THE INCOME TAX APPELLATE TRIBUNAL
DELHI "F" BENCH: NEW DELHI

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.3270/Del/2019
Assessment Year : 2011-12

Rita Chandiok, L-41, Connaught Circus, New Delhi-110001. PAN-AAAPC2224L	Vs	ACIT, Circle-52(1), New Delhi.
APPELLANT		**RESPONDENT**

ITA No.5559/Del/2018
Assessment Year : 2011-12

Rita Chandiok, C/o-Mr.Vinod Chandiok, M/s. Walkar Chandiok & Co., L-41, Connaught Place, New Delhi-110001. PAN-AAAPC2224L	Vs	ACIT, Circle-31(1), New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Sh. Vinod Bindal, CA & Ms. Sweety Kothari, Adv.
Respondent by	Sh.Farhat Khan, Sr. DR
Date of Hearing	12.05.2021
Date of Pronouncement	03.06.2021

ORDER

PER KUL BHARAT, JM :

These two appeals filed by the assessee are directed against the two different orders of Ld. CIT(A)-18, New Delhi dated 06.04.2017 and Ld.CIT(A)-35, New Delhi dated 05.03.2019 for the same assessment year 2011-12.

2. Out of these two appeals, one appeal i.e. ITA No.3270/Del/2019 is against appeal giving effect by the Assessing Officer and ITA No.5559/Del/2018 is arising out of the original assessment proceedings.

3. Both appeals were heard together and are being disposed by way of a consolidated order. First, we take up **ITA No.3270/Del/2019 [Assessment Year 2011-12]** filed by the assessee. The assessee has raised following grounds of appeal:-

> *1. "The CIT(A) erred in law and on facts in confirming the disallowance of the exemption u/s 54 of the Act made by Assessing Officer while giving appeal effect to the CIT(A) order by not correctly appreciating the order of the CIT(A) wherein the said exemption was allowed to the assessee in para 5.10.15. Thus the exemption u/s 54 should be allowed to the assessee.*
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> *2. The CIT(A) erred in law and on facts in confirming the disallowance of exemption u/s 54 of the Act in the year under consideration on the basis of non-fulfillment of the condition imposed by the CIT(A in his order though no such condition is prescribed under the Act for claiming the said exemption and ignoring that the CIT(A) is not empowered to impose such condition. Thus the exemption u/s 54 should be allowed to the assessee."*

4. The only effective ground raised by the assessee in this appeal is against the disallowance of claim of exemption u/s 54 of the Income Tax Act, 1961 ('the Act').

5. Facts giving rise to the present appeal are that the assessment u/s 143(3) of the Act was concluded vide order dated 27.02.2014 at an income of

Rs.4,55,84,363/- against the returned income of Rs.27,37,571/-. The Assessing Officer disallowed the claim made u/s 54 of the Act in respect of capital gain arising out of the sale transaction of the property No.-C-94, Anand Niketan, New Delhi.

6. Aggrieved against this, the assessee had filed appeal before Ld.CIT(A) who allowed the claim u/s 54 of the Act with direction to place before the Assessing Officer the completion certificate or certificate of the satisfactory progress of construction at the earliest appropriate time and latest by 30.09.2017, failing which necessary action could be taken including reopening of the case of taxability of the amount for Assessment Year relevant to the period at the end of three years from the date of sale for taxing the amount as per law. The Assessing Officer in pursuance of the aforesaid direction framed assessment order dated 08.02.2018. Thereby, the Assessing Officer declined the exemption u/s 54 of the Act for non-production of requisite documents.

7. Aggrieved against this, the assessee preferred appeal before the Ld. CIT(A) who sustained the findings of Assessing Officer and dismissed the appeal filed by the assessee.

8. Aggrieved against this, the assessee is in appeal before this Tribunal.

9. Ld. Counsel for the assessee vehemently argued that authorities below are not justified in making addition in the year under appeal and declining the exemption u//s 54 of the Act, which was otherwise allowed by the Ld.CIT(A) in the original proceedings. He contended that the authorities below have grossly

failed to give effect to the order passed by the Ld.CIT(A). He submitted that Ld. CIT(A) is incorrect to hold that her predecessor in original proceedings had given contradictory finding. He submitted that a bare reading of section 54 of the Act and the finding of Ld.CIT(A) in the original appellate proceedings goes to prove that Ld.CIT(A) had correctly held that capital gain would be taxable for the Assessment Year relevant to the period at end of three years from the date of sale for taxing the amount as per law. Ld. Counsel for the assessee took us through the relevant provision of law to buttress the contention that no capital gain could be charged in the year under appeal.

10. Per contra, Ld. Sr. DR opposed the submissions and supported the order of Ld.CIT(A).

11. We have heard the rival contentions and perused the material available on record. Undisputed facts that emerged from the records are that the property in question was sold on 08.11.2010. The assessee claimed exemption u/s 54 of the Act on the basis of purchase of new asset. For the sake of clarity, section 54 of the Act is reproduced as under:-

Profit on sale of property used for residence

54. "(1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the

assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:

2 [Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,—

(a) the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;

(b) any reference in this sub-section and sub-section (2)to "new asset" shall be construed as a reference to the two residential houses in India:

Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.]

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

12. We find that Ld.CIT(A) in original proceedings, which has been challenged in ITA No.5559/Del/2018 had decided the appeal by observing as under:-

".....I find that the insufficient material taken to account could be the reason for such conclusion on the part of the AO.

But when the full gamut of the facts as brought out by the AR during the appellate proceeding is considered, the situation turns different and the intention of the appellant rises above suspicion and passes the muster.

Similarly the second investment is not even questioned by the AO nor I find anything unusual. The only thing questioned by the AO is that even while entering into this agreement, the appellant is aware of the fact that the construction would not be complete in any case within the stipulated period of three years. However, my decision would not waiver in view of the ratio and interpretation adopted by the jurisdictional HC in the case of Kuldeep Singh(Supra) and as discussed by me above, the appellant is eligible for the exemption u/s 54F, in my humble opinion.

5.10.16 However, I must leave a note of caution here. As held in CIT vs V. Pradeep Kumar 53 Taxman 138/290 ITR 90 (Mad) para 9:

For the purpose of exemption under section 54F, the assessees must construct residential houses within three years from the date of transfer. The question here is whether the assessee constructs a residential house or not. In this case, there is no proof for the construction of the same and hence the assessees are not entitled to relief under section 54F of the Act.

The argument that construing the provision s' iliberally does not arise here when we are concerned with the factual issue.

5.10.17 It is also noted that the property that gave rise to capital gains was sold 011 08.11.2010. More than 6 years have already elapsed in the meatime. However considering the peculiarity of the case, some more time may be afforded for providing satisfactory evidence of completion of the property to be acquired.

It is therefore, directed that the appellant should submit the completion certificate or certificate of the satisfactory progress of the construction at the earliest appropriate time and latest by 30.09.2017, failing which necessary action including reopening of the case of taxability of the amount for Assessment Year relevant to the period at the end of three years from the date of sale for taxing the amount and as per law."

13. In the light of the above finding of Ld. CIT(A), it is to be decided whether the Assessing Officer has given appeal effect or not. We find that the Assessing Officer has reproduced the direction of the Ld.CIT(A) and declined to grant relief to the assessee by observing as under:-

"Citing the above direction given by the Ld. CIT(A) in the appellate order, a letter dated 05.06.2017 was issued to the assessee for producing the requisite document completion certificate as mentioned above. To which, no compliance was made and further, no copy was received in the office in the stipulated time given by the Ld. CIT(A) for proving the facts in favour of the assessee; rather assessee filed a letter dated 09.01.2018 for passing of the appeal effect. However, the assessee was given intimated to furnish the requisite documents but did not comply in respect to the same.

In respect to the above, no relief can be given to the assessee in light of non production of the requisite documents necessary for the same. Therefore, in pursuance to the order of the CIT(A) and directions thereto, the net taxable income of the assessee remains as assessed u/s 143(3) of the Act, i.e. income of Rs.4,55,84,363/-."

14. From the finding of the Assessing Officer, it is clear that one part of the direction was considered and another part regarding re-opening of the assessment or taxability of the correct Assessment Year was not considered. In our considered view, the Assessing Officer has failed to give appeal effect and Ld.CIT(A) mechanically sustained the finding of the Assessing Officer without giving any reason as to why the direction of Ld.CIT(A) regarding re-opening of the assessment for the purpose of taxability could not be given effect to. Under these undisputed facts, the finding of Ld.CIT(A) cannot be sustained, therefore, the impugned order is set aside. The Assessing Officer is hereby directed to give effect to the order of the Ld.CIT(A) in accordance with law. It is clarified that the Assessing Officer would be at liberty to re-open the assessment for the relevant Assessment Year as directed by the Ld.CIT(A) in the original appellate proceedings if law so permit. The grounds raised by the assessee are allowed in terms as indicated above. Thus, Grounds raised by the assessee are allowed.

15. In the result, the appeal of the assessee is allowed.

16. Now, coming to **ITA No.5559/Del/2018** filed by the assessee pertaining to Assessment Year 2011-12. The assessee has raised following grounds of appeal:-

> *1. "The CIT(A) erred in law and on facts in imposing an illegal additional condition, while allowing exemption u/s 54 of the Act. Thus, the order of the CIT(A) is not as per law to that extent and therefore such additional condition imposed by the CIT(A) should be excluded.*
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> *2. The CIT(A) erred in law and on facts in incorrectly applying the facts of the case of CIT vs Pradeep Kumar (2007) 290 ITR 90 (Mad) ignoring that the same are not applicable to the assessee as the assessee has invested the amount of capital gain with a builder for construction of new house property and has not invested the money in the old house. Thus, the direction of the CIT(A) based on such judgement should be deleted."*

17. At the outset, it is pointed out that the Assessing Officer has already passed the assessment order, hence the instant appeal became infructuous. The appeal of the assessee is dismissed, being infructuous.

18. In the result, appeal of the assessee in ITA No.3270/Del/2019 is allowed and appeal of the assessee in ITA No.5559/Del/2018 is dismissed, being infructuous.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 03rd June, 2021.

Sd/-	***Sd/-***
(G.S. PANNU)	**(KUL BHARAT)**
VICE PRESIDENT	**JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI