

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

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

ITA No.2046/Del/2023
Assessment Year: 2020-21

Shri Anurag Lakshman Pande, 86, Rajouri Apartments, Opp. Gol Free Colony, Rajouri Garden, New Delhi	Vs.	DCIT, Central – Intl. Tax-2(2)(2), New Delhi
PAN :AKQPP6996G		
(Appellant)		(Respondent)

Assessee by	Sh. Lalit Mohan, CA & Sh. Parth Singhal, Advocate
Department by	Sh. Vijay B. Vasanta, CIT(DR)

Date of hearing	03.07.2024
Date of pronouncement	10.07.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This is an appeal by the assessee against the final assessment order dated 27.06.2023 passed in pursuance to the directions of learned Dispute Resolution Panel (DRP) for the assessment year 2020-21.

2. In ground no. 1, the assessee has challenged the addition of long term capital gain of Rs.33,73,120/-.

3. Briefly the facts are, the assessee is a non-resident individual. For the assessment year under dispute, the assessee had filed his return of income on 08.12.2020 declaring income of Rs.32,27,218/- and claiming refund of Rs.24,99,640/-. In the year under consideration, the assessee sold two immovable properties, one being a residential property, bearing unit no. MGE TW-19/16/25a, Fairway West, M3M Golf Estate, Sector-65, Gurgaon, Haryana, for a total sale consideration of Rs.3,05,00,000/-. Whereas, the second property sold by the assessee was a commercial property bearing Shop No. G-35, Ground Floor at Baani Square, Mayfield Garden, Sector-50, Adampur, Gurgaon for a total consideration of Rs.59,60,000/-. In the computation of income, after claiming indexation benefit the assessee claimed long term capital loss in respect of both the properties sold. While verifying the return of income and computation of income furnished by the assessee, the Assessing Officer noticed that as against the sale consideration of Rs.3,05,00,000/- received in respect of residential property, the assessee had acquired it for a consideration of Rs.3,81,02,159/-. Whereas, in respect of the commercial property, as against the

sale consideration of Rs.59,60,000/-, the assessee has set off indexed cost of acquisition of Rs.69,46,598/- and claimed long term capital loss of Rs.9,86,598/-.

4. After calling for and examining the registered sale deed relating to the sale of commercial property, he found that as per the registered sale deed, the cost of acquisition of the property by the assessee was Rs.21,65,280/- along with stamp duty of Rs.3,41,040/-. Therefore, he rejected the indexed cost of acquisition claimed by the assessee and re-computed the capital gain by taking the cost of acquisition at Rs. 21,65,280/- and allowing benefit of indexed cost of Rs.25,86,880/-. This resulted in net long term capital gain of Rs.33,73,120/- as against long term capital loss of Rs. 9,86,598/- shown by the assessee. Accordingly, he computed the income of the assessee. Against the determination of long term capital gain of Rs. 33,73,120/-, the assessee raised objections before learned DRP. While disposing of the objections of the assessee on the issue, learned DRP directed the Assessing Officer to pass a speaking order after taking into account the submissions made by the assessee before him. However, in the final assessment order, the Assessing Officer

again made the addition of Rs. 33,73,120/-, being long term capital gain from sale of commercial property.

5. Before us, learned counsel appearing for the assessee submitted that the commercial property was originally owned by Mr. Rajan Chanana, who had entered into an agreement with the developer of the property, namely, M/s. Baani Technology Services (P) Ltd. for purchasing the property for a total consideration of Rs.21,65,280/-. He submitted, subsequently, the assessee entered into an agreement to sale with Sh. Rajan Chanana on 1st April, 2012 for purchasing the property for a total consideration of Rs.45 lakhs. He submitted, the entire sale consideration of Rs.45 lakhs was paid to Mr. Rajan Chanana through two cheques dated 06.03.2012 and 01.04.2012. He submitted, after receiving the consideration, Mr. Rajan Chanana furnished an undertaking to the developer, M/s. Baani Technology Services (P) Ltd. for transferring the property to the name of the assessee. He submitted, pursuant to such undertaking, the developer, M/s. Baani Technology Services (P) Ltd. executed the conveyance deed in favour of the assessee on 13.03.2019. However, he submitted, in so far as the assessee is

concerned, the cost of acquisition is Rs. 45 lakhs, the amount paid to Mr. Rajan Chanana. He submitted, the value of the property, as on the date of execution of conveyance deed, was computed by the stamp duty authority at Rs. 48,71,880/-. Therefore, he submitted, the cost of acquisition at the hands of the assessee should be taken at Rs.45 lakhs and not Rs.21,65,280/-.

6. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned first appellate authority.

7. We have considered rival submissions and perused the materials on record. Perusal of the assessee order indicates that the Assessing Officer has taken the cost of acquisition of the commercial property at Rs.24,23948/-, including the stamp duty of Rs.3,41,040/- based on the conveyance deed dated 13.03.2019 executed between M/s. Baani Technology Services (P) Ltd. and the assessee. However, the agreement to sale between the assessee and Mr. Rajan Chanana and the letter issued by Mr. Rajan Chanana to M/s. Baani Technology Services (P) Ltd. nominating assessee in his place, the undertaking of the assessee

to M/s. Baani Technology Services (P) Ltd. clearly reveal that the assessee had paid an amount of Rs. 45 lakhs towards sale consideration of the property to Mr. Rajan Chanana, who was allotted the property by the developer, M/s. Baani Technology Services (P) Ltd. It is further evident, Mr. Rajan Chanana was given allotment of the property by the developer on payment of sale consideration of Rs. 21,65,280/- along with stamp duty of Rs.3,41,040/-. However, as far as the assessee is concerned, he has paid an amount of Rs.45 lakhs to Mr. Rajan Chanana towards sale consideration of the property. In fact, the conveyance deed between the assessee and M/s. Baani Technology Services (P) Ltd. clearly indicates that the stamp duty authority has determined the value of the property for stamp duty purpose at Rs. 48,71,880/-.

8. Thus, as on the date of the conveyance deed, the value of the property is more than Rs.45 lakhs. Moreover, there is direct evidence on record, which indicates that the assessee, in fact, had paid the consideration of Rs.45 lakhs to Mr. Rajan Chanana through cheques for purchasing the property. Therefore, the cost of acquisition, insofar as the assessee is concerned, has to be

taken at Rs.45 lakhs and indexation benefit has to be given to the assessee based on the cost of acquisition of Rs.45 lakhs.

9. In the aforesaid view of the matter, we direct the Assessing Officer to delete the addition of Rs.33,73,120/- made towards long term capital gain and accept the computation of income of the assessee. This ground is allowed.

10. In ground no. 2, the assessee has challenged denial of benefit of carry forward of capital loss.

11. As discussed earlier, in the year under consideration, the assessee had sold two properties. Insofar as the residential property is concerned, the assessee had sold the property for a consideration of Rs.3,05,00,000/-. Whereas, he had purchased the property for a consideration of Rs.3,81,02,159/-. Therefore, after adjusting the indexed cost of acquisition, the assessee had claimed long term capital loss. In respect of commercial property as well, the assessee had claimed long term capital loss of Rs.9,86,598/-. However, while completing the assessment, the Assessing Officer did not allow set off and carry forward of long term capital loss.

12. Before learned DRP, the assessee raised objections on the issue. While disposing of assessee's objections, learned DRP directed the Assessing Officer to allow set off of long term capital loss as per law by passing a speaking order. However, while passing the final assessment order, though, the Assessing Officer set off the long term capital gain computed on sale of commercial property against long term capital loss on sale of residential property, however, he did not allow carry forward of the long term capital loss remaining after set off.

13. Having considered rival submissions and perused the materials on record, we are of the view that the assessee is entitled to avail the benefit of carry forward of long term capital loss. Accordingly, the Assessing Officer is directed to verify the issue factually and allow carry forward of long term capital loss claimed by the assessee. This ground is allowed.

14. In the result, the appeal is allowed.

Order pronounced in the open court on 10th July, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 10th July, 2024.

RK/-

Copy forwarded to:

1. Appellant

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

Asst. Registrar, ITAT, New Delhi