

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No. 5432/MUM/2012
(Assessment Year : 2009-10)

Mr.Vivek Venugopal,
"N"Block, 15th Main Road,
Anna Nagar, Chennai 600040
PAN:AEBT3112P

... Appellant

Vs.

The ACIT, Cen. Cir.13,
Prathishtha Bhavan, Old CGO Bldg.,
MK Road, Mumbai 400 020

.... Respondent

Appellant by : Shri M. Subramanian
Respondent by : Shri S. Senthil Kumaran

Date of hearing : 07/06/2016
Date of pronouncement : 15/06/2016

ORDER

PER G.S. PANNU,AM:

The captioned appeal filed by the assessee pertaining to assessment year 2009-10 is directed against an order passed by CIT(A)-37, Mumbai dated 27/06/2012, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 20/12/2011.

2. In this appeal, assessee has raised the following two Grounds of appeal:-

“On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax(A)-37, Mumbai [CIT(A)]-

- 1. Erred in restricting the relief u/s.54F to the extend of Rs.25,00,000/- as against claimed by the assessee of Rs.28,85,426/-.*
- 2. Erred in confirming the addition of Rs.12,51,000/- on account of deposit of cash in bank U/s 88 of the I.T. Act, 1961.”*

3. The appellant before us is an individual who was subject to a survey action under section 133A of the Act on 23/04/2010. In the assessment finalized under section 143(3) of the Act dated 20/12/2011, assessee was found to have earned a long term capital gain of Rs.1,32,77,264/- on account of sale of shares of M/s. Hasco Infrastrure Limited. The assessee had claimed exemption under section 54F of the Act against such long term capital gain on account of acquisition of a residential house. In the return of income, such exemption was claimed at Rs.32,86,123/-, which was denied to the assessee on the ground that what was purchased by the assessee was not a residential house but land. The CIT(Appeals) has since allowed the claim of the assessee, inasmuch as, according to him assessee is entitled to the claim of exemption under section 54F as assessee had indeed purchased a house alongwith a piece of land appurtenant thereto. So however, the aforesaid decision of the CIT(Appeals) is not in dispute before us. The issue challenged by the assessee before us is that the claim of exemption under section 54F of the Act has been allowed by the CIT(Appeals) to the extent of Rs.25.00 lacs only, whereas as per the appellant the entitled claim is to the extent of Rs.28,85,426/-.

4. At the time of hearing, the Ld. Representative for the assessee explained that the total consideration paid to the seller for acquisition of the property was Rs.25.00 lacs and further assessee had incurred an expenditure of Rs.3,97,611/- by way of stamp duty and registration, thereby resulting in a total cost of Rs.28,97,611/-. On this basis, it is sought to be pointed out that the claim of exemption under section 54F of the Act would work out to Rs.28,85,426/-, whereas the CIT(Appeals) has allowed the claim only to the extent of Rs.25.00 lacs, which is the amount of basic consideration paid to the seller. The claim set up by the Ld. Departmental Representative for the Revenue is that the CIT(Appeals) has noticed that before the Assessing Officer assessee has made a revised claim of Rs.25.00 lacs, and thus he allowed the claim to that extent.

5. Having considered the rival stands, we find that in the present case, the new residential house entitled for exemption under section 54F has been purchased by the assessee for Rs.25.00 lacs as evidenced by the deed of registration, a copy of which has been placed on our record. Before the lower authorities, the assessee has consistently explained that it has incurred a further expenditure of Rs.3,97,611/- by way of stamp duty and registration charges, which is not disputed. In this view of the matter, it was incumbent upon the CIT(Appeals) to allow appropriate amount of exemption after considering the cost of new residential house, which is required to be calculated by including the cost incurred by way of stamp duty and registration charges also. Therefore, the calculation of exemption under section 54F made by the assessee, and which has been detailed by the CIT(Appeals) in para 2.6.3

of his order, amounting to Rs.28,85,426/- is in order. Accordingly, we set-aside the order of CIT(Appeals) and direct the Assessing Officer to allow the claim of the assessee for exemption under section 54F of Rs.28,85,426/- instead of Rs.25.00 lacs allowed by the CIT(Appeals). Thus, on this aspect assessee succeeds.

6. The other issue raised in this appeal is an addition of Rs.12,51,000/- made by the lower authorities by invoking the provisions of section 68 of the Act. In brief, the relevant facts are that assessee was found to have made cash deposits in the bank account on various dates during the year with Kotak Mahindra Bank Ltd., totalling to Rs.12,51,000/-. The failure of the assessee to explain the source of deposits prevailed with the Assessing Officer to treat the same as unexplained cash-credit within the meaning of section 68 of the Act. However, before the CIT(Appeals) assessee sought to canvass that he had withdrawn cash from Kotak Mahindra Bank Ltd. and DBS Bank to the extent of Rs.12,50,000/- and Rs. 4,77,000/- respectively, which was more than adequate to cover the deposits made in the bank account during the year. The aforesaid explanation was not accepted by the CIT(Appeals) in terms of the discussion contained in Para 2.7.1 of his order. As per the CIT(Appeals) assessee could not furnish the correlation between the withdrawals made from time to time and the deposits thereof. In this manner, an addition of Rs.12,51,000/- under section 68 of the Act has been sustained.

7. Before us, Ld. Representative for the assessee vehemently pointed out that assessee had furnished a statement of cash deposits and withdrawals, copy of which has been placed in the Paper Book at

pages 35-36, in terms of which cash withdrawals were to the tune of Rs.15,20,000/-, which was adequate to meet the deposits of Rs.12,51,000/-. Further, he has also referred to the fact that assessee had pleaded before the lower authorities that assessee had received a sum of Rs.4.00 lacs in cash from one Mr. Hameed, which was also utilized for the deposits and a confirmation from the said person has also been placed in the Paper Book at page 59. Ld. Representative for the assessee pointed out that the aforesaid material supports the explanation furnished by the assessee and in any case, presently assessee was willing to appear before the Assessing Officer again and provide the details of co-relation between the withdrawals and subsequent deposits.

8. On the other hand, Ld. Departmental Representative for the Revenue reiterated the stand of the lower authorities, which we have already adverted to in the earlier part of the order and is not being repeated for the sake of brevity.

9. Having considered the rival submission, in our view, from a prima-facie appraisal of the explanation furnished by the assessee, copies of which are placed in the Paper Book at pages 35-36 and 59, it is evident that the entire amount of cash deposit made in the bank account amounting to Rs.12,51,000/- cannot be considered as unexplained. The explanation furnished by the assessee has been mechanically brush-aside by the lower authorities without examining the same appropriately. The details furnished by the assessee, namely date-wise cash deposits and cash withdrawals as well as confirmation from Mr. Hameed requires to be examined in some detail and,

therefore, we are inclined to uphold the plea of the assessee that the matter be remanded back to the file of Assessing Officer for an appraisal afresh. The assessee shall satisfy the Assessing Officer the source of the cash deposits in the bank account on the basis of appropriate material and the Assessing Officer shall consider the explanation furnished by the assessee in accordance with law. Thus, we set-aside the order of the CIT(Appeals) and restore the matter back to the file of Assessing Officer to decide afresh as per law.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 15/06/2016

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Mumbai, Dated 15/06/2016

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai