

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

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 7904/Del/2018 : Asstt. Year: 2015-16

Subramanian Swaminathan, Malik & Co., Tax & Economic Laws Advocates, 305/7, Thapar Nagar, Meerut, Uttar Pradesh-250001	Vs.	ACIT(Intl. Taxation), Circle-3(1)(2), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. CCDPS9395F		

**Assessee by : Sh. Sankalp Malik, Adv.
Revenue by : Sh. Sanjay Kumar, Sr. DR**

Date of Hearing: 15.03.2023	Date of Pronouncement: 12.05.2023
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-43, New Delhi dated 22.10.2018.

2. The assessee has raised the following grounds of appeal:

"1. Because the Ld. CIT(A) has erred in law and on facts by rejecting the deduction u/s 54F and making an enhancement of Rs. 1,73,65,056/- on the ground that possession of flat was not given to the assessee, because:

1.1. The necessary ingredient u/s 54F is reinvestment by way of purchase construction or purchase and construction but not possession.

1.2. The rights accrued to the Assessee when the Purchase Agreement & Construction Agreement were executed and registered.

1.3. The delay in handing over the possession was not in the control of the Assessee.

1.4. No tax liability accrues to the assessee in the year under consideration, as the sale proceeds were duly deposited in the Capital Gains Scheme, irrespective of any other fact.

2. Because having regard to the facts and circumstances of the case, the Ld. CIT(A) erred in enhancing the income of the assessee, that too by recording incorrect facts that no amount was deposited in the capital gains scheme.

3. Because without prejudice to the above, the Ld. CIT(A) erred in law and on facts by disallowing the expenses to the tune of Rs. 2,83,473/- incurred in lieu of purchase of the new residential unit, more so, when all evidence were duly submitted before the Authorities below.

3.1. Because the registration expenses were much over and above the amount claimed and all evidences were duly submitted before the lower authorities.

4. Because in the fact and circumstances of the case, the Ld. AO erred in making disallowances and the Ld. CIT(A) further erred in disallowing the entire deduction, rightfully claimed u/s 54F of the Act.

5. Because the Assessee denies its liability to be assessed at an income of Rs. 16,49,432/- as computed by the Ld. AO or at the enhanced income made by the Ld. CIT(A)."

3. The assessee is a resident of Kuwait & a doctor by profession. The Assessee in the year under consideration, sold a Plot of Land and earned LTCG, which was invested in the purchase and construction of a residential house and accordingly, deduction was claimed.

4. Thereafter, the case was opened for limited scrutiny by CASS to examine "large deduction claimed under section 54B, 54C, 54D, 54G & 54GA" as would be evident from the Assessment Order (Para 2, Page 1 of the Assessment Order)

5. During scrutiny proceedings, the said claim of deduction under section 54F, had been examined in detail and duly allowed. However, only the indexed cost of acquisition of Rs. 10,25,801/- & the expense of Rs. 2,83,473/- was disallowed.

6. For the sake of ready reference, the findings of the AO (Para 5, Page 2 of the Assessment Order) is reproduced as under:

"5. The record of the A.Y. 2015-16 was received in this office from ITO, ward 45(3), New Delhi which received the records from ITO, Ward-44(1), New Delhi. Record was perused thoroughly but no aforesaid documents were found. So, in the absence of any explanation/ supporting evidence, in view of the provisions of the provisions of the act, this amount of Rs. 10,25,801/- and Rs. 2,83,473/- (Rs. 13,09,274/-) are not allowed as transfer expenses. Hence, the amount of Rs. 10,25,801/- and Rs. 2,83,473/- are added to the income of the assessee. In view of the above, I am satisfied that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. Accordingly, penalty proceedings u/s 271(1)(c) of the Act is initiated separately."

7. Aggrieved by the action of the AO, the assessee preferred an appeal before the Ld. CIT(A), who in turn, enhanced the income from capital gains to Rs. 1,73,65,056/- while disallowing the entire deduction u/s 54F.

8. The relevant findings as recorded by the Ld. CIT(A) in para 5.2.3 at Pages 16-17 are reproduced as under:

"5.2.3 It is however clear that the construction of the flat was not completed within a period of 3 years. The plot of land was transferred on 14.05.15. The statement furnished by the appellant that construction was completed on 14.05.15 is totally incorrect as the construction agreement itself was signed on 31.01.15. The flat has still not been handed over to the appellant which is clearly indicated in the material submitted by the appellant himself. In the absence of acquisition of residential house within a period of 3 years by way of construction the appellant is not eligible for deduction under section 54F. The reliance on circular number 471 and 672 is not relevant since the said circulars are applicable only to construction by DDA or any similar cooperative society and such construction would be deemed to be construction made by the assessee. It is no manner relaxes the three year timeline provided under section 54F for cases where there was no deposit in the CG Account Scheme. In the appellants case the capital gains has not been appropriated towards the acquisition of a residential house by way of purchase and neither has the amount been deposited in a designated account to be utilized for construction. The construction time line has not been met and therefore deduction under section 54F is not eligible. As a result the income from capital gains is enhanced to an extent of Rs. 1,73,65,056/- due to the said deduction under section 54F not being eligible to the appellant."

9. Aggrieved by the action of the Ld. CIT(A), wherein the Id. CIT(A) enhanced the income holding that,

- a) construction was not completed within 3 years and
 - b) non-deposit of the amount in CG Scheme,
- the assessee filed appeal before the Tribunal.

10. Thus, the only effective issue involved in the present appeal is the disallowance of deduction under section 54F, and enhancement made by the Ld. CIT(A) viz. a) that the amount of Sale Consideration was not deposited in the Capital Gains Account Scheme. b) That the claim of 54F is not applicable as the construction has not been completed.

11. Heard the arguments of both the parties and perused the material available on record.

12. In the instant case, undisputedly, the amounts for purchase of property and the construction thereon, were paid duly within the relevant period, as prescribed under law and that too from the Capital Gains Account. The said fact of the payments being made, has been admitted by the Ld. CIT(A), which is evident from the perusal of in para 5.2.2 at Page 16 of his order. In such circumstances, the disallowance of the entire exemption only because the construction was not completed is without any basis and/or merit and the said action of the Ld. CIT(A) deserves to be quashed.

13. On this issue, reliance is being placed on the following judgments:

- Smt. Rajneet Sandhu vs. CIT, [2011] 16 taxmann.com 210 (Chandigarh)

The construction was in progress and was not complete and in view thereof the benefit of exemption claimed under section 54F was rejected by the authorities below. However, following the ratio laid down by the Madhya

Pradesh High Court in the case of Smt. Shashi Varma v. CIT [1997] 224 ITR 106. It was found that there was no merit in the plea of the authorities in denying the exemption under section 54F on the ground that the construction of the house had not been completed. The requirement of sections 54 and 54F is for the assessee to have either purchased a residential house being a new asset within the stipulated period or construct a residential house within a period of three years from the date of transfer. The section does not prescribe the completion of the construction of the residential house and the thrust is on the investment of the net consideration received on sale of original asset and the start of construction of a new residential house. In view thereof, where the assessee had invested the consideration received on sale of original asset in the purchase of the plot of land and started construction though not completed, the assessee had complied with the provisions of section 54F and hence was entitled to the benefit of exemption claimed. Accordingly, the order of the Commissioner (Appeals) was set aside and directed the Assessing Officer to allow the claim of the assessee in respect of the benefit of exemption claimed under section 54F. [Para 11]

➤ Smt. Shashi Varma v. CIT [1997] 224 ITR 106 (MP.)

More so, section 54 only says that within two years, the assessee should have constructed the house but that does not mean that the construction of house should necessarily be complete within two years. What it means is that the construction of house should be completed as far as

possible within two years. In the modern days, it is not easy to construct a house within the time-limit of two years and under the Government schemes, construction takes years and years. Therefore, confining to two years' period for construction and handing over possession thereof is impossible and unworkable under section 54. If substantial investment is made in the construction of house, then it should be deemed that sufficient steps have been taken and this satisfies the requirements of section 54. Therefore, the view taken by the Tribunal was not correct.

- *Hasmukh N. Gala vs. ITO [2017] 83 taxmann.com 49*

It was held that completion of the construction or possession of the residential house is not material if assessee has invested the substantial part of the money for acquisition or construction of residential house. In such a case deduction u/s 54 or 54F cannot be denied.

- *Pr. CIT vs. C. Gopaldaswamy [2016] 384 ITR 307 (Karn)*

It was held that where the assessee has entered into an agreement with a builder and invested the capital gain for purchase of a residential unit, he is entitled to deduction u/s. 54 irrespective of the fact that builder has not completed the construction or has not yet handed over the flat.

14. Thus, we hold that the Id. CIT(A) erred in disallowing the claim by making factually incorrect observations that the assessee had not deposited any amount in the capital gains scheme account whereas the amounts were duly deposited in the capital gains scheme account and duly utilized from the said account only. The Id. CIT(A) further erred to even take cognizance of the capital gains account which was placed on record. Further, owing to availability of sufficient evidences on record, we also hold that the stamp duty registration cost of Rs.2,83,473/- are hereby allowed.

15. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 12/05/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 12/05/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR