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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 536/2023**

PR. COMMISSIONER OF INCOME TAX DELHI 12..... Appellant

Through: Mr Sanjeev Menon, Standing
Counsel.

versus

SH MAYUR BATRA Respondent

Through: Mr Ruchesh Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **19.09.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl. 48326-27/2023 [*Applications filed on behalf of the appellant/revenue seeking condonation of delay of 24 days in filing and 93 days in re-filing the appeal*]

1. These are the applications moved on behalf of the appellant/revenue, seeking condonation of delay in filing and re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 24 days in filing and 93 days in re-filing the appeal.

2. Mr Ruchesh Sinha, learned counsel who appears on behalf of the respondent/assessee, does not oppose the prayer made in the application.

3. Accordingly, the delay is condoned.

4. The applications are disposed of in the aforesaid terms.

ITA 536/2023

1/5



ITA 536/2023

5. This appeal concerns Assessment Year (AY) 2014-15.

6. The record shows that two issues arose for consideration before the statutory authorities:

(i) Whether the respondent/assessee would be entitled to the exemption under Section 54 of the Income Tax Act, 1961 [in short, “Act”]?

(ii) Whether the Assessing Officer is right in disallowing the tax credit amounting to Rs.25,75,000/-?

7. The first issue arose in the backdrop of the fact that the respondent/assessee had sold an immovable property which was held over by him for three (3) years and the proceeds received thereof had been invested in a plot located in Dubai.

8. The record shows that the property sold is described as E-6/2 Vasant Vihar, Delhi [hereafter referred to as, “Vasant Vihar Property”]. This property was sold for an aggregate consideration of Rs.25,75,00,000/-.

8.1 The record also shows that the said property was let out on rent in earlier Financial Years (FYs) and the lease rent was offered for imposition of tax.

8.2 Furthermore, insofar as the plot which was purchased by the respondent/assessee is concerned, the record shows that the date of purchase was 14.07.2013.

8.3 The respondent/assessee, it appears, placed on record a certificate showing the completion of construction on the said plot. This certificate is apparently dated 15.12.2015.



9. The record also discloses that the plot was purchased for a value of Rs.15,48,30,000/- [AED 97,50,000 x 15.88, at an exchange rate of 1 AED = INR 15.88].

10. The respondent/assessee appears to have paid Rs.15,63,78,300/-, inclusive of stamp duty.

11. The buyer of the Vasant Vihar property had deducted TAS on the sale value at the rate of 1% amounting to Rs.25,75,000/- in terms of Section 194IA of the Act.

12. The second issue which arises for consideration is with regard to disallowance of tax credit amounting to Rs.25,75,000/-.

12.1 Given this position, the AO made an addition to the respondent/assessee's income amounting to Rs.15,58,11,962/-, via the assessment order dated 28.12.2016

13. The Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] *via* order dated 30.11.2017 reversed the addition made by the AO.

13.1 This order has been sustained by the Income Tax Appellate Tribunal [in short, "Tribunal"] *via* order dated 29.09.2022.

14. The admitted position is that the respondent/assessee had not disclosed the sale of property and the long term capital gains earned in the return.

14.1 The AO obtained this knowledge due to information contained in Form 26AS and Form 26QB.

15. The CIT(A), broadly, concluded that the information furnished by the respondent/assessee could be taken into account to arrive at a decision as to whether the exemption under Section 54 of the Act was available in the



instant case.

16. Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the respondent/revenue, has raised an issue concerning the provisions of Sub-Section (2) of Section 54 of the Act.

16.1 It is Mr Menon's contention that since there was a hiatus in the purchase of the plot and construction on the property, the said provision required the respondent/assessee to deposit money with a bank or an institution as may be specified, or utilised in accordance with, any scheme which the Central Government may, by notification, frame in that behalf.

16.2 In other words, Mr Menon says that the necessity of filing a return emanates on account of condition contained in Sub-section (2) of Section 54 of the Act.

17. Furthermore, Mr Menon says that there is a contradiction in the stand taken by the respondent/assessee before the AO and that which was taken before the CIT(A).

17.1 Before the AO, the stand taken by the respondent/assessee was that he had simply purchased a plot. Mr Menon says that there was no mention of the construction being made on the said plot.

18. The record, however, shows quite clearly that both these issues were not raised by the appellant/revenue before the CIT(A) or the Tribunal. As a matter of fact, these are not even the issues raised in the instant appeal filed before this court.

19. The CIT(A) has examined the facts on record, and concluded clearly



that the respondent/assessee had carried out construction on the plot purchased by him within the statutory period i.e., three (3) years.

19.1 This finding has been affirmed by the Tribunal.

20. Insofar as this aspect is concerned, *prima facie*, we are not impressed.

21. As regards the other aspect i.e., the applicability of Section 54(2) of the Act is concerned, we would like to hear the counsel for the parties further, with of course, the caveat as to what would be the ramifications of admitted position that issue was not raised by the appellant/revenue before any of the authorities.

22. List the matter on 09.11.2023.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 19, 2023/pmc

[Click here to check corrigendum, if any](#)

ITA 536/2023

5/5