

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER**

ITA No. 6113/Del/2016 : Asstt. Year : 2013-14

Rajpal Trehan, C/o Raj Kumar & Associates, CA L-7A(LGF), South Ext. Part-2, New Delhi-110049	Vs	ACIT, Circle-59(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACPT0299G		

**Assessee by : Sh. Raj Kumar Gupta &
Sh. Sumit Goyal, CAs
Revenue by : Ms. Bedobani, Sr. DR**

Date of Hearing : 06.02.2017	Date of Pronouncement : 05.05.2017
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ORDER

This is an appeal by the assessee against the order dated 14.10.2016 of Id. CIT (A)-19, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That under the facts and circumstances, both the lower authorities grossly erred in law as well as on merits in not allowing deduction u/s. 54 F for Rs. 36,65,714/- for the capital gain earned on sale of Indirapuram plot.

*2. That **without prejudice**, alternatively, under the facts and circumstances, if in any case, capital gain issue was to be examined for its taxability, it could had been done only in A.Y. 2016 - 2017 as provided U/s. 54 F (4), being the year in which the period of 3 years from the date of transfer of original asset expires.*

3. That under the facts and circumstances, no interest under section 234 A & B should had been charged. Without prejudice, in any case, the calculations are grossly erroneous and excessive.”

3. From the above ground, it is gathered that main grievance of the assessee relates to the deduction u/s 54F of the Income-tax Act, 1961 (hereinafter referred to as the Act) for Rs.36,65,714/- on account of capital gain earned on sale of Indrapuram plot.

4. Facts of the case in brief are that the assessee filed the original return of income on 18.10.2013 which was processed u/s 143(1) of Act. Subsequently, the case was selected for scrutiny. During the course of assessment proceedings, the AO asked the assessee to supply reasons for high investment as compared to the total income. The assessee submitted that investments were made out of income deductible u/s 54F of the Act. The AO observed that a residential Plot No. 76, Nitikhand-II, Indrapuram was sold by the assessee (sole owner) for Rs.44,80,000/- on 05.07.2012 and on the same day Plot No. 300, Nitikhand-II, Indrapuram was purchased as co owner. The assessee submitted that a sum of Rs.1,14,60,000/- was invested jointly with his sister as equal contributor of Rs.57,30,000/- in purchase of land at 300, Nitikhand-II, Indrapuram,

Ghaziabad, U.P. and a new house was built at a cost of Rs.4,50,000/- (part of the total cost of Rs.8,25,000/-) which was incurred by the assessee. The AO asked the assessee to furnish sufficient evidence that the residential house claimed to have been constructed was in a habitable condition. The assessee produced a certificate dated 12.03.2015 from Arc Design Group, a private valuer and architect stating therein as under:

“This is to certify that the residential house of Mr. Rajpal Trehan & Smt. Anita Pal Gotra is completed existing of living room & bathroom with kitchen at Plot No. NK-II/300, Ghaziabad (U.P.), is approx cost as per details below:

Total plot area = 241.06 sq. mtr. (as per submission map)”

Another certificate was also furnished by the assessee stating that total cost of proposed construction of Plot No. NK-II/300, Indrapuram, Ghaziabad (U.P.) was at Rs.8,25,000/-.

5. The AO was of the view that the use of the term “proposed” indicated that actual construction had not taken place, he, therefore, also deputed one Inspector to collect information u/s 133B(1) of the Act, the Inspector on his visit found and reported in his report dated 30.11.2015 that

only boundary wall of the plot, a room made out of brick and cement approximately 15×15 feet had been erected on the plot and the rest was lying vacant and that the wild grass was growing in the plot and no water connection appears to be installed. The AO asked the assessee to show cause as to why disallowance u/s 54F of the Act should not be made as no residential house seems to be constructed on the said plot. The assessee furnished the copy of the approved plan of construction and admitted that the report and photographs furnished by the Inspector were correct and belonged to Plot No. 300, Nitikhand-II, Indrapuram, Ghaziabad (U.P.). The assessee submitted to the AO that he was using 5 Kg LPG cylinder and used submersible pump for water supply. The AO, however was not satisfied from the reply of the assessee and held that the assessee had not able to justify the claim for deduction u/s 54F of the Act and had not produced LPG bills and completion certificate from any Government authority, therefore, no construction had taken place as per approved plan. The AO also held that the structure present on the said plot was not a residential house or it was not in a habitable condition, he, therefore, made the addition of Rs.36,65,714/- on account of long term capital gain.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and filed additional evidences in the form of pictures of the completed house, copy of bank statement showing payments to contractor and a certificate of the building contractor regarding completion of the house. It was further stated that since the house was completed after the assessment, therefore, those evidences could not be produced at the time of assessment proceedings. It was contended that the pictures and the report of the Inspector had not been confronted to him, therefore, he was prevented by sufficient cause from rebutting the same. The Id. CIT(A) also asked the remand report from the AO who furnished the report vide letter dated 22.07.2016. The said report has been reproduced by the Id. CIT(A) in para 5 at page nos. 9 to 17 of the assessee's paper book (for the cost of repetition, the same is not reproduced herein). Thereafter, the Id. CIT(A) confronted the remand report to the assessee who in his rejoinder vide letter dated 31.08.2016 submitted that the property situated at Plot No. 76 at Niti Khand-II, Indirapuram was sold on 05.07.2012 for a sum of Rs.44,80,000/-. Therefore, the assessee was required to complete the construction of the house by 05.07.2015 and for that purpose the assessee invested his share in a joint property at 300, Niti Khand-II, Indirapuram amounting to

Rs.57,30,000/- and claimed the deduction u/s 54F of the Act and that the assessee provided a certificate from Arc Design Group, a registered valuer. It was submitted that the construction started within a period of three years and whole of the sale proceeds were invested in new residential house. It was further submitted that the assessee engaged a contractor, namely, Sh. Binod Yadav and paid Rs.2,50,000/- on 03.11.2014 and further paid Rs.2,00,000/- on 24.11.2014. It was stated that one room was constructed, thereafter, the contractor fell sick and could not continue. It was stated that the contractor again started the construction in January, 2016 and the assessee further paid Rs.1,85,000/- to him.

7. The ld. CIT(A) after considering the submissions of the assessee observed that the assessee had made a complete U-turn as far as earlier submissions made during the assessment proceedings and contradicted his own submissions that the house was complete in March 2015 and accepted that only one room was completed although before the AO his arguments were that one room, kitchen and bath room were constructed. The ld. CIT(A) also considered the evidences furnished by the assessee and observed that the bank statement had shown that there were cash withdrawals

on the relevant dates but the withdrawal of cash did not mean that the same was paid to the contractor for construction. He further observed that the notice u/s 143(2) of the Act was served on the assessee on 18.09.2014, up to that date, the assessee had not taken any steps towards the construction of the property but took preliminary steps only to create a facade for completion of property before the AO. He further observed that the assertion that the labour ran away or the contractor fell ill was also unsubstantiated, nor believable, since there was no shortage of labour in the country, so as to hold up any activity. He also observed that the photographs of the complete house revealed that it was not an extension of the old house which disproved the argument of the assessee that only part work was done, which was completed later on. The Id. CIT(A) also pointed out that the steel gate on boundary wall of earlier photographs were different and that the assessee had filed completion certificate only on 30.06.2016 which would have been relevant date for completion of the house which shows that within three years the assessee had only created a temporary brick structure to hoodwink the Revenue. The Id. CIT(A) held that if the house was not in a habitable condition, the same could not be considered residential house. The reliance was placed on the following case laws:

- *Usha Rani Kalindi Vs ITO 37 Taxman 360 (ITAT Hyd.)*
- *Saleem Fazalbhoy Vs DCIT (2007) 106 ITD 167 (Mum.)*
- *Mrs. Sonia Gulati Vs ITO (2001) 115 Taxman 232 (Mum.)*

8. The Id. CIT(A) was of the view that the case of the assessee did not fall within the clause of Section 54F of the Act because the assessee neither bought any new house nor purchased the constructed house and he had not deposited the amount in capital gains account which was not being utilized and that the net consideration was invested in a plot of land and not the house. He also observed that the so called construction plan (alleged to have been got approved by the assessee) was the same plan that was filed by the original allottee of the plot namely, Sh. Rishi Lal Chawla and therefore, it could not be stated that any steps were taken by the assessee towards construction of the house till the notice of scrutiny was issued. As regards to the architect's certificate, the Id. CIT(A) observed that the assessee contradicted himself when he accepted that only one room was made till January 2016 and that one kitchen, bathroom etc. were not even visible in the photo taken on 15.11.2015. He pointed out that if the approved map was in respect of a built up area of 61 sq. mts. and no other map

was approved then how could the architect dreamed of construction of only 40 sq. mts. with a cost of Rs.8.25 lacs. He also observed that the Inspector was deputed to collect the evidences and the photographs taken clearly show the nature of construction and the condition of structure. The Id. CIT(A) also observed that a liberal interpretation should be used where the notice show that strict interpretation was undue hardship of the assessee, who had done everything within his power to comply with the provisions but still due to reasons out of his control he could not meet some of the conditions and that the facts of the assessee's case were entirely different from the cases relied because the assessee was undertaking constructions under his control and guidance and the fact that he undertook to construct only after the case was selected for scrutiny which shows the utter disregard to the provisions of the Act. The Id. CIT(A) held that the AO was correct in stating that the assessee had failed to complete the construction of house within a period of three years and violated the provisions of Section 54F of the Act. Accordingly, the addition made by the AO was sustained.

9. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the

authorities below and further submitted that the assessee purchased a residential plot for Rs.57,30,000/- on the same date i.e. 05.07.2012 when the Plot No. 76, Niti Khand-II, Indirapuram was sold for a sum of Rs.44,80,000/-. Thus, the whole sale consideration was invested within three years and construction plan was got sanctioned from GDA vide approval dated 21.10.2014 and thereafter the construction was started in November 2014. However, construction of only one room residential set, consisting of living room, bathroom and kitchen got constructed within the specified period of 3 years upto March 2015 which stood proved from the certificate of architect/Government approved valuer dated 12.03.2015 (copy of which is placed at page no. 6 of the assessee's paper book), Certificate of building contractor (copy of which is placed at page no. 14 of the assessee's paper book) and that the money withdrawn from bank, document showing the installation of electricity connection proved that the assessee constructed one habitable residential unit prior to expiry of three years period which expired on 05.07.2015. Therefore, the deduction u/s 54F of the Act was available to the assessee. It was stated that Section 54F of the Act is a beneficial section, the objective of the said section since fulfilled by constructing a residential house, the deduction u/s 54F of

the Act should have been allowed. A reference was made to Circular No. 667 dated 18.10.1993 issued by the CBDT and reliance was placed on the following case laws:

- *CIT & Anr. Vs Smt. B. S. Shanthikumari (2015) 126 DTR 436 (Kar.)*
- *Sardarmal Kothari 302 ITR 286 (Mad.)*
- *CIT Vs R. L. Sood 245 ITR 727 (Del.)*
- *Smt. Shashi Verma 224 ITR 106 (MP)*
- *Smt. Rajneet Sandhu Vs DCIT (2010) 133 TTJ 64 (Chd.)*
- *Narsimha Raju Rudra Rao Vs ACIT 35 Taxman 90 (Hyd. Trib.)*
- *Bajaj Tempo Ltd. Vs CIT 196 ITR 188 (SC)*
- *Satish Chandra Gupta Vs AO 54 ITD 508 (Del. Trib.)*
- *CIT Vs Smt. B. B. Shanthakumari 126 DTR 436 (Kar.)*
- *Smt. Ranjneet Sandhu Vs DCIT 133 TTJ 64 (Chd.)*
- *Narashimha Raju Rudra Raju Vs ACIT 35 Taxman 90 (Hyd. Trib.)*
- *Satish Chandra Gupta Vs AO 54 ITD 508 (Del. Trib.)*

10. In his rival submissions the ld. DR reiterated the observations made by the authorities below in their respective orders and further submitted that as per the architect report, it was a proposed construction and the plot of land purchased by the assessee was not a residential unit. It was also submitted that the Inspector of the department deputed by the AO reported that only one room was there and that wild grass was there, so it cannot be said that the room was habitable. It was stated that the construction plan

was furnished for approval by the earlier owner and not by the assessee and even the new structure constructed was different from the structure reported by the Inspector in his report. Therefore, the assessee was not eligible for deduction u/s 54F of the Act.

11. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is not in dispute that the assessee sold Plot No. 76 at Niti Khand-II, Indirapuram, Ghaziabad on 05.07.2012 for a sum of Rs.44,80,000/- and purchased the another residential Plot No. 300, Niti Khand-II, Indirapuram, Ghaziabad for Rs.57,30,000/- on the same date i.e. 05.07.2012. The assessee got the construction plan sanctioned from GDA vide approval dated 21.10.2014 which is evident from the copy of sanctioned plan issued by Ghaziabad Development Authority available on the record wherein it is mentioned that the Map No. 74 was sanctioned for Zone 6/14-15 dated 31.10.2014 for residential building at Plot No. NK-300, Indirapuram, Ghaziabad (U.P.). The assessee started construction on the same plot and the approved valuer vide certificate dated 12.03.2015 (copy of which is placed at page no. 6 of the assessee's paper book) certified that the residential house of Mr. Rajpal Trehan and

Smt. Anita Pal Gotra was completed existing of living room, bathroom and kitchen at Plot No. NK-II/300, Ghaziabad (U.P.). In the present case, it is also noticed that the AO deputed one Inspector to examine the site and give report of construction. Thereafter, the Inspector of the Income Tax Department vide his report dated 30.11.2015 states as under:

“I was deputed to collect information u/s 133B (1) of the Income Tax Act 1961 on the above-mentioned person's address in connection with ongoing assessment proceedings for u/s 143(3) for A.Y. 2013-14, to verify whether construction on this plot is complete for residential purpose. The assessee is claiming deduction u/s 54F of the Income Tax Act 1961.

However, on visiting this address on 28.11.2015 at 1.15 P.M., it was notice that only boundary wall of the plot has been completed and a 15x15 Ft. (Approx.) room with a cement ceiling was erected on the plot. The room was locked and appears not in use. The single room appears to be a temporary structure with one door and is lying uncemented without whitewash. Further, it was also noted that the wild grass was growing on the plot and no water connection appears to have been installed in the plot.

Report is accordingly submitted please.

Please find attached copies of p-1 to p-8 photo graphs clicked by me at the aforementioned address.”

12. From the aforesaid report dated 30.11.2015 of the inspector of the Income Tax Department (copy of which is placed at page no.6), it is clear that when he visited the site one room was erected on the plot, so, it cannot be said that the assessee did not construct the residential unit because nowhere the Inspector in his report stated that the room was not habitable. He simply stated that wild grass was growing on the plot and no water connection appears to have been installed in the plot. The submission of the Id. Counsel for the assessee was that the water was obtained from submersible. The said contention was not rebutted. It is noticed that the CBDT vide Circular No. 667 dated 18.10.1993 instructed as under:

“if the amount of capital gain for the purposes of Section 54, and the net consideration for the purposes of Section 54F, is appropriated towards purchase of a plot and also towards construction of a residential house thereon, the aggregate cost should be considered for determining the quantum of deduction under Section 54/54F, provided that the acquisition of plot and also the construction thereon, are completed within the period specified in these sections.”

13. In the present case, the assessee sold the plot for a sum of Rs.44,80,000/- and invested in residential plot on the same date i.e. 05.07.2012, a sum of Rs.57,30,000/- which was more than the total consideration of the plot sold. The

assessee also constructed one room residential unit. Therefore, the conditions to claim the deduction u/s 54F of the Act were fulfilled prior to the time available for constructing the residential house from the sold plot which was upto 05.07.2015. The assessee along with the co-owner constructed a covered area of 40 sq. mts. by investing Rs.8,25,000/- and constructed one living room with bathroom & kitchen. The certificate given by the approved valuer is placed at page nos. 6 & 7 of the assessee's paper book. In the present case, the Inspector deputed by the AO, after visiting the site stated that a room measuring 15×15 ft. with a cement ceiling was erected on the plot which was locked and appeared not in use but the report given by the Inspector was dated 30.11.2015 while the valuer certified vide his report dated 12.03.2015 that one living room unit was constructed on the plot in question.

14. From the above facts, it is clear that the assessee invested in the residential plot which as per the aforesaid referred to Circular No. 667 dated 18.10.1993 of the CBDT should be considered towards the cost of construction of a residential house and the aggregate cost should be considered for determining the deduction u/s 54F of the Act. In the present case, the assessee purchased the plot for

a sum of Rs.57,30,000/- and as per the report of the approved valuer invested Rs.8,25,000/- alongwith the co-owner in the construction. Therefore, the combined cost of plot and the construction was much more then the sale consideration received by the assessee for Plot No. 76, Niti Khand-II, Indirapuram, Ghaziabad at Rs.44,89,000/-. Therefore, the assessee was entitled for the deduction u/s 54F of the Act.

15. On a similar issue the Honøble Karnataka High Court in the case of CIT, Bangalore Vs Smt. B.S. Shanthakumari (2015) 60 Taxman 74 (supra) held as under:

“that once it was established by assessee that she had invested entire net consideration in construction of residential house within stipulated period, it would meet requirement of Section 54F and she would be entitled to get benefit of Section 54F of the Act.”

16. In the present case also the assessee invested full consideration in the purchase of plot, within the stipulated period i.e. 05.07.2015, and also constructed the house on the said plot. Therefore, he was entitled for deduction u/s 54F of the Act. I, therefore, considering the totality of the facts as discussed hereinabove set aside the impugned order

passed by the Id. CIT(A) and direct the AO to allow the deduction claimed by the assessee u/s 54F of the Act.

17. In the result, the appeal of the assessee is allowed.
(Order Pronounced in the Open Court on 05/05/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 05/05/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR