2025:DHC:3098-DB

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

% *Date of Decision: 30.04.2025*

\+ **ITA 127/2025 & CM No.25518/2025**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 .....Appellant

Through: Mr. Ruchir Bhatia, Adv.

Versus

LATA GOEL .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*Oral*)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**Act**] impugning an order dated 25.09.2024 [**impugned order**] passed by the Income Tax Appellate Tribunal [**ITAT]** in ITA No.3426/Del/2019 in respect of Assessment Year [**AY**] 2011-12.

2. The impugned order is a common order passed by the learned ITAT in ITA No.3426/Del/2019 and ITA No.5892/Del/2015. However, as stated above, the present appeal arises from ITA No.3426/Del/2019, which was preferred by the Assessee against an order dated 18.03.2019 passed by the Commissioner of Income Tax (Appeals)-24 [**CIT(A)**]. The said appeal, in turn, was filed against an assessment order dated 29.12.2017, passed by the Assessing Officer [**AO**] under Section 147 read with Section 143(3) of the

Act.

3. The subject matter of controversy in the appeals before the learned ITAT centres around the Assessee's claim for deduction under Section 54F of the Act.

4. The Assessee filed her return of income for AY 2011-12 on 31.12.2011, declaring an income of ₹70,87,301/-. The Assessee also claimed a deduction of ₹90 crores under Section 54F of the Act asserting that the consideration received from the sale of shares of FIITJEE Ltd. — an unlisted company, the gains from which would otherwise be chargeable to tax as capital gains — was invested in acquiring a residential house property bearing the address E-27, Vasant Vihar, New Delhi [**the new asset**].

5. On 17.12.2012, a search and seizure operation was carried out under Section 132 of the Act on persons constituting the FIITJEE Group. The Assessee was also one of the persons searched. Thereafter, the AO issued a notice dated 13.08.2013 under Section 153A of the Act and during the ensuing proceedings, examined the claim of the Assessee for deduction under Section 54F of the Act.

6. The AO passed an assessment order dated 27.03.2015 under Section 153A read with Section 143(3) of the Act restricting the deduction under Section 54F to ₹30 crores, as against ₹90 crores claimed by the Assessee.

7. The Assessee had deposited the consideration in the capital gains account in two tranches – ₹30 crores on 28.07.2011 and ₹60 crores on 29.07.2011. The AO noted that the Assessee had paid a certain amount to a charitable trust/educational society, which, in turn, had paid certain sums to

FITJEE Limited. FIITJEE Ltd. had paid an amount of ₹60 Crores to M/s Alert Buildtech Private limited on 28.07.2011 and the said company had lent ₹60 crores to the Assessee on 29.07.2011.

8. In the given facts, the AO reasoned that the amount received from the sale of shares was not directly invested in acquiring the new asset as the amount of ₹60 Crores continued to be reflected as outstanding.

9. Aggrieved by the said decision, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [**CIT(A)**], which was allowed by an order dated 28.08.2015. The learned CIT(A) noted that there was no requirement for the amount received from the sale of a capital asset to be directly invested in acquiring the house property [**the new asset**]. The learned CIT(A) explained that the AO was required to determine whether the investment had been made in acquiring the new asset and that there was no requirement for the sale consideration received from sale of the capital asset be traced in specie to the payments made for acquiring the new asset. The fact that a sum of ₹60 Crores continued to be reflected as outstanding, did not disentitle the Assessee from availing the deduction under Section 54F of the Act. Accordingly, the entire disallowance was deleted.

10. Aggrieved by the order dated 28.08.2015 passed by the learned CIT(A), the Revenue filed an appeal before the learned ITAT [**ITA No.5892/Del/2015**], which was also disposed of by the impugned order.

11. However, as noted above, the Revenue's appeal in the present case does not arise in respect of the said decision. It arises from an assessment order dated 29.12.2017 framed by the AO under Section 147 read with 143(3) of

the Act.

12. The reassessment proceedings were initiated pursuant to a notice dated 30.03.2017 issued under Section 148 of the Act. The AO had reopened the assessment on the basis that the records of South Delhi Municipal Corporation [**SDMC**] indicated that the Assessee owned more than one residential property on the date of the transfer of the shares of FIITJEE Ltd. [**the original asset**] being the basement and second floor of the property bearing address D-6/5, Vasant Vihar, New Delhi. According to the AO, the basement and second floor were required to be considered as two separate residential houses.

13. In terms of clause (i) to the proviso to Section 54F(1) of the act, the said section would not apply if the assessee owned more than one residential house. Clause (i) of the proviso to Section 54F of the Act is extracted below:

> "**Section 54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house**.
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> *** *** ***
>
> **Provided** that nothing contained in this sub-section shall apply where.–
> (*a*) the assessee,–
> (*i*) owns more than one residential house, other than the new asset, on the date of the transfer of the original asset; or"

14. The AO held that the Assessee had more than one residential unit on the date of transfer of the original asset and therefore, disallowed the entire deduction claimed under Section 54F of the Act. It is material to note that the Assessee had also filed objections for re-opening the assessment on the ground that there was no failure on the part of the Assessee to fairly and truly

disclose all material facts and therefore, the reassessment notice – which was issued beyond the period of four years from the end of the relevant assessment year – was barred by limitation. The said objections were rejected by the AO.

15. Aggrieved by the assessment order dated 29.12.2017, the Assessee filed an appeal before the learned CIT(A).

16. The learned CIT(A) dismissed the Assessee's challenge to the disallowance under Section 54F of the Act in terms of the order dated 18.03.2019 passed under Section 250 of the Act. The Assessee being aggrieved by the learned CIT(A)'s order preferred an appeal before the learned ITAT [being **ITA 3426/Del/2019**], which was allowed by the learned ITAT by the impugned order. The present appeal by the Revenue is confined to the impugned order rendered in the context of the Assessee's appeal (ITA 3426/Del/2019).

17. A plain reading of the impugned order proceeds on the basis that the learned ITAT had accepted the Assessee's objection that the notice issued under Section 148 of the Act is barred by limitation as there was no failure on the part of the Assessee in truly and fairly disclosing all material facts. The learned ITAT also faulted the AO's decision in finding that the Assessee had more than one residential unit, which would render the Assessee ineligible for claiming a deduction under Section 54F of the Act.

18. Before proceeding further, it is relevant to refer to the properties, which were owned by the Assessee and were considered as more than one dwelling unit. The learned ITAT had noted the description of the sale deeds pertaining

to the different floors of the property bearing the address D-6/5 Vasant Vihar, New Delhi. The same are reproduced below:

> "a. D-6/5, Basement, Vasant Vihar, New Delhi was purchased by Mr. K.K. Goel HUF along with assessee vide registered sale deed dated 02.07.2001. In this, the assessee was having 50% share in the capacity of co-owner.
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> b. D-6/5, Second Floor, Vasant Vihar, New Delhi was purchased by Ms Monila Goel (assessee's daughter in law) and assessee vide registered sale dated 28.01.2008. In this, the assessee was having 50% of share in the capacity of co-owner.
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> c. D-6/5, Ground Floor, Vasant Vihar was purchased by Ms. Monila Goel (daughter in law) along with Mr. DK Goel (assessee's son) vide registered sale deed 02.07.2001. Both parties are having equal share in the said property.
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> d. D-6/5, First Floor, Vasant Vihar, New Delhi was purchased by Ms Monila Gael. Physical possession of the said property was taken over on 02.09.2014, but not registered as 100% payment is made to the seller only in financial year 2013-14."

19. It is clear from the above that separate floors of the singular house bearing the address D-6/5 Vasant Vihar, New Delhi, were purchased by the family members of the Assessee. The fact that different floors may be owned or partly owned would not detract from the fact that the portions owned were required to be considered 'one residential house'.

20. In ***Commissioner of Income-tax and Anr. v. D. Ananda Basappa: (2009) 309 ITR 329***, the Karnataka High Court considered the admissibility of exemption under Section 54 of the Act in a case where the Assessee had sold a residential house and purchased two adjacent apartments. The Court held that "the expression 'a' residential house should be understood in a sense that building should be of residential in nature and 'a' should not be understood to indicate a singular number". However, in the facts of the said

case, the court noted that two apartments had been joined to make one unit by opening a door between the two apartments and therefore, the same could be construed as one unit.

21. In ***Pawan Arya v. Commissioner of Income Tax: 2010 SCC OnLine P&H 12590***, the court distinguished the decision in ***Commissioner of Income Tax & Anr. v. D. Ananda Basappa,*** *(supra)* and stated that the exemption under Section 54F of the Act would not be applicable where the units are located at two different locations. In the aforesaid context, the court observed as under:-

> "4. As regards claim for exemption against acquisition of two houses under Section 54 of the Act, the same is not admissible in plain language of statute. In the judgment of Karnataka High Court in ***CIT v. D. Ananda Basappa*** [2009] 309 ITR 329 (Kar), referred to in the impugned order, exemption against purchase of two flats was allowed having regard to the finding that both the flats could be treated to be one house as both had been combined to make one residential unit. The said judgment, thus, proceeds on a different fact situation."

22. It is also relevant to refer to the decision of the coordinate bench of this court in ***Commissioner of Income-tax v. Gita Duggal: 2013 SCC OnLine Del 752*** where this court has held as under: -

> "11. There could also be another angle. Section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". This is a new concept introduced by the Assessing Officer into the section. Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only

> requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the Income-tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly postretirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under section 54/54F. It is neither expressly nor by necessary implication prohibited."

23. This court in ***Mrs. Kamla Ajmera v. Pr. Commissioner of Income Tax: Neutral Citation No.: 2024:DHC:9342-DB***, referred to the decision in ***CIT v. Geeta Duggal,*** *(supra)*, and held that in certain circumstances, multiple residential units may be considered as a single residential house for the purposes of exemption under Section 54F of the Act. The court observed as follows: -

> "39. This assumes significance in the backdrop of our opinion that the word 'a' used in Section 54F of the Act denotes one singular

> residence, along with the caveat that in case the floors or houses are so constructed as to be used as one singular unit or capable of being used as such, they may fall within the definition of a residential house."

24. The Madras High Court also held a similar view in ***Commissioner of Income-tax v. Gumanmal Jain*: *2017 SCC OnLine Mad 13653***.

25. The aforesaid decisions were rendered in the context of construing whether the new asset purchased is 'a residential house' – an expression used in Section 54 and 54F of the Act. However, the said decisions would be equally applicable for construing the term 'one residential house' as used in clause (i) of the proviso to Section 54F of the Act. We say so because in ***Pawan Arya v. Commissioner of Income Tax*** (*supra*) as well as in ***Commissioner of Income-tax v. Gita Duggal:*** *(supra)* and ***Mrs Kamla Ajmera v. Pr. Commissioner of Income Tax*** (*supra*), the term 'a residential house' has been construed to mean 'one residential house'. We find it difficult to accept that, in the given facts, different floors of a house are required to be considered as multiple residential houses.

26. In view of the above, we find no infirmity with the decision of the learned ITAT in holding that the Assessee could not be denied the deduction under Section 54F of the Act on the ground that she holds more than one residential unit.

27. We also find that there has been no failure on the part of the Assessee to truly and fairly disclose all the material facts in her return. The Assessee had fairly disclosed about the sale of the original asset, in respect of which capital gains had arisen as well as about the house property purchased from the said sale proceeds.

28. The configuration of ownership of the property, as recorded in the

South Delhi Municipal Corporation records for D-6/5, does not lead to the conclusion that there was any failure on the part of the Assessee in disclosing the material facts relevant for claiming the deduction sought by the Assessee.

29. In view of the above, we find that no substantial question of law arises for consideration of this court. Accordingly, the appeal as well as the pending application is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 30, 2025
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Click here to check corrigendum, if any