

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'D' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)**

**ITA No. 2440/Kol/2017  
Assessment Year: 2013-14**

**Smt. Nilanjana Chakraborti.....Appellant**  
**99B, Kankulia Road**  
**Kolkata - 700 029**  
**[PAN : ACUPC 49992 P]**

**Vs.**

**Deputy Commissioner of Income Tax, Circle-22, Kolkata.....Respondent**

**Appearances by:**

*Shri Manish Tiwari, A/R, appeared on behalf of the assessee.*

*Shri Robin Choudhury, Addl. Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : October 16<sup>th</sup>, 2018

Date of pronouncing the order : November 9<sup>th</sup>, 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-6, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 03/08/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2013-14, on the following grounds:-

*"1. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in holding the erroneous determination of long term capital gain at Rs.72,50,000/- by Ld. DCIT on erroneous belief and misconception of law by denying the benefit claimed u/s 54F of Income Tax Act, 1961 of the Appellant.*

*2. That the appellant craves leave to add, amend, adduce or alter any ground or grounds on or before the hearing of the appeal."*

2. The facts of the case are brought out at para 3 & 4 of the assessment order, which is extracted below for ready reference:-

*"3. Therefore the total consideration amount for the purpose of computation of Long Term Capital Gain should be Rs.13593333/-. Now I am examining the conditions provided u/s - 54F as per the submission dated 30.03.2016, the assessee became owner of the assets and liabilities of Dr. Sibdas Mukherjee and Mrs. Sabita Mukherjee on death of Mrs. Sabita Mukherjee on 13.12.2011. These inherited assets includes one residential flat at Saltlake .Therefore assessee was owner of one residential flat on the date of sale of her Long term capital asset as*

*mentioned above. Assessee in her own admission dated 04.01.2016, has given advance for the purchase of two flats RS.2000000/- to Exclusive Home Pvt. Ltd. and Rs.4000000/- to Amit Enterprises. Assessee has further admitted that she had spent Rs 125000/- towards construction of the house at shantiniketan."*

4. *From the above it is clear assessee was owner of more than one residential house at the date of transfer of Long term capital asset .Which defeats the condition laid down in section 54 F. Assessee has purchased two flats within one year from the date of transfer of the Long term capital asset. Which defeats the condition laid down in section 54F(a)(ii) . Assessee has started a construction within one year from the date transfer of Long term capital asset. Therefore assessee has defeated all the conditions u/s - 54F for claiming the benefit under this section. Hence the benefit u/s -54F is disallowed. Penalty proceeding u/s.271(1)(C) is initiated for furnishing inaccurate particulars of income."*

2.1. On appeal, the Id. First Appellate Authority confirmed the denial of exemption u/s 54F of the Act.

3. The Id. Counsel for the assessee submits that the assessee earned long term capital gain on sale of two plots of land. The total long term capital gain earned is Rs.1,80,92,965/-. The assessee had made invested in REC Bonds of Rs.50,00,000/- within the period allowed in law and claimed exemption u/s 54EC of the Act. This issue is not in dispute.

He submitted that the assessee has advanced, for the purchase of two residential flats Rs.20,00,000/- to M/s Exclusive Home Pvt. Ltd. and Rs.40,00,000/- to M/s Amit Enterprises totaling to Rs.60,00,000/- and that the assessee had further spent for construction of a residential house in *Shantiniketan*, an amount of Rs.12,50,000/-. Before us, the Id. Counsel for the assessee submitted that, the Id. Assessing Officer be directed to grant benefit of Section 54F at least in the case of one house property i.e. for Rs.40 Lakhs/- paid to M/s. Exclusive Homes Pvt. Ltd.. He submitted that he had inherited one house property and thus, is eligible for exemption u/s 54F of the Act, for an investment made in one more house property.

He further submits that Section 50C of the Act, does not apply to investment made u/s 54 F of the Act. For this proposition he relies on the order of the Visakhapatnam Bench of the Tribunal in the case of *DCIT vs. Dr. Chalasani Mallikarjuna Rao [2016] 75 taxmann.com 270*.

3.1. The Id. D/R, on the other hand, took this Bench through the wording in the Act and the purpose of introduction of Section 50C of the Act in the statute and submitted that the interpretation placed by the Tribunal in the case of *Dr. Chalasani Mallikarjuna Rao (supra)* would defeat the intention of legislature in bringing in Section 50C into the Act, to the statute. He submitted that the assessee had inherited the property before the transfer of the capital asset in question and hence the order of the Assessing Officer as confirmed by the Id. CIT(A) is to be upheld.

4. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

5. The first issue is whether the assessee is entitled to exemption u/s 54F of the Act for investment made in one more residential house property. The undisputed fact is that the assessee had inherited one residential house prior to the sale of these two plots of land which had resulted in the assessee earning capital gain. As per the provision of Section 54F of the Act, the assessee is entitled to exemption for investment made in a second residential house property from out of the long term capital gains. Merely because the assessee has invested in more than one house property, he cannot be denied rightful exemption on an investment made on the second house property. The assessee claims that the amount of Rs.40 Lakhs/- investment by him for the purchase of the residential plot by way of advances to M/s Amit Enterprises should be considered for exemption u/s 54F of the Act, as investment in a second house property. We find force in these arguments. Hence we direct the Assessing Officer accordingly.

6. Coming to the issue as to whether the deeming provisions of Section 50C of the Act can be applied to Section 54F of the Act, we find that the Visakhapatnam Bench of the Tribunal in the case of *DCIT vs. Dr. Chalasani Mallikarjuna Rao [2016] 75 taxmann.com 270*, held as follows:-

*“12. The question is whether the assessee needs to invest the net sale consideration as a result of transfer or the full value of consideration as defined*

*u/s. 50C of the Act. The full value of consideration as defined u/s. 50C of the Act is a deeming consideration which is applicable for the purpose of computation of capital gain under the provisions of section 48 of the Act. The net sale consideration as a result of transfer of capital asset is a consideration received or accrued as a result of transfer. There is difference between net sale consideration and full value consideration. In our considered view, if the assessee invests net sale consideration for the purpose of purchase/construction of new residential house property, then he is eligible for exemption u/s. 54 of the Act, even though the full value of consideration is more than the net sale consideration as a result of transfer. Deeming fiction as provided u/s. 50C of the Act in respect of the words full value of consideration is to be applied only to section 48 of the Act and therefore meaning of full value of consideration as referred to in explanation to section 54F(1) of the Act is not governed by the meaning of the words full value of consideration as mentioned in section 50C of the Act as held by the coordinate bench of ITAT Jaipur in the case of Gyan Chand Batra v. ITO [\[2010\] 8 taxmann.com 22](#). The relevant portion of the order is extracted below:*

*"From sub-s. (1) of s. 50C, it is clear that in case the consideration received is less than the value adopted by stamp valuation authority then the value so adopted is to be taken as full value of the consideration for the purposes of s. 48. Sec. 50C provides a deeming provision for considering the full value of consideration as the value adopted for stamp duty. In modern statutes, the expression 'deem' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction of a word or phrase, Thus the artificial meaning of full value of the consideration has been given in s. 50C for the purpose of s. 48. One is entitled to ascertain the purpose for creating a statutory fiction. After ascertaining the purpose, full effect must be to the statutory fiction and it should be carried to its logical conclusion and to that end, it be proper and even necessary to assume all those facts on which alone fiction can operate legislature in its wisdom has referred to s. 48 in s. 50C for adopting the same value market value. Hence, the deeming fiction as provided in s. 50C in respect of the word value of consideration' is to be applied only for s. 48. The words 'full value of consideration mentioned in other provisions of the Act are not governed by the meaning of full value consideration as contained in s. 50C. The natural meaning of full value of consideration refers to consideration specified in the sale deed. Hence, for the meaning of full value of consideration mentioned in different provisions of the Act except in s. 48, one will have to consider its value of consideration as specified in sale deed. —CIT v. Smt. Nilofer I. Singh [\(2009\) 22 \(Del\) 277](#); [\(2008\) 14 DTR \(Del\) 108](#); [\(2009\) 309 ITR 233 \(Del\)](#) relied on. (Para 7.1)*

*In Explanation to s. 54F(1), it is mentioned that net consideration means the full value a consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in s. 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-cl. (a) and (b) of s. 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly*

mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable. Deeming provisions as mentioned in s. 50C will not be applicable to s. 54F so far as the meaning of full value of consideration is concerned as deeming provision mentioned in s. 50C is for specific asset and for the purpose of s. 48. Hence the assessee is entitled for deduction under s. 54F.—*CIT v. Ace Builders (P.) Ltd.* [\(2005\) 195 CTR \(Bom\) 1.](#) [\(2006\) 281 ITR 210 \(Bom\)](#) and *CIT v. Assam Petroleum Industries (P.) Ltd.* [\(2003\) 185 CTR \(Gau\) 71 :](#) [\(2003\) 262 ITR 587 \(Gau\)](#) applied. (Paras 7.3 to 7.5)"

**13.** *Considering the facts and circumstances of the case and also applying the ratio of the case laws discussed above, we are of the view that the assessee is eligible for exemption u/s. 54 of the Act, if the net sale consideration is invested in construction or purchase of new residential house. In the present case on hand, the assessee has invested net sale consideration for construction of new residential house property. Though, the full value of consideration as defined u/s. 50C of the Act is more than the net sale consideration as referred in section 54F(1) of the Act, once the net sale consideration has been fully applied under the provisions of section 54 of the Act, then the deeming consideration as defined u/s. 50C of the Act cannot be brought into the provisions of section 54F of the Act. Therefore, we are of the view that the assessee is eligible for exemption u/s. 54 of the Act, therefore, the whole of the capital gain is not chargeable to tax even if the capital gain is computed by taking the value as per the provision of section 50C of the Act. Therefore, we direct the A.O. to allow the exemption u/s. 54 of the Act."*

6.1. No contrary decision has been brought to our notice by the Id. D/R. Thus, respectfully following the order of the Co-ordinate Bench of the Tribunal on this issue we direct the Assessing Officer to re-compute the capital gains by applying the propositions of law laid down in the case of *Dr. Chalasani Mallikarjuna Rao (supra)*, to the facts of this case. The Id. Assessing Officer is also directed to examine the claim of the assessee of having invested in a second house property and that she is exempt u/s. 54F of the Act.

7. In the result, appeal of the assessee is allowed for statistical purposes.

***Kolkata, the 9<sup>th</sup> day of November, 2018.***

Sd/-

**[S.S. Viswanethra Ravi]**  
Judicial Member

Dated : 09.11.2018

{SC SPS}

Sd/-

**[J. Sudhakar Reddy]**  
Accountant Member

*Copy of the order forwarded to:*

**1. *Smt. Nilanjana Chakraborti***  
***99B, Kankulia Road***  
***Kolkata – 700 029***

**2. *Deputy Commissioner of Income Tax, Circle-22, Kolkata***

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches