

**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. 732/Del/2014
Assessment Year: 2008-09**

Pavitar Singh Chowdhry, D-145, Defense Colony, New Delhi. PAN- ADCPC 1769R. (Appellant)	vs.	Income-tax Officer, Ward 32(4), New Delhi (Respondent)
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Appellant by	Smt. Lalita Krishnamurthy, Adv.
Respondent by	Smt. Sulekha Verma, CIT/DR

Date of Hearing	28.01.2019
Date of Pronouncement	30.01.2019

ORDER

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

This is an appeal filed by the assessee against the order of the Id. CIT(A)-XXXVIII, New Delhi dated 13.11.2013 for the assessment year 2008-09 on the following revised grounds :

1. *That in the absence of service of notice under Section 143(2) of IT Act within the prescribed period, the AO has no jurisdiction to make an assessment and accordingly the assessment so framed by the AO in furtherance of such invalid assumption of jurisdiction by way of issue of notice under Section 143(2) is invalid and bad in law.*

2. *That without prejudice to ground no. 1 above, the valuation made by the Valuation Officer (VO) based on the Circle Rate adopted by the*

Stamp Valuation Authority without properly looking into the other derogatory factors in respect of the immovable property, such as legal dispute going on in the Court, illegal possession by accused is arbitrary, unjust and consequently the Capital Gains as sustained, based on such arbitrary and unreasonable valuation of VO is also arbitrary, unreasonable and at any rate very excessive.

3. That without prejudice to ground nos. 1 and 2 above CIT(Appeals) / AO has erred on facts and under the law in not allowing the deduction, in respect of the investment from the sale proceeds in residential house, under Section 54 / 54F of IT Act as permissible under the law.

2. Out of above grounds of appeal, ground No. 1 is not pressed by the Id. AR of the assessee. The same is dismissed as such.

3. The questions emerge out of the remaining grounds of appeal and attending facts of the case, which need adjudication before us are (i) whether in the facts and circumstances of the present case, the claim of assessee to calculate the long-term capital gains after taking into account the sale consideration of Rs.16,00,000/- as admitted by the assessee was justified or the Id. CIT(A) was justified to direct the Assessing Officer to calculate the capital gain after considering the sale consideration of Rs.34,00,000/- of the property transferred, as valued by the AVO; and (ii) whether the assessee is entitled to deduction claimed u/s. 54/54F of the IT Act.

4. The relevant facts are that the assessee filed its return of income on 26.09.2008 declaring total income of Rs.4,81,332/-. The case was selected for scrutiny on the basis of AIR information that the assessee had sold an

immovable property at a sale consideration of Rs.37 lakhs. The information so received was supplied to the assessee and the assessee was asked to file the computation of capital gains on sale of property. On perusal of the return of income, the Assessing Officer observed that in the capital gain section of the computation filed with the return was crossed by the assessee nor did the assessee show any capital gain or deduction u/s. 54 of the IT Act therein. In response to notice, the AR of the assessee filed a computation of long-term capital gains wherein he has taken full value of consideration at Rs.37 lakhs, indexed cost of acquisition at Rs.7,49,323/- and computed the long term capital gains at Rs.29,50,677/-, out of which the assessee claimed deducted u/s. 54 of Rs.29,04,841/- and calculated the taxable long term capital gain of Rs.45,836/- and paid tax thereon. This computation of capital gains submitted by the assessee before the Assessing Officer is placed at page 19 to 23 of the paper book. Subsequently, vide letter dated 20.12.2010, the assessee informed that the property in question was sold at Rs.16,00,000/- and requested the Assessing Officer to refer the matter to the DVO, which was rejected by the Assessing Officer stating that such a request was made at the fag end of the assessment proceedings which were going to be time barred. The Assessing Officer observed that in the return of income and computation filed therewith the Assessee did not declare any capital gain nor claimed any deduction u/s. 54, thereby concealing entire sale of property. It was also observed that the asset sold by the assessee was a plot of land and not a residential house and therefore, the deduction u/s. 54 was not legally available to the assessee. Therefore, rejecting the claim of deduction u/s. 54 and other claims of assessee, the Assessing Officer computed the capital gain

at Rs.29,50,677/- as computed by the assessee in his computation of capital gains submitted to the Assessing Officer and added the entire capital gain to the total income of the assessee.

5. The assessee carried the matter in appeal before the Id. CIT(A), where on the request of assessee he referred the valuation of impugned property to the Valuation Cell and the AVO filed his report determining the fair market value of the property at Rs.34,00,000/-. Considering this amount as sale consideration of the property, the Id. CIT(A) directed the Assessing Officer to compute the long term capital gains after considering the sale consideration of property at Rs.34,00,000/-. He, however, confirmed the action of the Assessing Officer regarding rejection of assessee's claim of deduction u/s. 54 of the Act. Aggrieved, the assessee is in appeal before the Tribunal.

6. During the course of hearing, the Id. counsel for the assessee reiterated the submissions made before the authorities below and submitted that the Id. authorities below were not justified in not considering the actual sale consideration of Rs.16 lakhs, supported by sale deed and the documentary evidences pertaining to litigation on the said property, while relying on the valuation made by the AVO at Rs.34 lakhs, particularly when the assessee had objected to the same by pointing out various discrepancies therein. It was also submitted that the provisions of section 54 have been wrongly interpreted by the authorities below before rejecting the legitimate claim of deduction made by the assessee. It is, therefore, urged that the long term

capital gains be computed by taking into consideration the sale value of property at Rs.16,00,000/- and legitimate deduction u/s. 54 of the Act as claimed, be allowed to the assessee.

7. On the other hand, the ld. DR relied on the orders of the authorities below and urged for sustenance of the impugned order.

8. We have considered the submissions of both the parties and have gone through the entire material available on record. It is not in dispute that the assessee neither in the return of income nor in the computation filed therewith had given the details of property sold or any capital gains or deduction u/s. 54 of the Act, on the premise that since no taxable capital gains after considering the sale value of property at Rs.16,00,000/- and considering the deduction u/s. 54, was arising to the assessee, the assessee crossed the capital gain section of the said computation of income. This contention of the assessee does not appear appealing to reason particularly when the assessee itself has furnished the computation of capital gain to the Assessing Officer in response to his notice. It is born out on record that in the said computation, the assessee itself has computed the long-term capital gains at Rs.29,50,677/- and after deducting Rs.29,04,841/- u/s. 54, has admitted the taxable long-term capital gains at Rs.45,836/- as noted above. In presence of these facts, there remains nothing to say on behalf of the assessee to considering the sale consideration of property at Rs.16,00,000/- for further computing the capital gain of the said property, particularly when the request of assessee for

referring the valuation to Valuation cell has been accepted by the Id. CIT(A) and the valuation of AVO at Rs.34 lakhs has been accepted by him and the Assessing Officer has been directed accordingly. We, therefore, do not find any justification in the claim of assessee to consider the sale value of impugned property at Rs.16 lakhs in the peculiar facts and circumstances of the present case.

9. As far as the claim of deduction u/s. 54 of the Act is concerned, it is not in dispute that the assessee has invested in purchase of residential property at B-40, Malcha Marg, for Rs.29,04,841/-. The Assessing Officer while rejecting the claim of assessee u/s. 54 of the Act has opined that the said deduction is not available to the assessee u/s. 54 as he had sold a plot of land and not any residential house. However, in the revised grounds of appeal before us, the assessee has submitted that the claim made by assessee is legitimate and is available to it u/s. 54/54F. In our opinion, once the assessee has admitted the capital gains on the sale of capital asset and has admittedly invested substantial amount of capital gains in purchase of residential property within the stipulated time, the assessee would be entitled to claim deduction u/s. 54 or 54F, as the case may be, and the Assessing Officer was bound to give credit of such claim legitimately, meaning thereby, if the assessee was found not satisfying the conditions of section 54 of the Act, the Assessing Officer was required to consider its claim in the light of section 54F of the Act. We, therefore, think it appropriate to remit this issue back to the file of Assessing Officer for considering the claim of assessee on the anvil of section 54F of the Act and to decide the issue afresh after being satisfied with the conditions of

section 54F, if satisfied by assessee. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, the appeal deserves to be partly allowed for statistical purposes.

10. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 30.01.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 30.01.2019

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Copy of order forwarded to:

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi