



**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
and  
Shri M. Balaganesh, Accountant Member**

ITA No. 8816/Del/2019  
(Assessment Year: 2016-17)  
Girish Mohan, Vs. ACIT,  
725, Udyog Vihar, Phase-2, Circle-1(1),  
Gurgaon Gurgaon  
(Appellant) (Respondent)  
**PAN:AAQPM4017P**

Assessee by : Sh. P. C. Yadav, Adv  
Sh. Raghav Sharma, CA  
Revenue by: Sh. Vipul Kashyap, Sr. DR  
Date of Hearing 19/04/2023  
Date of pronouncement /07/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This appeal has been filed by the assessee against the order of the Id CIT(A)-1, Gurgaon dated 23.09.2019 for AY 2016-17.
2. The assessee has raised following grounds of appeal:-
  - "1. That the Ld CIT (A) has erred on facts and in law in upholding the disallowance of the cost of improvement in incurred by the appellant on the property which was sold by him.
  2. That the Ld CIT (A) has erred on facts and in law in upholding the disallowance of deduction claimed u/s. 54F.
  3. That the Ld CIT (A) has erred on facts and in law in upholding the disallowance of deduction claimed u/s. 54F on the ground that the appellant has not constructed the residential house.
  4. That the impugned order is arbitrary, illegal, bad in law and the violation of rudimentary principle contemporary jurisprudence."

**Ground No. 1**

3. Apropos ground No. 1, the Id counsel submitted that the AO as well as the Id CIT(A) has erred in on facts and in law in upholding the

disallowances of cost of improvement of Rs. 4 lakh incurred by the assessee on the property which was sold during the financial period 1996-97 despite the fact that the assessee successfully established the claim of cost of improvement by way of filing all possible evidence under his command. Therefore, cost of improvement may kindly be allowed to the assessee.

4. Replying to the above, the Id Sr. DR drawing our attention towards relevant part of the assessment as well as first appellate order submitted that the documentary evidences submitted by the assessee was not reliable and the AO has verified and examined the same in detailed in assessment order wherein, he rightly held that the bills/ vouchers submitted by the assessee are not acceptable and thus claim of incurring of such expenses was rightly disallowed. The Id Sr. DR submitted that the AO has enclosed bills/ vouchers submitted by the assessee to the assessment order which clearly revealed that the assessee has failed to establish such claim of cost of improvement on the property sold during FY 1996-97.

5. On careful of the above submission from relevant para 4.2 and 4.4 of the first appellate order we clearly note that the Id CIT(A) after considering the facts and circumstances of the issue and by reproducing relevant part of the assessment order held that the appellant has not been able to controvert the observation of the AO in the assessment order and therefore, the same are accordingly rejected. For the sake of completeness we find it appropriate to reproduce the said para 4.2 of the first appellate order which reads as under:-

*"4.2 The Assessing Officer asked the appellant to furnish evidence with regard to investment in construction in immovable property and to justify the claim of deduction u/s 54F. The appellant filed copies of vouchers and bills in support of construction. The Assessing Officer considered the appellant's submissions and pointed out as under:-*

*"At the outset, the claim of assessee with regard to Rs. 10 lakhs to be included in cost of acquisition is rejected as the assessee cannot include the expenses incurred on property purchased for the purpose*

*of computing the investment amount for the purpose of provisions of section 54F. Only the cost of property purchased i.e. Rs. 3.25 crores in this case can be considered.*

*Without prejudice, the bills submitted by the assessee cannot be accepted because of following reasons:*

- Material Cost - The bills submitted by the assessee pertains to 'Chander Bhan Cement and Building Material (Prop. Satbir Yadav) which does not have any indirect tax registration number or PAN number through which identity of seller can be authenticated*
- Labour cost - The assessee has submitted the self-made ledger in this regard and failed to submit any invoice in this regard.*
- Security Guard - The cost includes cost for 9 months and no evidence in respect of same has been provided by the assessee."*

6. The Id CIT(A) in para 4.4 recorded final findings on this issue which are as follows:-

*"4.4 The appellant had also claimed cost of improvement with regard to the original asset sold for the purpose of computation of capital gains. In this regard the Assessing Officer held as under:-*

*"Regarding vouchers and bills in support of the cost of improvement made in year 1996-1997 on the property sold.*

*At the outset, the cost of improvement of Rs. 4,00,000/- in comparison to cost of purchase of Rs. 3,24,241/- is comparatively very high considering that the amounts pertains to F.Y. 1996-97.*

*Without prejudice, the bills submitted by the assessee cannot be accepted because of following reasons:*

*Labour - The assessee has merely submitted pages of note book mentioning the date and amount of expense. The authenticity of said document cannot be relied upon.*

*Material- The assessee has submitted bills from "Indraj. The same cannot be relied upon due to following reasons:*

*The serial numbers of all the bills are in sequence i.e. Bill no. 246 dt 02.08.1996, 247 dr. 04.10.1996 and 248 dt. 20.11.1996 despite the fact that same are issued on different dates and after a sufficient gap. Even from the different dates & serial chronology, it seems that the assessee was the only customer from August to November at that shop who had purchased materials from the said supplier.*

*It is also worthwhile to mention here that address of the supplier namely 'Indraj' on the Bill Memo is mentioned as "Bestech Flats, Palam Vihar Road, Gurgaon". However, actual fact and also well known to all that 'Bestech Flats on Palam Vihar Road were constructed in the year around 2011 whereas date of material*

*supplied on Bills is mentioned as year 1996 which is not possible at all practically.*

*Bills do not have any sales tax registration number or PAN through which identity of seller can be authenticated.*

***The contact number mentioned thereon were not in existence in year 1996 (Mobile no. 7827711182 and 8860702411). The mobile number series starting from 7 or 8 was introduced in year 2009 only.***

*In view of above discussions, the bills/vouchers submitted by the assessee are not accepted and claim of incurring said expenses are hereby disallowed. Copies of all vouchers are annexed alongwith this order."*

7. In view of the findings recorded by the AO and Id CIT(A) we have no hesitation that the AO examined and verified a note book mentioning the date and amount of labour bills and vouchers submitted by the assessee and thereafter drawn a sustainable conclusion that the bills/ vouchers submitted by the assessee are not acceptable documentary evidence to substantiate the fact of incurring of Rs. 4 lakhs as cost of improvement of the land during FY 1996-97. Therefore, we decline to accept the contention of the Id counsel of the assessee and thus, ground No. 1 of the assessee is dismissed.

### **Ground Nos. 2 and 3 of assessee**

8. Apropos ground Nos. 2 and 3 the Id counsel of the assessee precisely reiterated the written submission which are as follows:-

#### ***"Now claim of exemption of 54F (Investment in new residential house)***

*11. The findings of the AO in respect of 54F deduction are at Page No- 4 roman, The AO has alleged that assessee is merely possessing a piece of land without any construction thereon and hence not entitled for deduction of 54 F.*

*12. Before CIT(A) assessee pointed out that the observation of the AO that assessee failed to submit anything regarding construction of house at new land is factually incorrect Assessee pointed out to the CIT(A) that vide letter dated 11 12 2018 assessee has pointed out to the AO about the incurring of expenses on construction of house, further assessee has also pointed out the source of those expenses. However the AO very conveniently ignored the submissions of the assessee.*

13. Before the Ld CIT(A) assessee also filed report of Registered valuer, certifying the factum of character of property that is residential house and also the construction of residential house at the land purchased.

14 The Ld CIT(A) after considering the entire gamut of facts has partly allowed the claim of assessee and observed as under-para-4.12 page number-9 of the CIT(A) order

a. The assessee has constructed a very small residential house and land size was very big. The cost of construction is very small when compare to the price of land

b. Assessee failed to prove that he small dwelling unit was intended to be used for residential purpose. Para(a) at page number-10

c. Considering the status of assessee (by seeing his returned income) it is not acceptable that assessee was intending to use the dwelling unit as his residential house.

d. Ld CIT(A) has held that it has to be assumed from the marginal heading of section 54F that the intention of legislature was to extend the benefit of exemption u/s 54 only when the property purchased by the appellant was intended to be used as residential house( this is not correct as the term used is mentioned in section 54 and not in 54F and that too for property sold not purchased, see comments below)

e. The Ld CIT(A) has relied on two decisions one of Delhi High Court and other of Hyderabad Tribunal, ignoring that both are rendered in reference to section 54 and that too for the transaction of sale of property and not new investment

f. Lastly the CIT(A) held that exemption claimed only restricted to the land beneath under constructed portion and no deduction for vacant portion of land (See Page number-13 Para(a))

g. Lastly the CIT(A) allowed the deduction of 54F but restricted the deduction to constructed portion Finding of the CIT(A) in Para-4. 18 Page number-20

15 Submissions of the assessee on section 54F exemption are as under

a. The observation of the CIT(A) that the legislature want that the exemption should only be allowed to an assessee who intended to use the new residential house for residence purpose is legally incorrect in as much no such requirement is mentioned in section 54F The marginal notes of section 54F and provisions of section 54F nowhere suggest that investment should be in such residential house where assessee intends to reside. This issue has been examined by the various benches of the ITAT, in the following decisions:-

i. Mahavir Parsad Gupta VS JCIT reported in 101 TTJ 1078- Wherein the Hon'ble Bench observed as under-

Capital gains-Exemption under s. 54F-Non-residential use of residential house-Mere non-residential use would not render a property ineligible for benefit under s. 54F, if it otherwise is a residential house-If the assessee is found to have constructed

*a residential house, whatever might be the use it had been put to, the assessee can be said to have fulfilled the conditions envisaged under s. 54F-New residential house, let out for commercial use, would not lose exemption under s. 54F (para-8)*

*ii. ACIT Vs Omprakash Goyal ITA no- 647/Jp/2011 dated 23.01.2012- Relevant observations in Page number-8- Copy of the decision is annexed in Paper book*

*iii. ACIT VS Kanwal Mohan Singh ITA No-500/D/2019 order dated 06.07.2022- Copy is annexed in Decisions paper book*

*b. The next observation of the CIT(A) that the size of the constructed portion is very small and the exemptions benefits cannot be extended to the land appurtenant is also not tenable in law Reliance can be placed on the following judgments*

*1. ACIT Vs Kanwal Mohan Singh ITA No-500/D/2019 order dated 06.07.2022-*

*ii. CIT vs. Shri Narendra Mohan Uniyali, the Delhi Bench of the Tribunal held in ITA No. 1624/Del/2009 dated 31.08.2009*

*c. It is next submitted that the new investment was in fact in a residential house has been proved by assessee with following documents*

*i. Page number-6 site plan approved by Rajasthan State Govt Clearly mentioned character of land is residential -*

*ii. Page Number- 26-A CLU granted in respect of land purchased by assessee from the previous owner Omprakash Chandel*

*iii. Valuation report Page number,- 28 colum number-9, Page number-29 Colum number 15 iv Water and electricity bills - Colum number 29 page number-30"*

9. Replying to the above, the Id Sr. DR supported the orders of the authorities below and submitted that the Id CIT(A) after considering the written submission of assessee dated 28.08.2019, rightly held that the appellant has not been able to explain the deficiencies pointed out by the AO, except filing a valuation report. The Id Sr. DR also pointed out that the appellant merely submitted that the property situated at remote village and formal market is not there. The Id SR. DR vehemently pointed that all expenditure claimed to have incurred by the assessee were in cash and there was no approval for construction has been taken by the assessee

from the competent authority which could show that the house was actually built, therefore, the assessee has not been able to establish that he is eligible for deduction u/s 54F of the Act. The Id Sr. DR prayed to dismiss the grounds of assessee.

10. On careful consideration of the above rival submission, from the submission particularly, from the written submission of assessee, we note that the assessee has relied on three orders of coordinate benches of the Tribunal to support his claim of deduction u/s 54F of the Act. In the case of Mahavir Prasad Gupta Vs. JCIT 101 TTJ 1078 it was held that while non-residential use of residential house mere non-residential use would not render a property ineligible for benefit of section 54F of the Act, if it otherwise a residential house, and the assessee is found to have constructed a residential house, whatever might be the house it had been put to, the assessee can be said to have fulfilled the conditions envisaged u/s 54F of the Act.

11. Further, the assessee has also relied on the order of the coordinate bench in the case of ACIT Vs. Om Prakash Goyal ITA No. 64/Del/2011 wherein it was held that when the land is purchased and building the constructed thereon, it is not necessary that such construction should be on the entire plot of land, meaning thereby that there is no denial of exemption on investment in a part of the land which is appurtenant to the building and on which no construction is made only because construction was made on the first plot of land, the exemption claimed in respect of investment made in adjacent plot of land cannot be declined when all the other conditions as per requirement u/s 54F of the Act were satisfied.

12. Furthermore, the Id AR also placed reliance on the order in the case of DCIT Vs. Kanwal Mohan Singh (supra) ITAT Delhi Bench wherein it was held that the disallowance of deduction u/s 54F of the Act is not valid on the solitary ground that residential house is constructed on agricultural land. From the first appellate order, we note that the Id CIT(A) observed that the legislature accepts that exemption should only be allowed to the

assessee who intended to use new residential house for residence purpose. Id counsel placing reliance on the order of coordinate bench of the Tribunal Mahavir Vs. CIT (supra) submitted that even non residential use of residential house would not render a property ineligible for benefit/ deduction u/s 54F of the Act if it otherwise is a residential house and the assessee was found to have constructed a residential house whatever might be the use it had been put to. We are in agreement with the said contention of Id counsel of assessee based on order of coordinate bench of the Tribunal.

13. The Id CIT(A) also observed that the size of constructed portion is very small and the exemption benefit cannot be extended to the land appurtenant is not tenable in law. In the case of DCIT Vs. Kanwal Mohan Singh (supra) the Tribunal has relied on the order ITAT Jaipur in the case of Shyam Sunder Makhija Vs. ITO 38 ITR 125 wherein, it was held that the farmhouse is also a residential house and section 54F does not put any rider with direction in respect investment in acquisition of land appurtenant to the building will not qualify.

14. On the other hand, from the copies of the documentary evidence submitted by the assessee in his paper book we note that the site plan approved by the competent authority clearly reveals that the character of land has been mentioned as residential. The change of land (CLU) use order/ permission in respect of land purchased by the assessee from the previous owner Sh. Om Prakash reveals that the competent authority has authorized change of land use to the assessee pertaining to the land constructed by the assessee. Valuation report submitted by the assessee at pages 27 to 35 reveals that the valuer in his report has mentioned the property is residential in column 9 and 16 before submitting the valuation report. The valuer is also considered the fact that there is a water and electricity connection as per bills submitted by the assessee. The valuer in para 44 estimated the life of constructed house as 65 years and in the annexure to the report while submitting technical details the valuer



mentioned that walls are brick load bearing walls, type of foundation brick stepped foundation, superstructure above ground floor brick wall in cement mortar, flooring with marble flooring, finishing with cement plaster. These details supports contentions by the assessee that the house constructed by the assessee was not a simple dwelling house but the same was built with strong building material which provide a long life to the structure of building/ house.

15. In the light of the above factual position, we find ourselves agree with the contention of the Id counsel of the assessee based on the order of ITAT Jaipur Bench in the case of ACIT Vs. Om Prakash Goyal (supra) wherein, the Tribunal under similar facts and circumstances held that since all the conditions claiming exemption u/s 54F of the Act have been satisfied, therefore, it will futile exercise if the matter is sent back to the file of the AO particularly when all the details are placed on record from which it is established that assessee purchased the plot of land and have been constructed residential unit/ house for his use. The tribunal also held that the house constructed on agricultural land or on other land does not matter, but the fact mattes that the residential house is constructed. In the present case, the valuation report and other documentary evidence including change of land use (CLU) certificate issued by the Haryana Govt authorities and the certificate issued by Sarpanch of Village Biranwas, Tehsil Kotkasim Distt. Alwar, Rajasthan clearly reveals that the assessee has constructed residential buildings comprising of two rooms, kitchen, toilet having electricity and water connection and a borewell with a septic tank which was being used as residential unit. Therefore, we are unable to agree with the basis taken by the Id CIT(A) that in proportion to the size of plot/ land the constructed portion is very small and thus, the exemption benefit u/s 54F of the Act cannot be extended to the cost of land appurtenant to the house.

16. Therefore, on the basis of foregoing discussion we reach to a legal conclusion that the assessee, for claiming deduction u/s 54F of the Act, has

submitted sufficient and all possible documentary evidence under his command, before authorities below to show that the assessee purchased land, constructed a residential unit consisting of two rooms, kitchen and bathroom with electricity and water facility supported by connection of borewell and septic tank built therein. The change of land use certificate reveals that the assessee before construction of said unit obtained permission from the competent authority before using agricultural land for the purpose of construction of residential house pertaining entire 1.26 hectre of land. Therefore, we are inclined to hold that the authorities below have erred in dismissing the claim of the assessee for deduction u/s 54F of the Act and hence, the AO is directed to allow the same to the assessee. Accordingly, ground Nos. 2 and 3 of the assessee are allowed.

17. The Id counsel submitted that the assessee does not want to press the ground No. 4 and 5 hence, same are dismissed as not pressed.

18. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 14/07/2023.

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

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 14/07/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi