

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.1174/Del/2022
Assessment Year: 2012-13

Ms. Sarita Gupta, 315, Prem Bhawan, Railway Road Hapur, Hapur	Vs.	Pr. CIT, Ghaziabad
PAN :ACBPG0393H		
(Appellant)		(Respondent)

Assessee by	Sh. Sankalp Malik, Advocate Sh. Sanjay Malik, Advocate
Department by	Sh. Subhra Jyoti Chakraborty, CIT(DR)

Date of hearing	29.11.2023
Date of pronouncement	07.12.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

The present appeal of the assessee arises out of order dated 22.03.2022 passed by learned Principle Commissioner of Income Tax (PCIT), Ghaziabad, under section 263 of the Act for the assessment year 2012-13.

2. Briefly the facts are, the assessee is a resident individual. Information was received by the Assessing Officer indicating that in the year under consideration, the assessee had sold an immovable property for a consideration of Rs.62,06,000/-. Based on such information, the Assessing Officer reopened the assessment under section 147 of the Act. In response to the notice issued under section 148 of the Act, the assessee filed her return of income declaring income of Rs.6,42,470/-, which was the income declared in the original return of income.

3. In course of assessment proceedings, the Assessing Officer called upon the assessee to furnish the details of the properties sold and the resultant capital gain. In response, the assessee furnished all the details relating to the property sold and the capital gain arising out of such property. From the details furnished, it was found by the Assessing Officer that the property was under the joint ownership of the assessee and another co-owner and was purchased for an amount of Rs.20 lakhs, out of which, assessee's share was Rs.10 lakhs. Whereas, the property was sold for a consideration of Rs. 62,06,000/-, out of which the assessee share was Rs. 31,03,000/-. After reducing the cost of acquisition and indexation benefit, the long term capital gain

arising out of sale of property worked out to Rs.14,59,324/-. Whereas, the assessee has made investment in purchase of new residential property of the entire capital gain amount, hence, claimed exemption under section 54 of the Act. After verifying all the details, the Assessing Officer accepted the return of income filed by the assessee and accordingly completed the assessment.

4. Post completion of assessment, learned PCIT called for and examined assessment record and while doing so, she found that the capital gain amount was not deposited in the capital gain account scheme during the interim period till its utilization in purchase/construction of new property. She observed, the aforesaid facts were not considered/inquired into by the Assessing Officer. Thus, she was of the view that due to non-consideration of these facts the assessment order is erroneous and prejudicial to the interest of Revenue. Therefore, she issued a show-cause notice under section 268 of the Act calling upon the assessee to show-cause as to why, the assessment order should not be declared as erroneous and prejudicial to the interest of Revenue and set aside. The assessee furnished a detailed reply objecting to the proposed action under section 263 of the Act. However, rejecting assessee's submission learned PCIT set aside

the assessment order with a direction to disallow the deduction claimed under section 54 of the Act, as, the assessee has failed to deposit the capital gain amount in capital gain account scheme.

5. We have considered rival submissions and perused the materials on record. From the order sheet maintained by the Assessing Officer in the assessment record, it is evident that in course of assessment proceedings, the Assessing Officer has thoroughly examined the issue of sale of the immovable property and the resultant capital gain arising from such sale. In fact, in order-sheet entry dated 18.06.2019, the Assessing Officer has clearly stated that assessee's counsel has furnished written reply, sale deed, copy of purchase of property and computation of capital gain. In the said order sheet, the Assessing Officer has also called upon the assessee to furnish the details of exemption claimed under section 54 with supporting evidences. Thus, as could be seen from the order-sheet entries in the assessment record, the Assessing Officer has duly examined the issue relating to capital gain from sale of property as well as assessee's claim of deduction under section 54 of the Act. A perusal of the show-cause notice issued under section 263 of the Act as well as the order passed under the said provision clearly reveal that the

revisionary authority has not expressed any doubt regarding the quantum of capital gain arising at the hands of the assessee and also the fact that such capital gain was invested in purchase/construction of residential house within the time limit prescribed under section 54(1) of the Act. Only because the capital gain was not deposited in the capital gain account scheme, the revisionary authority has treated the assessment order to be erroneous and prejudicial to the interest of Revenue. In our view, learned PCIT has adopted a hyper-technical approach while dealing with the issue. When the basic conditions of section 54(1) has been satisfied, in our view, the assessee remains entitled to claim the deduction under section 54 of the Act. In any case of the matter, there is no prejudice caused to the Revenue as the assessee in terms of section 54(1) of the Act is entitled to deduction.

6. In the aforesaid view of the matter, we hold that exercise of power under section 263 of the Act to revise the assessment order in the instant case is invalid. Accordingly, we quash the order passed under section 263 of the Act and restore the assessment order.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 7th December, 2023

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT**

Dated: 7th December, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi