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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-05-2003

Judge : V Wakharkar, A Jain, Jm

Appellant : Abraham Koshy

Respondent : Dcit

Judgement :

1. This appeal is for the assessment year 1996-97, against the order dated 25.5.1998, passed by the learned Commissioner (Appeals).

2. In the return for the assessment year 1996-97, the assessee showed receipt of Rs. 1.91 crores on account of transfer of tenancy rights.

Against this receipt, the assessee claimed deduction u/s. 54 of the Income Tax Act, 1961, to the extent of Rs. 1,32,52,307. The exemption was claimed on the ground that the assessee had purchased two ne properties, one at Mumbai and the other at Cochin. While processing the return, the learned Assessing Officer disallowed the deduction under section 54. The Adjustment Explanatory Sheet read as under :- "The assessee has claimed deduction u/s. 54 against LTCG. Since the asset transferred is not a building or land appurtenant thereto in the nature of residential house but in the nature of tenancy right, the deduction that would have been available to the assessee could be under section 54F. Since the assessee has invested in two residential premises viz. (1) Flat No. 4, Indrajeet, 17th Road, Santa Cruz (West), Mumbai-54 (Rs. 1,23,19,307/-) and (2) Flat No. A-

12, 7th floor, Periyar Hern. Cochin, Kerala (Rs. 9,33,000/-) the assessee's reinvestment for claim 54F is also rendered ineligible in view of the provision of section 54F wk reads as under: "Nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchases within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the had "income from House Property", other than the new asset".

Accordingly, the entire deduction claimed u/s. 54 is disallowed and adjusted. Levy additional tax on Rs. 1,32,53,811/- (Adjusted total income-Rs. 1,97,81,614/-)." 3. The adjustment made was challenged by the assessee in appeal before the learned CIT(A). The learned CIT (A) held that on the basis of information available with the return, the assessee was not entitled to deduction either under section 54 or under section 54F and as such, the adjustment made by the learned Assessing Officer was in line with law.

The assessee's appeal was dismissed.

6. Before us, the learned Counsel for the assessee conceded that the assessee was not entitled to deduction u/s. 54 as shown in the return of income. He placed reliance upon the decision of the Hon'ble Jurisdictional High Court in the case of "CIT VS. Amitabh Bhachan Corporation Ltd." 261 ITR 45, in support of the proposition that under section 143 (1)(a), the Assessing Officer ought to allow any deduction or relief which was allowable under law, though such relief or deduction may not have been claimed by the assessee in the return. He further conceded that house shown to have been purchased at Cochin was an ansentral house. The return showed tow payments in respect of Cochin house one before 31.3.96 and another before 30.9.96. Exact dates of payments were not shown. He argued that deduction u/s. 54F was permissible in respect of Flat purchased at Santa Cruz and the authorities below erred in making a prima facie adjustment by not allowing deduction under section 54F in respect of the moneys invested in residential property at Mumbai.

7. The learned DR. contended that the assessee had claimed deduction under section 54 which admittedly, was not available to him. The learned Assessing Officer had considered availability of deduction under section 54F and as such the action of the Assessing Officer was in conformity with the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid case. No deduction under section 54F was available in respect of the house property at Cochin as admitted by the learned A.R. As regards' purchase of property at Mumbai, information available on record did not show that the conditions laid down in section 54F with regard to the specific period of investment were satisfied.

8. We have considered the rival submissions and have perused the records. The assessee claimed deduction under section 54 in the return and provisions of the said section were not applicable to the assessee's case. The question of allowing the assessee's claim under section 54 did not arise. As regards deduction under section 54F, admittedly, the said deduction was not allowable in respect of property at Cochin. Even in regard to the house purchased in Mumbai, the return did not show that the necessary conditions stood complied with. the Prima-facie adjustments made by the Assessing Officer were, therefore, correct in law and on facts. We see no grounds to interfere with the order of the learned CIT (A).