



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.24/PUN/2025
निर्धारण वर्ष / Assessment Year : 2007-08

Mahadev Dasu Jadhav, 141, Khadgaon, Latur, Tilaknagar Latur S.O., Latur- 413531. PAN : AOTPJ3485K	Vs.	ITO, Ward-1, Latur.
Appellant		Respondent

Assessee by : Shri Sarang Gudhate
Revenue by : Shri Manoj Tripathi

Date of hearing : 19.03.2025
Date of pronouncement : 28.03.2025

आदेश / ORDER

PER S. S. VISWANETHRA RAVI, JM:

This appeal by the assessee against the order dated 19.11.2024 passed by the CIT(A)/Addl/JCIT(A)-6, Chennai [‘the CIT(A)’] for the assessment year 2007-08.

2. The assessee raised sole ground challenging the action of the CIT(A) in not granting benefit of deduction u/s 54F of the Act.
3. Brief facts relating to case are that the assessee is an individual filed return of income declaring total income at Nil. According to

Assessing Officer, an information gathered that the assessee has sold a plot comprising 50R at Khadgaon, Latur for a consideration of Rs.17,26,000/- on 18.01.2007. A notice u/s 148 was issued asking the assessee to file copy of return of income, bank account extracts and working of capital gain. According to Assessing Officer, there was no response from the assessee but an Authorized Representative appeared before the Assessing Officer in response to the notice u/s 143(2) of the Act. According to Assessing Officer, the assessee claimed deduction u/s 54F of the Act. According to Assessing Officer, on perusal of the details submitted by the assessee that the assessee purchased a plot on 09.04.2003 and permission for construction was granted on 29.06.2005. Further, he observed that the assessee is not entitled to claim of deduction u/s 54F of the Act as there was no evidence proving the house is actually constructed within the time prescribed therein. Further, he observed that the assessee is not entitled as the plot was purchased on 09.05.2003 i.e. 3 years and 7 months prior to the date of sale i.e. 18.01.2007. Accordingly, the Assessing Officer denied deduction u/s 54F of the Act and computed capital gain by determining the total income of the assessee at Rs.11,95,150/- vide its order dated 20.03.2015.

4. Having aggrieved by the said order of the Assessing Officer, the assessee preferred an appeal before the CIT(A). The CIT(A) held that there is no infirmity in the order of the Assessing Officer in denying deduction u/s 54F of the Act by holding that the assessee had constructed the house even before sale of properties. The relevant portion from para no.4 in page no.3 of CIT(A) upto para no.4.6 is reproduced herein for better understanding :-

- “4. *Decision: The appellant filed his return of income for AY 2007-08 declaring income of Rs. Nil. Subsequently, the case was selected for scrutiny and assessment order u/s 143(3) of the Act dated 20.03.2015 was passed by AO by adding a sum of Rs.11,95,150/-. Aggrieved by the order, the appellant filed the present appeal raising 5 grounds of appeal, of which Ground 5 is general in nature.*
- 4.1 *Ground 1 to 4 are related to addition of Rs.11,95,150/-. The AO in his assessment order found that the appellant had 3 properties in FY 06-07 (date of sale being 18.01.17 and 22.01.17) and claimed deduction u/s 54F of the Act on the ground that he had constructed a house utilising the sale proceeds of the properties sold. With respect to that new house, the AO observed that,*
- i) The plot was purchased on 09/04/2003.*
 - ii) The plan was sanctioned on 30/06/2005.*
 - iii) The permission for construction was granted on 29.06.2005.*
 - iv) no record as to when the house construction was completed as completion certificate was not produced.*
- 4.2 *The AO held that, "Thus, there is no liberty to construct the house prior to the date of sale under the Act. The assessee has purchased a plot on 09/04/2003 i.e. nearly 3 years and 7 months prior to the sale of the asset. Further, the construction permission was sought on 29/06/2005, nearly 1 year and 6 months prior to the sale of the asset. The date of sale of the property is 19/01/2007 and 22/01/2007 respectively. Thus, as per the provision of section 54F, to avail the exemption, the assessee was required to purchase the house within the period from 19/01/2006 to 18/01/2009 or he should have constructed the*

house within a period of three years from the date of sale i.e. w.e.f. 19/01/2007 18/01/2010. However, there is nothing on record to show that, he has either purchased or constructed a new house within the above specified period. As already stated, the plot was purchased on 09/05/2003 i.e. 3 years and 7 months prior to the date of sale and construction permission was obtained on 29/06/2005 i.e. 1 year and 6 months prior to the date of sale. Further, it is clearly mentioned in the Act that, the exemption is not allowed to the plot only. Based on the above, The AO held that appellant was not eligible for deduction u/s 54F and calculated the capital gains at Rs. 11,95,150/-.

- 4.3 During the appellate proceedings, the appellant submitted that, "though the construction of his house was started from 29.06.2005, it has been completed approximately in the month of January 2008. It means that the construction has been completed within the period on one year after the date of sale. In support of the claim the assessee has produced before the learned Income Tax Officer, Ward-1, Latur the copy of valuation report which was already obtained by the assessee from Shri S. V. Barbade, who is the approved Valuer. The appellant further relied on certain judicial pronouncements in support of his claim. All such cases were perused and found that the facts of those cases were very much distinguishable from that of the present case.
- 4.4 The facts of the case, submissions of the appellant and findings of AO in the assessment order have been considered. The Sec.54F is very clear in saying that the assessee has to construct a new residential house within 3 years from the date of transfer of original asset or purchase a new house one year before or two years after the date of transfer of original asset. The AO has clearly established in his order that the appellant had not constructed the new house after the date of sale of original asset, rather it was before the sale of original asset as the purchase of plot, approval of plan and permission for construction were all done even before the sale of original asset. Further even the completion certificate was also not provided to the AO by the appellant to ascertain the date of completion of construction.
- 4.5 Even during the appellate proceedings, the appellant vide notice u/s 250 of the Act dated 10.09.2024 was requested to provide the completion certificate to ascertain the date of completion. However, the appellant didn't submit the copy of completion certificate. In the absence of the same, it is to be held that the appellant constructed the house even before the sale of original asset and hence, the deduction u/s 54F is not applicable to the appellant. The valuation report submitted by the appellant was considered. The report mentions the year of construction as 2005-06, 06-07, 07-08. However, it is silent on the date of

commencement of construction and date of completion of construction of the property. Hence, it can't be taken up as evidence for determining the eligibility of appellant for deduction u/s 54F.

- 4.6 *Based on the facts and the detailed analysis of the AO and discussions as above, it is held that there is no infirmity in the order of AO and AO was correct in holding that the appellant had constructed the house even before the sale of properties on which deduction u/s 54F was claimed. Since, the deduction claimed u/s 54F by the appellant was rightly rejected by the AO and the grounds of appeal in this regard are rejected.”*

5. Heard both the parties and perused the material on record including paper book containing pages 1 to 9. We note that the assessee claimed deduction u/s 54F of the Act claiming that he had constructed a house utilizing the sale proceeds of three properties, which is evident from para no.3 of the assessment order. The Assessing Officer denied the said deduction by observing that the assessee is not entitled to claim of deduction u/s 54F of the Act as the assessee claimed to have purchased plot on 09.04.2003 which is 3 years and 7 months prior to the sale of asset. Further, the Assessing Officer also observed that in respect of sanctioning of plan for construction on 30.06.2005 which is also 1 year and 6 months prior to the sale of asset. In this regard, there is no dispute by the Ld. AR. The contention of the Ld. AR is that the requirement u/s 54F is that the assessee has to construct a new residential house within 3 years from the date of transfer of original

asset or purchase a new house one year before or two years after the date of transfer of original asset. On perusal of the impugned order as well as the Assessing Officer's observation along with the materials supplied in paper book containing pages 1 to 7, we note that the assessee had not constructed the new house after the date of sale of original asset as the purchase of plot, approval of plan and permission for construction were all affected before the sale of original asset. In this regard, we find no dispute from the Ld. AR, therefore, in our opinion, the arguments of Ld. AR is not acceptable. On plan reading of provisions u/s 54F of the Act in order to get deduction u/s 54F of the Act, the assessee was required to purchase the house within a period from 19.01.2006 to 18.01.2009 or the assessee should have constructed the house within a period of 3 years from the date of sale i.e. 19.01.2007 to 18.01.2010. On perusal of the valuation report in page no.1 which clearly shows the year of construction in completion is given between years 2005-06, 2006-07 and 2007-08. Therefore, it is clear that the assessee is neither purchased a house within one year nor constructed house within specified period contained in provisions u/s 54F of the Act. Therefore, we find no infirmity in the order of Ld. CIT(A) in confirming the order of Assessing Officer and denying deduction

u/s 54F of the Act. Thus, the sole ground raised by the assessee is dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced on 28th day of March, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th March, 2025.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl/JCIT(A)-6, Chennai.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “SMC” बेंच,
पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.