

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.3460/Mum/2023  
(A.Y. 2020-21)**

Kishore Bhagwandas Ramnani, B-406, Plot No. 442/444, Simla House Off Ld. Ruparel Marg, Parsi Mumbai – 400026	Vs.	Income Tax Officer-4(1)(1) Air India Building, Mumbai – 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:BCYPR3697F		
Appellant	..	Respondent

Appellant by :	Rahul Sarda
Respondent by :	Anil Sant

Date of Hearing	08.02.2024
Date of Pronouncement	14.03.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(DRP-1), Mumbai, dated 28.06.2023 for A.Y. 2020-21. The assessee has raised the following grounds before us:

- "1. The Dispute Resolution Panel erred in not entertaining the objections filed by the Appellant in Form No. 35A.*
- 2. The Dispute Resolution Panel failed to appreciate that Form No. 35A filed by the Appellant (and signed by CA. Ms. Priyanka Jain) on 17. 10.2022 was in accordance with the law, and therefore, the Dispute Resolution Panel erred in issuing the notice dated 06.04.2023 to the Appellant purporting to treat the said CA. Ms. Priyanka Jain as the 'agent of the Appellant for the purpose of section 163(1) of the Act.*

3. *Without prejudice to the above, the Dispute Resolution Panel erred in treating Form No. 35A filed by the Appellant (and signed by him) on 19.05.2023 as 'not filed'/ 'filed beyond time, and hence, dismissing the objections filed by the Appellant in limine. The Dispute Resolution Panel failed to appreciate that by the Form No. 35A filed on 19.05.2023, the Appellant only cured the defect, if any, in original Form No. 35A filed on 17.10.2022, and hence, Form No. 35A ought to be treated as filed on 17.10.2022 i.e. within time.*
4. *Without prejudice to the above, the Dispute Resolution Panel erred in dismissing the objections filed by the Appellant on technical grounds and without issuing any directions on the merits of the matter.*
5. *Rs. 17,88,000/- disallowed as per order under section 143(3) r.w.s. 144C (13) of the Income Tax Act, 1961 are stamp duty charges Rs. 17,58,000/- and Rs.30,000/- registration fees borne by the assessee and hence the same may please be allowed as expenses.*
6. *Rs 2,20,000/- disallowed as per order under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 are Society Transfer Fees paid by the assessee. Same are reflected in his bank account and hence may please be allowed as expenses.”*

2. Fact in brief is that return of income declaring total income of Rs.58,76,500/- was filed on 28.07.2020. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 29.06.2021. During the year under consideration the assessee was having income from capital gains and income from other sources. As per the computation submitted by the assessee, the assessee has shown long term capital gain of Rs.104,07,700/- on sale of immovable property i.e flat no. 406, 4<sup>th</sup> Floor, Shimla House Cooperative Society, Malabar & Kumhala Hill Division, Mumbai on 06.08.2019 for Rs.2,93,00,000/-. Out of the capital gain of Rs.104,07,700/- the assessee has invested Rs.50,00,000/- in the capital gain bond scheme as per Sec. 54EC of the Act and offered tax on remaining capital gains of Rs.54,07,700/-. On verification of the detail filed the assessing officer noticed that assessee has claimed deduction of Rs.17,58,000/- and Rs.30,000/- pertaining to stamp duty and registration charges of Rs.2,20,000/- in respect of society transfer fees paid by the assessee out of the aforesaid capital gain amount. The assessing officer has disallowed the claim of aforesaid

expenses on the ground that assessee has not furnished the supporting document regarding making payment of aforesaid expenditure claimed by the assessee.

3. The assessee filed objection before the DRP. The DRP has dismissed the objection filed by the assessee on the ground that original form no. 35A was non signed by the authorized representative and the fresh form no. 35A filed by the assessee cannot be considered because it was filed beyond time.

4. During the course of appellate proceeding before us the Id. Counsel contended that assessee has filed form no. 35A within the time through his authorized representative and subsequently on raising objection by the DRP the assessee has himself has filed the fresh form 35A, therefore, form no. 35A was filed within the time which was only corrected on raising objection by the DRP. Further, the Id. Counsel submitted that assessee is a non-resident and during the year assessee has sold immovable property and as per the terms of conditions of the sale the assessee has paid the stamp duty and registration charges which has been incorrectly disallowed by the assessing officer.

On the other hand, the Id. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. During the year under consideration the assessee has sold residential flat for total consideration of Rs.2,93,00,000/-. As per the terms and conditions of the sale agreement the assessee was to bear the cost of stamp duty and registration charges and the society transfer fees. The assessee has accordingly, paid stamp duty and registration charges on the sale of the flat of Rs.17,88,000/-. The assessee has also paid society transfer fees amounting to Rs.2,20,000/-. The assessee has also referred copy of sale agreement and copy of bank statement of Axis

Bank in support of his claim of making payment of aforesaid expenses. The assessing officer has disallowed the claim of such expenses merely on the ground that the Dispute Resolution Panel has treated the original Form 35A as not filed. In this regard, we find that assessee has already filed original form 35A within the time limit, however, same was corrected as pointed out by the DRP on the ground that authorized representative was not the right person to sign form 35A. After considering the above facts it is evident that assessee has made correction in the form 35A which cannot be treated as filed beyond time limit, therefore, we don't find any justification in the finding of the DRP for treating the form 35A as not filed. Further, on merit we find that the assessing officer has not considered that assessee has actually incurred the expenses pertaining to stamp duty and registration charges and society transfer charges as per the terms and conditions of the agreement and evidence of payment as reflected in the copy of bank statement, therefore, we direct the assessing officer to allow the claim of the assessee after verification of the copy of agreement and copy of bank statement filed by the assessee. Accordingly, the appeal of the assess is allowed.

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

Order pronounced in the open court on 14.03.2024

Sd/-

(Amit Shukla)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 14.03.2024

Rohit: PS

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

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

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.