

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI S.K. YADAV, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5476/Del/2015  
Asstt. Year: 2011-12

DCIT Circle-26(2), Room No. 192, C.R. Building New Delhi.	Vs.	Punit Beriwala 15/10, Sarvapriya Vihar New Delhi – 110 008 PAN ADLPB0195R
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Ms. Ashima Neb, Sr. DR
Assessee by :	Shri Rajesh Arora, CA
Date of Hearing	13/11/2018
Date of pronouncement	16/11/2018

**ORDER**

**PER O.P. KANT, A.M.**

This appeal by the Revenue is directed against order dated 23/03/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-9, New Delhi for assessment year 2011-12 raising following grounds:

1. *“On the facts and in the circumstances of the case and in law the learned CIT(A) has erred :*
  - i) *in allowing deduction of Rs. 6,12,10,060/- claimed by the assessee u/s 54F of the I.T. Act.*

ii) *in admitting a new line of argument by the assessee that the 'Advances against property' is in relation to a commercial property, and not a residential one, without giving an opportunity to the AO to rebut the same*

2. *The appellant craves, leave or reserving the right to amend modify, alter, add or forego and ground(s) of appeal at any time before or during the hearing of this appeal."*

2. Briefly stated facts of the case are that the assessee filed return of income on 30/07/2011 declaring total income of Rs. 75,90,654/-. The case was selected for scrutiny and notice u/s 143(2) of the Income Tax Act, 1961 (in short the Act) was issued and complied with. The Assessing Officer observed that the assessee declared long-term capital gain of Rs. 6,14,32,959/-on account of sale of shares and claimed exemption of Rs. 6,12,10,060/-u/s 54F of the Act for investment towards residential house. According to the Assessing Officer, the assessee was owning following three properties on or before the investment in the residential house claimed as exemption u/s 54F of the Act:

- |                                       |                 |
|---------------------------------------|-----------------|
| a. Flat at Sarvapriya Vihar           | Rs. 50,80,000/- |
| b. Property at Madhya Pradesh         | Rs. 74,81,120/- |
| c. Advance against Property purchased | Rs. 30,00,000/- |

3. According to the Assessing Officer the property at Madhya Pradesh was not an agriculture property. Regarding the advance of Rs. 30 lakh , the Assessing Officer observed that advance against property was a capital asset and assessee was to be deemed to the owner of the property from the date of agreement for purchase of the property.

4. In view of the observation, the Assessing Officer held that the assessee owned more than one residential house other than the new asset on the date of the transfer of the original asset and therefore the condition of the section 54F was not complied with and accordingly, he withdrawn the exemption of Rs. 6,12,10,060/-claimed by the assessee u/s 54F of the Act . The assessment was completed on 28/03/2014. Aggrieved, assessee filed appeal before Ld. CIT(A) who allowed the appeal of the assessee on the issue of deduction u/s 54F of the Act. According to the Ld. CIT(A) the Assessing Officer has not brought on record any material to controvert the claim of the assessee that land at Madhya Pradesh was rural land and the advance given was towards purchase of commercial property. Aggrieved, Revenue is in appeal before the Tribunal raising the grounds is reproduced above.

5. Before us the Ld. DR submitted that the Ld. CIT(A) has not carried out any enquiry whether the land in question at Madhya Pradesh was rural land or the advance against property of Rs. 30 lakh was commercial property and allowed the appeal accepting the averments of the assessee. According to her, the Ld. CIT(A) was required to carry out the enquiries for verification of the facts whether the property in question was residential property or not. In support of her contention, she relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. M/s. Jansampark Advertising and Marketing (P) Ltd. in ITA No. 525/2014.

6. On the contrary, the Ld. Counsel of the assessee submitted that the assessee has filed the required details before the Assessing Officer for claiming deduction u/s 54F of the Act and Assessing Officer has not brought on record any adverse material to show that property in question were residential properties. The Ld. Counsel submitted that the Assessing Officer cannot be allowed second inning for carry out

the assessment and failure of the Assessing Officer in contradicting the claim of the assessee, the assessee cannot be visited again with the process of scrutiny proceedings. According to Ld. Counsel, the assessee has discharged his onus for claim u/s 54F of the Act.

6. We have heard the rival submissions and perused the relevant material on record. As far as deduction u/s 54F of the Act is concerned, an assessee gets disqualified for the deduction if he or she owns more than one residential house, other than the new asset on the date of the transfer of the original asset . The assessee sold certain shares and declared long-term capital gain of Rs. 6,14,32,959/-and against the said long-term capital gain, the assessee claimed exemption u/s 54F amounting to Rs. 6,12,10,060/- for investment in a new house. In the instant case, issue in dispute is whether the assessee was owning more than one residential house at the time of transfer of the original asset i.e. shares, on which long-term capital gain has arisen. The assessee claimed that on the date of transfer of the Shares the assessee was owning one flat at Sarvapria Vihar ( Rs. 50,80,000/- ); property at Madhya Pradesh ( Rs. 74,81,120/- ) and advance against property (Rs. 30,00,000/-). According to the Assessing Officer, the assessee has not earned any agriculture income during the year under consideration on the rural property at Madhya Pradesh. Therefore, it was not an agriculture property. We note that Assessing Officer himself has admitted that property at Madhya Pradesh is a rural property on which no agriculture activity has been carried out. In our opinion not carrying of agriculture activity on the rural land, cannot render the same as residential house for the purpose of section 54F of the Act. The Ld. CIT(A) has decided the issue favour of the assessee observing as under:

“2.4 In the assessment order, the AO has observed that “the Assessee has admitted that he has not earned any agricultural income during the year under consideration. In view of this admission of the Assessee, it is evident that the property at Madhya Pradesh is not an agricultural property”. The appellant has stated that he did not have any agricultural income from this property because it was barren land, and that there was no construction on this property of any residential unit. In the assessment order, the AO has not brought any material on record to controvert the claim of the appellant. Regarding advance against property purchased, the appellant has stated that this advance has been given towards purchase of commercial flats. The AO has not been able to controvert the appellant’s contentions and has failed to show that the above mentioned assets are in the nature of residential houses. Considering these facts, the rejection of the appellant’s claim for deduction u/s 54F is not sustainable in law. The addition is therefore, deleted. The grounds are accordingly allowed.”

7. In our opinion, the Assessing Officer has not brought on record any adverse evidence to claim that property at Madhya Pradesh was in the nature of residential house. On the contrary the Assessing Officer himself is admitting that the land in question is rural land and on which no agriculture activity has been carried out. The advance against the property also cannot be termed as residential house owned without any evidence of possession of the said property. In absence of any adverse evidences brought on record by the Assessing Officer, the Ld. CIT(A) cannot be faulted for not carrying out enquiries.

8. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) and uphold the same. The grounds of the appeal are accordingly dismissed.

9. In the result, the appeal of the Revenue is dismissed.

This decision was pronounced in the Open Court on 16<sup>th</sup> November, 2018.

sd/-

**(S.K. YADAV)**  
**JUDICIAL MEMBER**

sd/-

**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 16/11/2018

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi