it afresh.

by providing opportunity of hearing to both the parties. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings and the appeal of the assessee is thus allowed for statistical purposes.

7. Before parting, I make it clear that my decision to restore the matter back to the file of the CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the CIT(A) independently in accordance with law.

8. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 19.12.2024.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 19/12/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai