

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' NEW DELHI  
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.6101/Del/2016  
Assessment Year 2011-12**

<b>ITO Ward-1 Sonapat</b>	<b>Vs.</b>	<b>Bhim Sen Handa Future Foundation School, kailash Colony, Sonapat</b>
		<b>PAN-AEBPH0252A</b>
(Appellant)		(Respondent)

Revenue by :	Sh. T. Vasanthan, Sr. DR
Respondent by :	None

सुनवाई का तारख/Date of Hearing : 04/10/2017  
घोषणा का तारख/Date of Pronouncement: 05/10/2017

**ORDER**

**PER B.P. JAIN, A.M.**

This appeal of the Revenue arises from the order of the learned CIT(A), Rohtak vide order dated 27.9.2016 for the A.Y. 2011-12. The Revenue has raised the following grounds of appeal as under:-

- The CIT(A) has erred in deleting the addition of Rs. 50,29,500/- made by the AO by disallowing the claim of exemption u/s 54F of the I.T. Act without appreciating the fact that no bills relating to purchase of material used in construction of residential house at Sonapat and relevant documents as to its proving the ownership of plot were produced during the assessment proceedings before the AO. As such, case laws as relied upon by the assessee are distinguished with the facts of the case.*
- In the quoted case law 2013(4) TMI 499-P&H High Court-CIT, Rohtak Vs. Sh. Jagtar Singh Chawla, the assessee had deposited the utilized consideration of*

*capital gain in a “Flexi General Account” which is a saving as well as Fixed Deposit account. Whereas in the present case, assessee has neither deposited the utilized consideration in any bank account nor invested the same in construction of house within the extended period to file return in terms of sub section 4 of section 139 of the IT Act.*

2. The brief facts of the case as emanating from the order of the AO are reproduced hereinbelow:-

*From the reply of the assessee, it has been found that during the year the assessee having ½ share, had sold his commercial plot to two different parties for Rs. 28,10,000/- & Rs. 26,90,000/- respectively but paid stamp duty on collector’s rate of Rs. 55,50,000/- & Rs. 52,20,000/- respectively. In the return of income, the assessee has shown Long term Capital Gain as under:-*

<i>Sale price on 01.11.2010</i>	<i>Rs. 53,85,000/-</i>
<i>Indexed cost Rs. 50,000/-x711/100</i>	<i>Rs. 3,55,500/-</i>
<i>Balance</i>	<i>Rs. 50,29,500/-</i>
<i>Exempt u/s 54F</i>	<i>Rs. 50,29,500/-</i>

*The assessee was asked to submit the documentary evidences regarding investment in purchase/construction of property or cash deposited in Capital Gain account scheme. In his reply, the counsel of the assessee submitted that:-*

*“In the said assessment year, the assessee has sold his property situated at Ghaziabad on dated 01.11.2010 and earned Capital gain of Rs. 50,29,500/- and assessee has invested Rs. 54,30,000/- inn residential property within a period of three years from the date of transfer, valuation report is herewith attached for kind perusal. Further it is bring to your kind notice that assessee has not deposited the amount in Capital Gain account scheme framed by Central Government”*

*Further, he has quoted following case laws in support of his claim that he amount which was not deposited in Capital Gain account scheme but invested in residential property within extended period of limitation is allowed.*

- i. 2013(4)TMI 499-P & H High Court –CIT, Rohtak vs. Sh. Jagtar Singh Chawla*
- ii. 2015(12)TMI 704-ITAT Bangalore-Smt. Selvi Venkatasubramani vs. ITO, Ward 9(4)*
- iii. 2015(4)TMI 620-Karnataka High Court – CIT/DCIT vs. K. Ramachandra Rao*

*Thereafter, the assessee was asked to submit the documentary evidences regarding construction of property i.e bills related to purchase of Material, ownership papers of plot etc. The assessee could not furnish the same during the assessment proceedings except only a valuation report from the valuer in support of his claim, which is just an estimation regarding construction & completion. Moreover, in the case laws quoted by the counsel of the assessee , it has been found that facts of the case are not matched with above case laws as no bills/documents/certificates from the competent authority were submitted during the assessment proceedings. Thus, as per the provisions of section 54F & in absence of documentary evidences related to ownership, construction & completion of the property, the reply of the assessee is not tenable. Thus, exemption u/s 54F of Rs.50,29,500/- is not acceptable, hence, disallowed and added back to the income of the assessee for the assessment year 2011-12. Penalty proceedings u/s 271 (1) (c) is being initiated for furnishing inaccurate particulars of income.*

***(Addition Rs.50,29,500/-)***

2. The learned CIT(A) deleted the additions on the basis of the submissions and representation made by the assessee.
3. None appeared on behalf of the assessee and accordingly I decide the appeal *ex parte* after hearing the learned DR and after perusing the material available on record.
4. There is no dispute infact that the assessee had invested the capital gain within the time allowed under Section 54F of the Act but he has not deposited the capital gain in the capital gain account scheme framed by the Central Government which is a part of the submission of the assessee before the AO as well as the learned CIT(A). But the AO has not alleged as regards the non deposit of the money in the capital gain account scheme and he has ignored the same. This was taken note of by the learned CIT(A). The only allegation of the AO was that he has not submitted the bills of the construction of the property.
5. As regards the bills relating to construction of property, the assessee has

submitted the valuation report of the approved valuer in which no defect has been pointed out and also the AO has not referred the matter to the DVO. In such circumstances, the report of the registered valuer has to be considered as final and therefore the allegation of the AO becomes ineffective. Moreover, the controversy of not depositing money under capital Gain Account gets resolved once having spent the amount under Section 54F of the Act within the extended period of time in view of the following decision:

- i. *2013(4)TMI 499-P & H High Court –CIT, Rohtak vs. Sh. Jagtar Singh Chawla*
- ii. *2015(12)TMI 704-ITAT Bangalore-Smt. Selvi Venkatasubramani vs. ITO, Ward 9(4)*
- iii. *2015(4)TMI 620-Karnataka High Court – CIT/DCIT vs. K. Ramachandra Rao*

6. In such circumstances and facts of the case, I do not find any infirmity in the order of the learned CIT(A) who has rightly deleted the addition so made. Thus both the grounds raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue in ITA No. 6101/Del/2016 is dismissed.

Order pronounced in the open court on this day 05.10.2017

Sd/-  
**(B.P. JAIN)**  
**ACCOUNTANT MEMBER**

Dated: 05/10/2017  
SH

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation	07.06.2017
2.	Date on which the draft is placed before the Dictating Member	07.06.2017
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	