

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

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 8488/Del/2019 : Asstt. Year : 2015-16

Ramesh Chander Nijhawan, 59, Shakti Vihar, Pitampura, New Delhi-110034	Vs	ACIT, Circle-40(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAFPN5773Q		

Assessee by : Sh. Manoj Kumar, CA

Revenue by : Sh. Shankar Gupta, Sr. DR

Date of Hearing: 04.07.2022

Date of Pronouncement: 15.07.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-14, New Delhi dated 30.08.2019.

2. Following grounds have been raised by the assessee:

"1. That the Honorable CIT(A)-14 has erred in law and on facts in sustaining an addition of Rs.84,55,206.00 on illegal and untenable grounds. Hence, the addition as such may be deleted.

2. That the Honorable CIT(A)-14 has erred in law and on facts in sustaining the assessment made by the Id. ACIT CIR 40(1) who is not the jurisdictional officer in this case. Hence, the assessment order, as such, may be vacated.

3. That the Honorable CIT(A)-14 has erred in law and on facts in sustaining the assessment as the assessment order was passed on 23.12.2017 while final case was heard on 27.12.2017. Hence, the assessment order as such may be vacated.

4. That the Honorable CIT(A)-14 has erred in law and on facts in sustaining the capital gain of Rs.1,39,27,692.00 as against of Rs.54,72,485.00 as declared by the assessee. Hence, the addition as such may be deleted."

3. The assessee filed return of income on 28.08.2015 declaring income of Rs.63,35,840/-. The assessee has derived income from house property, capital gains and income from other sources.

4. The relevant undisputed facts for adjudication are as under:

- Date of sale : 27.03.2015
- Amount of sale : Rs.1,85,00,000/-
- Long Term Capital gains : Rs.1,79,28,780/-
- Date of opening of CG A/c : 24.08.2015
- Investment u/s 54EC : Rs.40,00,000/-
- Investment in house property: Rs.87,25,000/-
- Date of investment : 29.06.2016

5. The AO disallowed the deduction u/s 54F on the grounds that the capital gain account has been closed without the approval of the Assessing Officer and thus failed to satisfy the mandatory requirement of closing the account with due approval of the AO. The Id. CIT(A) concurred with the observation of the Id. CIT(A).

6. It is not in dispute that an amount of Rs.40,00,000/- has been invested in the specified bonds, in this case REC Bonds and purchased house for Rs.82,50,000/-. Hence, the observation of Id. CIT(A) that the assessee is not eligible for claim of exemption u/s 54 and u/s 54F is against the provisions of the Act. With regard to closer of the account without the

NOC of the Assessing Officer, the broad provisions and compliance of the law surpass the mere default in not taking the prior permission of the ITO before closer of the account, especially when the amounts have been utilized for purchase of the house in accordance with the provisions of the Act within two years from the date of sale. Hence, the appeal of the assessee on this ground is allowed.

7. With regard to the amount of Rs.1,65,000/- being the commission incurred for purchase of residential house and payment made for the deed writer, keeping in view, the normal practices of sale, purchase, documentation and registration, we hereby allow the expenditure incurred of Rs.1,65,000/-.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 15/07/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 15/07/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR