आयकर अपीलीय अधिकरण"B"न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER AND Dr.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1867/PUN/2019
निर्धारणवर्ष / Assessment Year: 2013-14

Sonia Satish Sethiya, Flat No.4, Yash Super Market, Sarafa, Aurangabad – 431 001 PAN : DLJPS5779F	Vs	ACIT, Jalna Circle, Jalna
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Prateek Jha
Revenue by	Shri M.G. Jasnani
Date of hearing	21-12-2022
Date of pronouncement	10-01-2023

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee's appeal for AY 2013-14, arises against the CIT(A)-I, Aurangabad's order dated 25.09.2019 passed in case No. ABD/CIT(A)-1/385/2018-19, involving proceedings under 143(3) r.w.s.147 of the Income Tax Act, 1961 in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee appears to have raised her two substantive grounds in the instant appeal *inter alia* challenging both the learned lower authorities action making the alleged section 51 addition of Rs.23,57,143/- and disallowing her section 54F/51 deduction claim of Rs.19,40,450/-; respectively.

3. Mr. Jha first of all invited our attention to the CIT(A)'s detailed discussion as well as his computation in page 20 that he has wrongly included the admitted advance amount forfeited of Rs.23,57,143/- as part of the actual sale consideration of Rs.20.10 lakh, resulting in the gross figure of Rs.43,67,143/- than reducing the same from the cost of acquisition of Rs.8,64,220/-, to arrive at net capital gains of Rs.35,02,943/- in issue.

4. Learned counsel invited our attention to the impugned statutory provision section 51 itself that such a forfeited advance money has to be deducted from the cost for which the asset was acquired than adding the same with the actual sale consideration received on transfer of the asset. We sought to examine the instant issue of correctness of the assessee's forfeiture claim itself. Learned counsel stated that such a course of action is no more available to the tribunal as both the lower authorities have already admitted the veracity of the assessee's forfeiture claim. We hardly find any merit in the assessee's instant technical arguments in light of hon'ble jurisdictional high court's landmark decision in *Ahmedabad Electricity Company Ltd. Vs. CIT (1993) 199 ITR 351 (Bom.) (FB)* that the clinching statutory expression "*pass such orders thereon as it thinks fit*" in section 254(1) of the Act has to be given wider than

a narrower interpretation. We accordingly accept the Revenue's vehement arguments at this stage that the assessee's claim of having forfeited the impugned sum of Rs.23,57,143/- itself does not satisfy the basic ingredients of genuineness in the given facts and circumstances before us.

5. Learned counsel at this stage invited our attention to the assessee's detailed paper book running into 56 pages that she herself and her co-owner Shailadevi Sunil Shethiya had executed "Issar Pavti" and "Bharna Pavti" way back on 12th January and 25th June, 2011; respectively with Santosh Pannalal Karwa for transfer of their respective shares in lieu of receiving Rs.1.00 crore as advance. The assessee's share in the said advance money is stated to be Rs.23,57,143/- in issue. The alleged total consideration therein was Rs.5.25 crore. Learned counsel's stand is that since the said vendee could not perform his contractual obligations, the assessee forfeited the impugned advance sum followed by her executing the registered sale deed dated 25-07-2012 in favour of other vendee(s). And that Pannalal Karwa above former vendee had put in appearance as a witness so as to avoid future complications.

6. All these assessee's arguments fail to evoke our concurrence. This is *inter alia* for the reason that the alleged argument between

the assessee and Pannalal Karwa is neither here nor there on record. We find from a perusal of the case file that she appears to have produced only a proforma of agreement to sell containing no signatures from either parties. We further make it clear that the assessee's stand all along is that she had executed the so called "Issar Pavti" and "Bharna Pavti" in the year 2011 and the sale deed on 25-07-2012. Her consideration money in the said sale deed is found to be Rs.20.10 lakh only. We sought to know as to what formed the reason for reducing the sale price from even the advance amount of Rs.23.57 lakh to Rs.20.10 lakh only within such a short span of time. Learned counsel submitted that the assessee's lands had been reserved for some public purpose and therefore, she had to settle for the lower actual consideration only. The assessee's instant explanation hardly carries any merit once there is no evidence before us to this effect. Her further claim that she had infact made Mr. Pannalal Karwa to appear as a witness so as to avoid future obligations after the sale deed dated 25-07-2012 (supra) also fails to cut any ice since the said registered document does not contain any stipulation to this effect. It is in view of all these surrounding suspicious circumstances that we are forced to conclude that the assessee has failed to prove this socalled cash advance amount of Rs.23.57 lakh as the sum forfeited u/s.51 of the Act. We, therefore, reject all of her arguments as lacking genuineness in light of human probabilities as per *Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC) and CIT Vs. Durga Prasad More (1972) 82 ITR 540 (SC).* Learned Assessing Officer is accordingly directed to assess this amount of Rs.23.57 as "unexplained" only. Necessary computation shall follow as per law.

7. The assessee at this stage vehemently argued that we could not change the head of income in section 254(1) proceedings. We are afraid that the learned counsel's instant argument very well goes against the hon'ble jurisdictional high court's landmark decision in *CIT Vs. Gilbert and Barker Manufacturing Company (1978) 111 ITR 529 (Bom.)* deciding the issue in favour of the tribunal's jurisdiction to this effect. We make it clear that we have heard the assessee at length regarding the instant former issue vis-à-vis taxability of the impugned section. The Assessing Officer shall ensure therefore that the impugned sum of Rs.23.57 lakh is assessed as "unexplained" followed by his necessary computation to be finalized as per law.

This first and foremost issue is decided in Revenue's favour in foregoing terms.

8. Next comes the latter issue of 54F deduction of Rs.19,40,440/-. We note from a perusal of the CIT(A)'s detailed discussion that both the lower authorities held the assessee ought to have deposited in her capital gain account scheme. It emerges from a perusal of the case file at pages 47 to 56 of the paper book that she had very well purchased the new residential asset/house on 28-03-2013 very well even before the due date of filing the return u/s.139(1) of the Act. We thus delete the impugned disallowance for this precise reason alone since no other specific reason has been pointed out in both the lower authorities respective orders under challenge. The assessee succeeds in her instant latter substantive ground therefore.

9. No other ground or argument has been raised before us.

10. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open Court on 10th January, 2023.

Sd/-	Sd/-
(Dr.DIPAK P. RIPOTE)	**(S S GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 10th January, 2023
Satish

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad
4. The Pr. CIT-1 Aurangabad
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT,Pune.

S.No	Details	Date	Initials	Designation
1	Draft dictated on	28-12-2022		Sr. PS/PS
2	Draft placed before author	29-12-2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			