

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH: RAIPUR**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 18/RPR/2014 (A.Y 2009-10)**

Shri Kalyandas Lalwani Prop. M/s Lalwani & saons Rajendra Nagar, Bilaspur (C.G) <b>(APPELLANT)</b>	Vs	Asstt. Commissioner of Income Tax [Circle-1(1)] Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G) <b>(RESPONDENT)</b>
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**I.T.A .No. 148/RPR/2014 (A.Y 2009-10)**

Smt. Nirmala Devi Lalwani Nehru Nagar, Near Hanuman Mandir Bilaspur (C.G) <b>(APPELLANT)</b>	Vs	Asstt. Commissioner of Income Tax [Circle-1(1)] Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G) <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Shri S. R. Rao, Adv</b>
<b>Respondent by</b>	<b>SH. D. K. Jain, DR</b>

<b>Date of Hearing</b>	<b>09.08.2018</b>
<b>Date of Pronouncement</b>	<b>23.10.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the respective assessee's against the orders dated 23/1/2012 for Assessment Year 2009-10.

2. The grounds of appeal are as under: **I.T.A .No. 18/RPR/2014**

"1. *In the facts and circumstances of the case, order is bad in law*

*as well as on facts.*

2. *That excluding the cost incurred or making the house habitable from the cost of improvement in the Residential House without pin-pointing any amount invested for Luxury/Comfortable items thereby making the additions of Rs.20,97,988.00 and confirmed by the Learned CIT(Appeal) is highly unjustified.”*

**I.T.A .No. 148/RPR/2014**

“1. *In the facts and circumstances of the case, order is bad in law as well as on facts.*

2. *That excluding the cost incurred or making the house habitable from the cost of improvement in the Residential House without pin-pointing any amount invested for Luxury/Comfortable items thereby making the additions of Rs.24,67,342.00 and confirmed by the Learned CIT(Appeal) is highly unjustified.”*

3. These two appeals are identical in nature though the assesseees are different. Therefore, we are taking up the facts of ITA No. 18/RPR/2014 as a lead matter.

4. The assessee, in the year under consideration, derived salary income of Rs. 1,00,000/- from M/s. Ruchand Hotel Pvt. Ltd., income from business or profession of Rs. 2,95,739/- from his proprietorship concern M/s. Lalwani and Sons dealing in whole sale trading of coal. Besides, the appellant has shown Long Term Capital Gain of Rs. 12,83,810/-. The property jointly owned by the assessee and other five co-owners was sold to M/s. Shivram Ventures Pvt. Ltd. on 10-04-2008 for total sale consideration of Rs.5,03,00,000/-, Rs. 3,84,20,000/- for land and Rs. 1,18,80,000/- for super structure on the land. The assessee has shown Long Term Capital Gain at Rs. 85,94,408/- on his share of sale consideration and claimed deduction u/s 54F of the Act of Rs.

53,03,650/- on account of purchase of a ready built house at Nehru Nagar, Bilaspur on 04-07-2008 along with further deduction of Rs. 20,06,948/- expended out of the sale proceeds for making the house habitable. The AO accepted the share of sale consideration taken at Rs. 93,00,000/-, indexed cost of acquisition at Rs. 7,05,592/-, commission of Rs. 56,000/- paid to Smt. Meena Devi Mangeshkar and Rs. 25,000/- paid to Shri Mahesh Chandra Gupta as transfer expenses, otherwise wrongly debited to the expenditure/ of the house. The AO also accepted the claim of deduction of Rs. 53,03,650/- purchase of ready built house u/s 54F of the Act. However, relating to claim of deduction of Rs. 20,26,948/-, he made further enquiries in order to ascertain whether the house was habitable at the time of purchase or it genuinely required repairing or remodeling to make it habitable. He examined the issue in the light of the decision of ITAT, Mumbai Bench in the case of Salem Fazelbhoy Vs. DCIT (2006) 9 SOT 601 and made addition of Rs.20,97,988/- as income from 'Long Term Capital Gain'.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that as regards Ground No.1, the assessee maintained regular books of accounts which were produced and verified by the Assessing Officer during the assessment proceedings. The Ld. AR submitted that the house for which exemption u/s 54F was claimed was constructed by State Housing Board with open foundation/piles 30 years ago and its total serviceable life was 40 years. With efflux of time and for want of maintenance it got dilapidated. The Ld. AR further submitted that doors, windows, cupboards, floor tiles, electric fittings, sanitary fittings, plastering, etc. were eroded and tattered and the structure required substantial capital expenditure to make it habitable at that particular time. The house being very old, further sum of Rs.24,76,231/- was incurred to make it habitable. The Ld. AR further submitted that separate account was opened and all expenses were paid partly

through cheques and partly through cash. The Ld. AR pointed out the assessment order does not give any finding that the assessee did not incur these expenses. The Ld. AR submitted that simply relying on CBDT Circular /guidelines by the Assessing Officer which was never confronted with the assessee is not just and proper. The Ld. AR further submitted that the Assessing Officer in fact admitted genuine need of capital repairs but estimated the same at Rs.100/- per sq. ft. without any basis. As per the Assessing Officer, the expenses were held to be made to make the house 'luxurious' and 'comfortable' hence the expenditure did not come in the ambit of Section 54F as per the Assessing Officer's decision. The Ld. AR submitted that these findings were only observations and no reasons were given in the assessment order regarding denial of Section 54F benefit. The Ld. AR submitted that the assessee is a regular income tax assessee, and the expenses incurred by the assessee houses are meant for comfortable living. The Ld. AR relied upon various decisions.

4. The Ld. DR relied upon the order of the Assessing Officer and the CIT (A).

5. We have heard both the parties and perused the material available on record. It is pertinent to note that there is an observation of the Assessing Officer that the house was habitable and given for rent for 7 months. But the Assessing Officer has only gone through the spot verification conducted by sub-registrar that the property was habitable. We find that an identical issue come up before the Hon'ble Karnataka High Court in case of Rahana Siraj vs. CIT (2015) 232 Taxman 0327 which was relied by the Ld. AR. The Hon'ble High Court held as under:

*"8. Insofar as the second substantial question of law is concerned, it is not in dispute that the property purchased by the assessee was habitable but had lacked certain amenities. The assessee has spent nearly about Rs.18 lakhs towards removal of mosaic flooring and laying of marble flooring, alteration of the kitchen, putting up compound wall, protecting the property with grill work and attending to other repairs. Section 54F of the Act provides*

*that if the cost of the new asset, which is to be taken into consideration while determining the capital gain, the words used is “cost of new asset” and not “the consideration for acquisition of the new asset”. In law, it is permissible for an assessee to acquire a vacant site and put up a construction thereon and the cost of the new asset would be cost of land plus(+) cost of construction. On the same analogy, even though he purchased a new asset, which is habitable but which requires additions, alternations, modifications and improvements and if money is spent on those aspects, it becomes the cost of the new asset and therefore, he would be entitled to the benefit of deduction in determining the capital gains. The approach of the authorities that once a habitable asset is acquired, any additions or improvements made on that habitable asset is not eligible for deduction, is contrary to the statutory provisions. The said reasoning is unsustainable. To that extent, the impugned order passed by the Tribunal as well as the Lower authorities require to be set-aside and it is to be held that in arriving at cost of the new asset, Rs. 18 lakhs spent by the assessee for modification, alterations and improvements of the asset acquired is to be taken not of. Thus, the second substantial question of law is answered in favour of the assessee and against the Revenue. ....”*

In light of the above decision of the Hon’ble Karnataka High Court, the claim of the assessee under Section 54F of the Act is just and proper. Therefore, we set aside the order of the CIT(A) and allow the appeal of the assessee in ITA No. 18/RPR/2014.

5. As regards ITA No. 148/RPR/2014, the factual aspects are similar to the earlier case which was not contradicted by the Ld. DR. Therefore, ITA No. 148/RPR/2014 is also allowed.

6. In result, both the appeals are allowed.

**Order pronounced in the Open Court on 23<sup>rd</sup> OCTOBER, 2018.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 23/10/2018

\*R.N

Copy forwarded to:

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

Private Secretary.....

Raipur Bench, Raipur.....

Date of dictation	22.10.2018
Date on which the typed draft is placed before the dictating Member	22.10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.10.2018
Date on which the final order is uploaded on the website of ITAT	.10.2018
Date on which the file goes to the Bench Clerk	.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	