

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6640/Del/2015
Assessment Year: 2012-13**

Dr. Vikram Kalra, 215A, MIG, Rajouri Garden, New Delhi. PAN- AHEPK 5621L (Appellant)	vs.	ACIT, Circle 61(1), New Delhi. (Respondent)
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Appellant by	Sh. Arvind Kumar, Advocate
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	21.01.2019
Date of Pronouncement	22.01.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of ld. CIT(A)-20, New Delhi dated 08.10.2015 for the assessment year 2012-13 on the following grounds :

1. *On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) -20, New Delhi, has erred on facts in not and reckoning the date of advance of the sale of the landed property (April 6, 2011) for the purposes of claim under section 54 F of the Income tax Act, as the date for counting the exemption period of one year provided under the law, which falls within one year of the date of purchase of another residential property (on April 9,2010) in the earlier financial year.*
2. *On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) -20, New Delhi, has erred on facts that advance*

money has been received by the assessee from the property broker for validating an agreement for sale, is only security and not advance for sale of property, which actually resulted in a sale later, can not be construed as advance sale consideration and hence the date of initiating the sale is not within the due period of 'One Year' and as prescribed under section 54F of the Act.

3. On the facts and circumstances of the case, the Commissioner of Income Tax Appeals has erred in law in counting period of one year or two years as the case may be from the date of sale and purchase, instead relating the same to the financial year in which the transactions happened for the purposes of section 54F of the Income tax Act, 1961."

2. The brief facts of the case are that the assessee is a doctor by profession and filed return of income on 26.12.2012 declaring income at Rs.57,53,650/-. The case was taken up for scrutiny. The Assessing Officer noticed that the assessee has shown his income from business or profession, house property, capital gains and other sources. The Assessing Officer further noticed that the assessee had sold plot C-1417, Palam Vihar, Gurgaon on 24.05.2011, which was a long term capital asset and he was the owner of 50% of that property. The said property was sold and he received his share for sale consideration of Rs.52.05 lakhs and claimed expenditure of Rs.8,20,180/-. Resultantly, the long term capital gain was calculated at Rs.43,24,820/-. Further, the assessee also purchased a house at DLF and claimed exemption u/s. 54F of his own share of 50% to the extent of Rs.50,53,375/-. Further, the Assessing Officer noticed that on the date of sale, the assessee had two residential houses. During the course of assessment proceedings, the assessee filed revised computation and claimed exemption u/s. 54F on purchase of flat at CB-6A Munirka, New Delhi of Rs.44,50,000/-. On the basis of revised computation filed, the AO noticed

that the new asset should be purchased within one year from the date of sale of the capital asset, i.e., 25.05.2010, but here the assessee purchased the property at CB-6A Munirka New Delhi on 09.04.2010 which is beyond the period prescribed u/s. 54F for availing deduction. Accordingly, the AO disallowed the claim of assessee u/s. 54F and made addition of Rs.44,50,000/- . In appeal before the ld. CIT(A), the assessee made detailed written submissions and the ld. CIT(A), after considering the submissions of the assessee and the provisions of section 54F sustained the impugned addition. Aggrieved, the assessee is in appeal before the ITAT.

3. The ld. AR of the assessee has filed a paper book which is placed on record. It was submitted that the limitation for purchase of new property should be reckoned from the date 06.04.2011 when the assessee received a cheque of Rs.5.00 lakhs from the broker as security deposit against the said property, though the sale deed of the property was executed on 30.05.2011. The assessee had purchased new residential property at CB-6A, Munirika, New Delhi on 09.04.2010 for Rs.44.5 lakhs and this date falls within the period of one year prior to sale of original asset, i.e. 06.04.2011. Therefore, the assessee is justified to claim deduction u/s. 54F of the Act. In support of his arguments, he relied on the decision of Hon'ble Supreme Court in the case of Sh. Sanjay Lal etc. etc. vs. CIT (Civil appeal No. 5899 – 5900 of 2014).

4. On the other hand, the ld. DR relied on the order of the lower authorities and submitted that language of the Act is clear for getting deduction u/s. 54 F of the Act that the assessee should invest his money for acquiring new asset (residential property) within a year from the sale of the original asset. The date of sale of property would be deemed to be when the sale deed was

executed by the assessee, which in the instant case is 30.05.2011 and the case law cited by the assessee is not applicable in the present case because it is based on different footings.

5. After hearing both the sides and perusing the entire material on record and the orders of the authorities below, we observe that the Id.CIT(A) has done a good reasoned order which reads as under :

"4.3. I have carefully considered the assessment order and submissions thereof. Following facts have emerged;

1. The assessee is a half co-owner of a plot at C-1417, Palam Vihar, which was sold at Rs.1,04,10,000/- (assessee share being Rs.52,05,000) vide sale deed registered on 30th May, 2011.

2. That the assessee has purchased a residential flat at CB6A, Munirka, New Delhi on 9th April, 2010 vide sale deed dated 9th April 2010 for an amount of Rs.30 lakhs and made investment in fixtures in the flat at Rs.14 lakhs. Total cost including stamp duty comes to Rs.44.5 lakhs.

3. The appellant has claimed that Since the cost of acquisition of a residential flat was Rs. 44,50,000 and that this exceeded the Long term capital gain of Rs. 43,48,820 that arose on sale of residential plot (after indexation), the whole gain was claimed as exempt under section 54 F of the Income tax Act, 1961.

{4.4} In order to examine the claim of the appellant, let's go to the provisions of the section 54F of the Act.

54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital

gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

In the instant case the date of sale of the asset is 30/05/2011. Therefore, in order to get exemption under section 54F of the Act, the appellant should have investment in a residential property on or after 30/05/2010.

Appellant has purchased the flat on 09/04/2010, which is clearly beyond the period applicable under section 54F of the Act. The appellant has claimed that he has approached several brokers for the sale of the property and that one of such broker has credited the account of the appellant an amount of Rs.5 lakh towards security deposit in lieu of future sale of this property and that the security deposit was received against this property on 06/04/2011. Therefore - the date of sale of the property should be treated as on 06/04/2011 and not the actual sale deed i.e 30/05/2011. The appellant's claim is not justified because of the following reasons;

- 1. That the money received by the appellant on 06/04/2011 was on account of security deposit against the property and not on account of any sale advance.*
- 2. That the amount received was from Sh Sanjay Kumar, who is not even the eventual purchaser of the property.*
- 3. That the amount actually is some sort of an arrangement between the property broker and the appellant so that the amount received by him shall be adjusted against the future sale proceeds.*
- 4. That it is a common practice that the brokers give some money to the property owner desirous of sale of the property so that the property is sold through that particular broker only. But by any stretch of imagination, such money which is appropriately described by the appellant itself deposits' cannot be construed as advance sale consideration when the buyer was nowhere in sight on 06/04/2011.*

In view of the above facts and circumstances of the case, appellant cannot claim exemption under section 54F as the conditions laid down in the Act is not fulfilled by the assessee."

From the above finding of the Id. CIT(A) is clear that the assessee had bought new property beyond one year prior to the sale of original asset against which the assessee wanted to take deduction u/s. 54F. The language of the Act is very clear that the assessee should purchase/invest in new house within one year prior to the date of sale of original asset. The assessee has sold the property on 30.05.2011 on the date the sale deed was executed and purchased property at CB-6A, Munirka on 09.04.2010 which is beyond one year as prescribed u/s. 54F for getting deduction u/s. 54F. Therefore, the lower authorities are justified in rejecting the claim of assessee.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 22.01.19.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 22.01.2019

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi