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

% *Date of Decision :06.11.2024*

\+ **ITA 548/2024 & CM APPL. 64775/2024**

HIMANSHU GARG .....Appellant

Through: Mr. Gajendra Maheshwari, Ms. P. Sinha and Ms. Sonakshi Sobhi, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-36 (1) .....Respondent

Through: Mr. Vipul Agrawal, SSC for Revenue.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**
**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**VIBHU BAKHRU, J. (*ORAL*)**

1. The appellant (hereafter **the Assessee**) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 30.05.2024 passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No. 819/Del/2020 captioned ***ACIT v. Sh. Himanshu Garg*** in respect of the assessment year (AY) 2014-15. The Revenue had filed the said appeal against the order dated 16.12.2019 passed by the learned Commissioner Income Tax (Appeals) [**CIT(A)**], whereby the Assessee's claims to the effect that receipts from

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sale of certain properties be treated as capital gains; the expenditure incurred in respect of the said properties as cost of improvement of the respective properties; and that exemption of a sum of Rs. ₹1,84,23,729/- be allowed as exemption under Section 54F of the Act, was allowed. The assessee has filed a cross objection (CO No. 112/Del/2022) in regard to the denial of his claim of exemption of ₹47,49,202/- and ₹4,24,182/- under Section 54B of the Act, in respect of two properties, which were raised as an additional grounds.

2. The controversy in this appeal is confined to the decision of the learned ITAT to deny the Assessee its claim for exemption under Section 54F of the Act. The assessee had sold certain lands for a consideration of ₹3,23,88,500/-. He had computed the cost of acquisition of ₹1,39,64,771/- and had declared long term capital gains of ₹1,84,23,729/-. The Assessee claimed that he had purchased immovable property (***new property***) in terms of registered sale deed dated 11.07.2013 jointly along with Smt. Menu Gupta and Smt. Nirmal Garg. The entire consideration for the new property was reflected as ₹5,41,36,367/-. The Assessee claimed that his share of the property is approximately 47.5/119 of the total area of Four Bigha Eight Biswa (approximately one acre) and the constructed area thereon. He claimed that a residential house with a covered area of 500 sq. ft. was existing on the said land (new property) and was described in the registered sale deed as "*makaan*". He claimed that his investment in purchase of a part share in the new property, ought to be construed as investment in purchase of 'a residential house'.

3. The learned Assessing Officer (hereafter *the AO*) had rejected the said contention on the ground that there was a brick-kiln existing on the new

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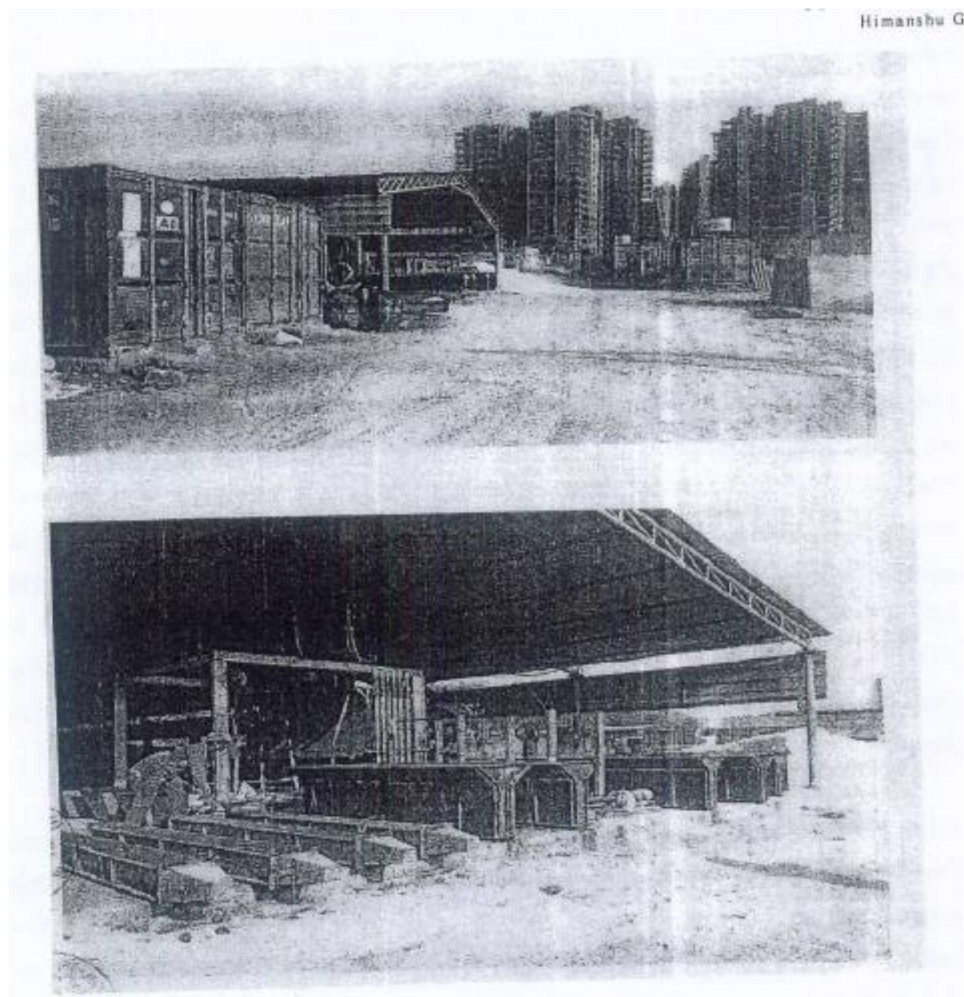
property and not a residential house. The learned ITAT had on the basis of evidence available on record, concluded that the Assessee's investment was not in a residential house and, therefore, the benefit of Section 54F of the Act was not available to the Assessee.

4. Concededly, the registered deed of the new property does not reflect any built-up structure other than "*makaan*", with a covered area of approximately 500 sq. ft. However, the AO had, on inspection, found that there was brick-kiln on the property in question. Photographs of the same were placed on record and have been reproduced by the learned ITAT in the impugned order. The said photographs are set out below:



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5. It is not disputed that the brick-kiln exists on the new property. However, the learned counsel for the Assessee submits that the said brick-kiln is not in the portion of the new property, which the Assessee claims falls to its share. He points out that the registered sale deed in question was in joint names along with two other individuals and claims that the brick-kiln stands on the portion of the land, which falls to the share of the other co-owners. He submits that there is ample evidence on record to show that a residential house was existing on the new property, which fell in the share of the Assessee. He also states that the Assessee had produced the lease deed whereby the said residential house had been leased to a tenant.

6. The learned ITAT had, in view of the evidence brought on record, concluded otherwise. The learned ITAT had concluded that the word "*makaan*" used in the registry was not in a reference to a residential house. This view is supported by the fact that a brick-kiln and sheds had been constructed on the land in question and the registered sale deed does not mention any other structure on the new property, other than a '*makaan'*. The contention that the brick-kiln and the built up share has fallen to the shares of other co-owners and, therefore, is not required to be considered, overlooks this point.

7. The present case is centred on appreciation of evidence on record. It is admitted that the registered sale deed of the new property is not confined to the share of the Assessee but also to the other co-owners. It is also admitted that it does not mention any structure other than a "*makaan*" and brick kilns and sheds stand on the new property. The learned ITAT noticed that the sale deed of the new property did not refer to the structure as *rihayasi makaan,*

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which would be a literal translation of "a residential house". Therefore, concluded that the reference to a *makaan* in the registered deed was not a residential house.

8. The learned ITAT also found that the new property was described in the revenue records as agricultural land and the registration fee was paid on the said basis.

9. The question as to whether a residential house existed on the land in question, is a question of fact. The Assessee seeks to assail the factual findings of the AO and of the learned ITAT, as perverse.

10. We find no merit in the aforesaid contention. The finding of the learned ITAT in the given facts, cannot be held to be perverse.

11. The present appeal does not raise any substantial question of law and is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**SWARANA KANTA SHARMA, J**

**NOVEMBER 06, 2024**

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*Click here to check corrigendum, if any*