

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2256/MUM/2023
(Assessment Year: 2015-16)**

Mukesh Harilal Mehta,

31, Tahnee Heights,
66 Nepean Sea Road,
Mumbai - 400006
[PAN: AFXPM2882E]

.....

Appellant

**Income Tax Officer 16(3)(1),
Mumbai,**

Vs

(Current jurisdiction:
Deputy Commissioner of Income Tax,
Circle 16(3), Mumbai)
Aayakar Bhavan, Mumbai - 400020

.....

Respondent

Appearance

For the Appellant/Assessee : Shri Snehal Shah
For the Respondent/Department : Smt. Sanyogita Nagpal

Date

Conclusion of hearing : 08.11.2023
Pronouncement of order : 30.01.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 18/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2015-16, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 29/12/2017, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:

- "1. *The Learned CIT(A), NFAC, Delhi has erred in confirming the action taken by the Ld. AO by adding the difference of Rs. 19,200/- under the head Income from Salary without appreciating the facts of the case in the right perspective.*
2. *The Learned CIT(A) NFAC, Delhi has erred in confirming the action taken by the Ld. AO of disallowing an amount of Rs. 11,27,41,786/- being the exemption claimed u/s 54 of the Income Tax Act, 1961.*
 - a. *Without considering the remand report prepared by the Ld. AO dated 22.01.2020 and resultantly without appreciating the facts of the case in the right perspective.*
 - b. *By drawing such erroneous conclusion merely on the basis of assumptions and presumptions in relation to inquiries made by the Ld. AO without confronting the "Inquiry Report" to the Appellant.*
 - c. *Without giving any opportunity to cross-examine the builder based on the inquiry report of the Ld. AO."*

Ground No.2

3. We would first take up Ground No. 2 raised in the Appeal.
4. The relevant facts for Ground No. 2 are that the Appellant, an individual resident assessee, filed original return of income for the Assessment Year 2015-16 on 28/08/2015 declaring total income of INR 14,94,420/-. The case of the Appellant was selected for scrutiny. During the course of assessment proceedings, the Appellant was asked to provide the details of purchase/sale of property, and exemption claimed under Section 54 of the Act. In response, the Appellant submitted that the Appellant had received during the relevant previous year sale consideration of INR 14,40,00,000/- as his share from sale of property located at Nepean Sea Road, Mumbai. According to the Appellant, the aforesaid sale transaction

resulted in capital gains income of INR 11,27,41,786/-. However, since the Appellant had paid INR 12,00,00,000/- towards purchase of a residential flat, being payment towards the cost of purchase including, stamp duty, pre-possession charge, service tax etc., the Appellant was entitled to claim deduction under Section 54 of the Act in respect of the same. Therefore, no capital gains income was chargeable to tax in the hands of the Appellant. However, the Assessing Officer rejected the aforesaid submission of the Appellant and brought to tax capital gains income of INR 11,27,41,786/- in the hands of the Appellant vide Assessment Order, dated 29/12/2017. The Assessing Officer noted that there was no registered sale deed evidencing purchase of new flat/asset. Further, the details of new flat/asset purchased mentioned in the possession letter were different from the flat/asset towards the purchase of which the payment of INR 12,00,00,000/- was said to have been made by the Appellant. In the aforesaid discrepancies Appellant's claim for deduction under Section 54 of the Act could not be allowed.

5. In appeal preferred by the Appellant on this issue, the CIT(A) concurred with the Assessing Officer and declined to grant any relief vide order, dated 18/05/2023.
6. Being aggrieved by the order passed by the CIT(A), the Appellant has carried the issue in appeal before us.
7. We have heard the rival submission, perused the material on record and examined the position in law. On perusal of the material placed before us following facts emerge. In the return of income for the Assessment Year 2015-16 the Appellant had claimed deduction of INR 11,27,41,786/- under Section 54 of the Act in respect of INR 14,40,00,000/- received by the Appellant on 12/03/2015 being

Appellant's share in sale consideration arising from the sale of property located at Nepean Sea Road, Mumbai. During the course of assessment proceedings, the Appellant was asked to provide, inter alia, the details of purchase/sale of property, and deduction claimed under Section 54 of the Act. As per the reply letter, dated 24/10/2017, and the unregistered Agreement for Sale, dated 20/03/2015, filed during the assessment proceedings, the Appellant had claimed deduction in respect of payments of INR 12,00,00,000/- made by the Appellant on 17/03/2015 to developer/seller (i.e. Keystone Realtors Private Limited) for purchase of Flat No. B-702, Rustomjee Oriana [for short 'Flat No. B-702']. However, as per paragraph 6.2 of the Assessment Order when the Appellant was asked to provide possession letter in support of his claim under Section 54 of the Act, a possession letter, dated 15/03/2016, issued in respect of Flat No. B-902, Rustomjee Oriana [for short 'Flat No. B-902'] was furnished by the Appellant along with letter, dated 14/11/2017, and it was contended on behalf of the Appellant that the registration of the agreement was not compulsory for claiming deduction under Section 54 of the Act. The Assessing Officer issued notice under Section 133(6) of the Act to the developer/seller (i.e. Keystone Realtors Private Limited) seeking the details of ownership/sale of Flat No. B-702. In reply, vide letter dated 29/11/2017, the developer/seller stated that neither the possession of Flat No. B-702 has been given to the Appellant, nor has the sale of Flat No. B-702 been registered. According to the Assessing Officer when the Authorized Representative for the Appellant was confronted with the aforesaid facts, it was submitted that there was a mere typographical error in mentioning the flat number and a letter, dated 26/12/2017 (placed at page 13 of the paper-book), to this effect, was also filed. Considering the explanation received from the

Appellant, the Assessing Officer called for further details from the developer/seller in respect of flat owned by the Appellant. However, as mentioned in paragraph 6.5 of the Assessment Order, the notice was returned as 'unaccepted' but the same was signed by one Ms. Pooja More on 09/12/2017 and it was stated thereon that Flat No. B-702 did not belong to the Appellant and was owned by one Mr. C.N. Jha. For further verification, an email was sent by the Assessing Officer to the developer/seller seeking confirmation regarding sale/ownership of Flat No. B-702. In response to the said email, the developer/seller (i.e. M/s. Keystone Realtors Private Limited) submitted the copy of Index II with Challans of duties paid by Mr. C.N. Jha for Flat No. B-702 duly registered on 17/02/2016 and also copy of an unregistered Agreement for Sale, dated 15/03/2016, pertaining to sale of Flat No. B-902 executed by the developer/seller with the Appellant. The Assessing Officer, thereafter, issued a detailed show cause letter/notice, dated 18/12/2017 to the Appellant. Since no response was received from the Appellant in respect of the aforesaid letter/notice, the Assessing Officer decided the issue against the Appellant concluding that the Appellant's claim for deduction under Section 54 of the Act was not bonafide. The Assessing Officer concluded that the Appellant did not have ownership or possession of Flat No. B-702. The Assessing Officer observed that the Appellant had entered into new Agreement for Sale with the developer/seller in respect of Flat No. B-902 on 15/03/2016 and on the same date, the developer/seller had issued possession letter to the Appellant in respect of the said flat which was filed by the Appellant during the assessment proceedings. According to the Assessing Officer, even the shifting of claim of deduction from Flat No. B-702 to Flat No. B-902 could not be accepted as the Appellant had only provided details/explanation after

being confronted by the Assessing Officer. In appeal before the CIT(A), the Appellant submitted that developer/seller had committed the mistake of allotting Flat No. B-702 to the Appellant and also to Mr. C. N. Jha. Having realized the aforesaid mistake, the developer/seller has entered into an unregistered Agreement for Sale, dated 15/03/2016, with the Appellant for allotment of Flat No. B-902 in the same building to the Appellant for the same consideration of INR 12,00,00,000/- which has been paid towards purchase of Flat No. B-702 on 15/03/2015. The CIT(A) called for a remand report from the Assessing Officer. In the remand proceedings, the Assessing Officer carried out the required verification and found the factual averments made by the Appellant to be correct. Vide remand report, dated 22/01/2022, the Assessing Officer also returned a factual finding that even the registered Agreement for Sale in respect of Flat No. B-902 was executed on 18/01/2018. However, despite the aforesaid remand report dated 22/01/2022, the CIT(A) concurred with the Assessing Officer and denied deduction under Section 54 of the Act. One of the reasons cited by the CIT(A) for rejecting the claim for deduction under Section 54 of the Act was that INR 12,00,00,000/- was a round figure which showed that the Appellant had made investment and not paid consideration for purchase of flat. The Appellant has placed before us Annexure A to the unregistered Agreement for Sale, dated 20/03/2015, which gives break-up of the aforesaid amount with 17/03/2015 as the date for making the payment. As per copy of bank statement of the Appellant placed at page 286 of the paper-book, entire payment of INR 12,00,00,000/- was made by the Appellant on 17/03/2015. Out of aforesaid payment of INR 12,00,00,000/-, the payment of INR 10,64,10,944/- represented towards cost of flat (while the balance being payment towards

service tax, taxes and pre-possession charges), and therefore, as reflected in Form 26AS of the Appellant, tax at source was deducted from the same in compliance with the provisions of Section 194IA of the Act. The aforesaid payment was towards purchase of Flat No. B-702. However, since the said flat was allotted/sold by the developer/seller to another person, Flat No. B-902 was allotted to the Appellant for same consideration. This has been clearly stated in the registered Agreement for Sale, dated 19/01/2018 in the following manner:

"WHEREAS:

a) to nn) xx xx

oo) The Purchaser/s applied to the Developers for purchase of Residential Flat No.702 on the 7th Level of Wing B of the said New Building on "ownership" basis (hereinafter referred to as "the said Booked Flat").

pp) The Developers inadvertently sold the said Booked Flat to another customer vide registered Agreement to Sale dated 15th February 2016 registered with the Sub Registrar Mumbai.

qq) Post discussions with the Purchaser/s and explaining the circumstances thereto for the inadvertent sale of the said Booked/Flat, the developer have agreed to sell and allot to the Purchaser/s. Flat No. 902 on the 9 Level of Wing B of the said New Building on ownership basis. (hereinafter referred to as "the said Residential Flat) on ownership basis for the total lump-sum consideration as stated in Clause 4 below"

8. Thus, from the material on record it is clear that the Appellant had clearly made payment of INR 12,00,00,000/- for purchase of a new asset being a residential flat on 17/03/2015 which consisted of (a) Payment against Flat Cost [INR 10,64,10,944/-], (b) Payment

against Service Tax [INR 39,45,718/- /-], (c) Payment against Taxes [INR 66,56,400/-], and (d) Payment against pre-possession charges [INR 29,86,938/-] . In our view, in the facts and circumstances of the present case, the Appellant cannot be penalized for the mistake committed by the developer/seller by allotting Flat No. B-702 to the Appellant and thereafter selling the same Flat to Mr. C.N. Jha. Clearly, the developer/seller had accepted the aforesaid mistake and accommodated the Appellant by allotting a similarly placed flat (i.e. Flat No. B-902) in the same building. The unregistered Agreement for Sale of the aforesaid Flat No. B-902 was executed on 15/03/2016 (i.e. with the specified period of 2 years from the date of transfer of the original capital asset on 12/03/2015). By that date, entire consideration of INR 12,00,00,000/- paid by the Appellant on 17/03/2015 stood appropriated by the developer/seller towards the purchase of Flat No. B-902. Further, we note that the Revenue has not disputed that the facts that the occupation certificate in respect of the project Rustomjee Oriana in which flat was booked/purchased by the Appellant was received on 07/11/2015 and that the possession of the said Flat No. B-902 was granted to the Appellant on 15/03/2016. In view of the aforesaid, we overturn the findings returned by the CIT(A) that the Appellant does not satisfy the condition laid down in Section 54 of the Act for claiming deduction and hold that the Appellant is entitled to claim deduction under Section 54 of the Act in respect of payment of INR 12,00,00,000/- as claimed by the Appellant. Accordingly, the addition of INR 11,27,41,786/- made by the Assessing Officer, which was confirmed by the CIT(A), is set aside and the Assessing Officer is directed to re-compute the capital gains, if any, after allowing deduction under Section 54 of the Act as claimed by the Appellant. Accordingly, Ground No. 2 raised by the Appellant is allowed.

Ground No. 1

9. Ground No. 1 raised by the Appellant is directed against the action of the Assessing Officer in making addition of INR 19,200/- under the head 'Income from Salaries'.
10. During the course of assessment proceedings, the Assessing Officer observed that the Appellant has shown salary income of INR 5,80,800/- whereas Form 26AS reflected salary receipts of INR 6,00,000/-. Thus, the Assessing Officer made addition of the difference of INR 19,200/-.
11. In appeal before CIT(A), the Appellant contended that the difference of INR 19,200/- was on account of (a) *Travel Allowance [INR 9,600/-]*, (b) *Medical Reimbursement [INR 7,100/-]* and (c) *Profession Tax [INR 2,500/-]* which were not liable to tax and therefore, not included in taxable salary income. However, the CIT(A) decline to grant any relief holding as under:

"Findings and Decisions

I have carefully considered the arguments of the appellant In the instant case, disallowance/addition has been made on the ground that an amount of Rs. 6,00,000/- is reflected in the form 26AS. The Appellant has submitted that Travelling allowance, medical reimbursement, and professional tax etc. of Rs. 19,200/- are not chargeable to tax. However, no evidence is submitted in his respect. Accordingly, the addition of Rs.19,200/- made by the AO is hereby confirmed. The ground of appeal no. 1 is dismissed."

12. Being, aggrieved, the Appellant is now in appeal before us on this issue.
13. We have heard the rival submissions and perused the material on

record. Since nothing has been placed before us to controvert the findings returned by the CIT(A). We decline to interfere with the order passed by the CIT(A) on this issue. Accordingly, Ground No. 1 raised by the Appellant is dismissed.

14. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 30.01.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.01.2024
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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