

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "E" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 3195/DEL/2019 (A.Y 2014-15)

Mrs. Mumtaz Naseem Syed, 7783/1, Chamelian Road, Bara Hindu Rao, New Delhi – 110 006. PAN No. AAYPS0899K (APPELLANT)	Vs.	Income Tax Officer, Ward : 63 (3) New Delhi. (RESPONDENT)
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Assessee by	N O N E;
Department by	Shri Ajay Kumar, Sr. D. R.;

Date of Hearing	07.12.2022
Date of Pronouncement	17.01.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-20, New Delhi [hereinafter referred to as CIT (Appeals)] dated 29.01.2019 for assessment year 2014-15.

2. The assessee has raised the following substantive grounds of appeal:-

“1. The additions amounting to Rs 74,49,302/- undertaken by the Learned Assessing Officer (“AO”) vide assessment order (“AOR”) dated 23/12/2016 under section 143(3) of the Income-tax Act, 1961 (“the Act”) and confirmed by the Learned Commissioner of Income Tax Appeals (“CIT A”) vide order dated 29/01/2019 is not in accordance with the law & therefore not sustainable.

2. That the CITA has erred both in law & on facts by rejecting the Appellant's submissions against the AOR and confirming the additions made by AO on the following grounds: -

a. The order passed is in complete disregard of the factual details and submissions filed by the appellant during the course of the assessment proceedings and appeal before the Commissioner of Income Tax (Appeals).

b. The Assessing officer has erred in restricting the exemption U/s 54 at 50% by misconstruing the ownership ratio, in complete disregard to the law, details and documents on record.

c. The CIT(A) has erred to appreciate that appellant returned the advance received for purchase of the property, out of the sale proceed credited in her joint account.

d. The Assessing Officer wrongly disallowed the 50% deduction under section 54 of the income tax act, 1961 solely on the ground that the new property in which the amount of capital gain has been invested is in joint name of the assessee and her son since the

payments made out of the earnings / contribution of her son Mr. Khalid Naseem.

3. *That, on the facts and circumstances of the case the Commissioner of Income (Appeals) erred in upholding the order of the assessing officer and confirming the disallowance of exemption.*

4. *That the Learned AO has erred in law and on facts in the initiation of penalty proceedings under the Income Tax Act, 1961.*

5. *The Appellant is aggrieved by the above said order and hence prefers this appeal & the appellant, therefore, pray that the appeal may be admitted, and orders may be passed rendering justice to the appellant.”*

3. Brief facts of the case are that, the assessee filed return declaring income of Rs. 3,69,340/- which was processed u/s 143(1) of the Income Tax Act 1961, ('Act' for short) at the declared return income. Subsequently, the case was selected for limited scrutiny for the reason '*Large long term capital loss on property, sale consideration of property in ITR is less than sale consideration reported in Form No. 26QB and large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA*'. Accordingly, notice u/s 143(2) and 142(1) of the Act were issued and served on the assessee. The representative of the assessee has participated in the assessment proceedings and assessment order came to be passed wherein deduction claimed by the assessee u/s 54 of the Act of Rs. 3,58,47,768/- has been restricted to Rs. 1,79,23,884/- and an addition of Rs. 74,49,302/- is added back to the income of the assessee by computing the income of the assessee at Rs. 78,18,640/- as against income declared by the assessee at Rs. 3,69,340/- and passed assessment order on 23/12/2016.

4. Aggrieved by the assessment order dated 23/12/2016, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 29/01/2019 upheld the addition made by the Ld. A.O. and confirmed the assessment order.

5. As against the order dated 29/01/2019 passed by the Ld.CIT(A), the assessee has preferred the present appeal on the grounds mentioned above.

6. None appeared for the assessee. The registry has issued several notices and the notice issued on 07/09/2022 returned with an endorsement 'Left the address'. Therefore, we are constrained to decide the appeal after hearing the Ld. DR and on verifying the records.

7. We have heard the Ld. DR perused the material available on record and gave our thoughtful consideration.

8. It is seen from the record that the assessee has sold property for Rs. 2,82,00,000/- and received sale proceeds of Rs. 1,00,00,000/- on 10/09/2013 in two cheques of Rs. 50,00,000/- each which has been encashed in the joint account held by the assessee and her son. Further, it is also found that the assessee has purchased flat at JP Greens along with her son and the payment were made from the joint account on 30/08/2013 and 07/09/2013 in two installments of Rs. 50,00,000/- each. The Ld. A.O was of the opinion that the son of the assessee had a credit of deposit of Rs. 1,52,57,686/- from 05/04/2013 to 06/09/2013 and the assessee did not have any source of income. There were no deposit from the assessee and the only deposit came after sale of property on 10/09/2103 after an amount of Rs. 1,00,00,000/- being paid by the son of the assessee for purchase of Flat at JP Greens. Thus, the Ld. A.O. has confronted the AR as to why not the deduction claimed u/s 54 be restricted to 50%. But the Ld. AR has expressed his inability to provide

the details. Thus, the Ld. A.O. found that both the assessee and her son have together invested in the house property at JP Greens and the deduction claimed u/s 54 of the Act by the assessee has been restricted to 50%.

9. During the appeal proceedings before the CIT(A), it is the specific case of the assessee is that as per the provision of Section 54 of the Act, if a person within a period of one year before two years after the date of transfer of the old house acquires another residential house or constructs a residential house within a period of three years from the date of transfer of the old house, he is eligible for exemption u/s 54 of the Act. Thus, it is not specifically required under law that the house should be purchased in the name of the assessee only.

10. It is not in dispute that the property has been acquired jointly by the assessee and her son further the sale proceeds amounting to Rs. 1,00,00,000/- from the old house were received by the assessee on 10/09/2013 whereas the payment were made to JP Greens amounting to Rs. 1,00,00,000/- in two installments on 30/08/2013 and on 07/09/2013. The amount have been paid from the joint account of the assessee along with her son. The assessee did not had any source of income to pay Rs. 1,00,00,000/- before she receives the sales proceeds from the old assets, there have been credit entries amounting to Rs. 1,52,57,686/- from 05/04/2013 to 06/09/2013, in the Joint Bank Account, which obviously was the income of assessee's son and the amount of Rs. 1,00,00,000/- has been paid from the income of the son. Since the assessee and her son have jointly invested the house property and are the joint owners of the house property having 50% right, title and interest over the property, the Assessing Officer is, therefore, correct in restricting the claim of the assessee u/s 54 of the Act to Rs. 1,79,23,884/- by making an addition of Rs. 74,49,302/- to the total income of the assessee. Therefore, we do not find any error or legal infirmity in the

orders of the Lower Authorities. Thus, the grounds of appeal No. 1 to 7 of the assessee *sans merite*.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on : 17th January, 2023.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 17/01/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R.N, SR. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI