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

Before : Shri Amit Shukla , Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 2649/Del/2016
Assessment Year: 2012-13

Bal Kishan Atal, 1610, Madarsa Road, Delhi. (PAN – AHNPA 3020A). **(Appellant)**	**vs.**	ACIT, Circle 20(1), New Delhi. **(Respondent)**

Appellant by	Sh. Ved Jain, Advocate and S/Sh. Ashish Goel, Surabhi Goyal, CA
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	21.02.2019
Date of Pronouncement	06.03.2019

ORDER

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

This is an appeal filed by the assessee against the order dated 29.02.2016 of ld. CIT(A) for the assessment year 2012-13 on the following grounds :

1. That the assessment order passed by the AO is illegal, bad in law and without jurisdiction and against the principle of natural justice.

2. That the AO has grossly erred in law and on facts in making disallowance of Rs. 83,41,330/- in the Assessment Year 2012-13 when the impugned transaction could only be subject to scrutiny in AY 2015-16.

3. That in view of the facts and circumstances of the case the CIT(A) has erred in law and on facts in confirming the disallowance of Rs. 62,68,311/- made by an AO on account of non fulfillment of conditions U/s 54F of the

Act (Delivery of possession and Payment of entire sale consideration) as the appellant has already made substantial payment for a residential house.

4. That the CIT (A) has erred in law and on facts in confirming the disallowance of Rs. 19,00,000/- made by an AO on account of non-utilisation of amount for the new asset within the period mentioned in sub section (1) of Section 54 of the Act when the same were utilised for the residential house.

5. Without prejudice, the CIT(A) has failed to appreciate that an amount of Rs. 10,60,311 was utilised for construction of the new asset.

6. That the AO and subsequently the CIT(A) has erred in law and on facts in taking the amount of Rs. 2,00,000/- as cost of acquisition for calculation of indexed cost of acquisition against the Rs. 2,20,450/-.

7. That the AO and subsequently the CIT(A) has erred in law and on facts in making a disallowance of Rs. 52,867/ on account of cost of improvement incurred in year 2010-11.

8. That the CIT(A) has failed to appreciate that on the facts and circumstances of the case, the various observations and findings of the learned assessing officer in the impugned assessment order are irrelevant and vitiated in the law.

9. That on the facts and circumstances of the case the interest charged U/s 234B and 234C has been wrongly and illegally charged and in any case is highly excessive.

10. That the material available on record have not been properly considered and judicially interpreted and the same do not justify the addition made.

11. That the addition made is based on mere surmises and conjunctures and the same cannot be justified by any material on record and the same are highly excessive.

2. Briefly stated, the facts attending to the present case are that the assessee derives income from Salary, income from business or profession, and other sources. The assessee filed its return of income at Rs.25,00,260/-, which stood revised on 24.09.2012 declaring total income of Rs.24,80,260/-. The case was selected for scrutiny under CASS so as to scrutinize large deductions claimed u/s. 54B, 54C, 54G & 54GA. During the year under consideration, the assessee sold a property for a total consideration of Rs.98,00,000/- and claimed deduction of Rs. 81,44,608/- under section 54 of the Income Tax Act after claiming indexed cost of acquisition of Rs.16,13,187/-. The assessee had invested a sum of Rs.62,68,311/- in the residential flat and deposited Rs. 19,00,000/- in the capital gain account. The Assessing Officer disallowed the deduction of Rs.62,68,311/- on the premise that assessee has not taken possession nor the purchase deed has been executed within the period of three years. Therefore, the Assessing Officer also disallowed the deduction of Rs.19,00,000/- deposited in the capital gain account on the ground that assessee had not utilised the same within the prescribed period. The Assessing Officer also reduced the indexed cost of acquisition by Rs.1,20,152 stating that the assessee has not been able to produce evidences in respect of the expenses of Rs.20,450/- incurred at the time of the purchase and also did not allow deduction of Rs.52,867/- claimed by the assessee on account of cost of improvement in the year 2010-11 on the ground that the assessee has failed to provide documentary evidence in support thereof. The assessee carried the matter in appeal before the ld. CIT(A), who after considering the submissions of the assessee and material on record, confirmed the action of the Assessing

Officer vide impugned order. Aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee has raised as many as 12 grounds in this appeal, but the issues involved therein are only with respect to addition of Rs.62,68,311/- on account of capital gains, as the assessee did not fully comply with the conditions u/s. 54F of the Act, addition of Rs.19,00,000/- on account non-utilization of amount in the new asset within the statutory period, addition of Rs.20,450/- by taking the indexed cost of property at Rs.2,00,000/- instead of Rs.2,20,450/- and addition of Rs.52,867/- on account of disallowance of cost of improvement claimed to have been incurred during the year under consideration.

4. Regarding disallowance of exemption of Rs.62,68,311/- claimed u/s. 54F of the Act in respect of investment in the residential flat, the ld. AR of the assessee submitted that both the authorities below have erred in not allowing the exemption claimed. It was submitted that during the year under consideration, the assessee sold a property, Plot No. 116, Sharda Niketan, Pitampura, Delhi. The said property was sold for a total consideration of Rs. 98,00,000/- and claimed exemption u/s 54 of the Act, by investing a sum of Rs. 62,68,311/- out of the sale proceeds in a residential flat bearing no. T12-801 at La Tropicana, Khyber Pass, Delhi developed by M/s Parsvnath Landmark Developers Pvt. Ltd. and deposited Rs. 19,00,000/- in Capital Gain account Scheme. The AO during the course of assessment proceedings asked the assessee to produce evidence for the property purchased by the assessee. In response to which the assessee, vide letter dated 07.08.2014 (place at Paper

book Page 6) submitted the copies of receipts of payments made to the developers and flat buyer agreement entered into by the assessee with the developers. However, possession of the property was not given to the assessee by the developer till the end of the statutory period of claiming the exemption under section 54 and therefore even the property did not get registered in the name of the assessee. The AO alleged that since the possession of the property was not taken by the assessee and the property is not registered in the name of the assessee, the benefit of exemption cannot be claimed. In reply It was submitted to the Ld. AO that La Tropicana Resident Welfare Association had filed a complaint before National Consumer Disputes Redressal Commission against the developers seeking relief and compensation for the losses suffered by the allottees on account of unfair trade practices and deficient services rendered by the developers. The delay in granting possession was due to the fact that the Commission through its order dated 02.06.2014 (placed at PB Page 73-74) put stay and directed the developers to not to transfer or alienate in any manner flats allotted to the members and due to which purchase deed also did not get executed. It was also submitted before the AO that substantial payments have already been made by the assessee and for claiming exemption u/s 54 of the Act, it is not necessary that the possession is granted to the assessee and purchase deed is executed. However, the AO ignored the submissions and evidences submitted by the assessee, and made an addition of Rs. 62,68,311/- alleging that for claiming exemption u/s 54 of the Act either purchase deed should have been executed or the possession should be granted to the assessee. The action of the Assessing Officer is incorrect as in the present case, the assessee had paid a substantial amount of purchase consideration to the

developers and had made frantic efforts for claiming possession of the said flat. However, there was delay on part of the developers against whom La Tropicana Resident Welfare Association filed a complaint before National Consumer Disputes Redressal Commission seeking relief from the unfair trade practices of the developers. It is submitted that assessee had bona fide intentions of investing the property and claiming the exemption u/s 54. But due to the complaint filed against Parsvnath Landmark Developers Pvt. Ltd., the developer and delay in receiving the possession was beyond the control of the assessee, and the assessee was restricted to pay further amount in the property with them. It was further contended by the Ld. AR that the AO has not doubted the payments made by the assessee which has been made through proper banking channels. The delay is by reason beyond the control of the assessee. Similar issue has come up before various courts where it is held that exemption under section 54 cannot be denied in case possession is not granted or purchase deed is not executed by reason beyond the control of the assessee. The Ld. AR placed reliance on the judgment of Hon'ble Delhi High Court in the case of Balraj Vs. CIT, [2002] 254 ITR 22, order dated 06.12.2001. Ld. AR also placed reliance on following judgments in support of its contention.

1. CIT vs. R.L. Sood, [2000] 245 ITR 727
2. Delhi ITAT in the case of DR. JASVIR SINGH RANA Vs. ITO, ITA No.5568/Del./2015, order dated 22.09.2017
3. Delhi ITAT in the case of Sanjay Khanna, c/o. JeetanNagpal Vs. DDIT(International Taxation), ITA No. 5852/Del/2012, order dated 14.07.2017
4. SHRI CHANDRAKANT S. CHOKSI HUF VERSUS THE ASST. COMMISSIONER OF INCOME-TAX CIRCLE 18(1) MUMBAI.- 2015 (2) TMI 313 - ITAT MUMBAI

5. THE COMMISSIONER OF INCOME TAX VERSUS RITESH KUMAR KUMAT- 2014 (1) TMI 1491 - MADHYA PRADESH HIGH COURT
6. Chennai ITAT in the case of ACIT Vs, Shri M. Raghuraman, ITA No. 1990/Mds/2017, order dated 08.02.2018.

5. On the other hand, Ld. DR placed reliance on the order passed by the authorities below. It was submitted that the assessee has not obtained the possession within the period of three years and also purchase deed has also not been executed in favour of the assessee and hence, he did not fulfill the condition for claiming exemption under section 54.

6. We have heard the rival submission and perused the entire material available on record including orders passed by the authorities below and the case laws cited. From the facts, it is clear that assessee has made payment of for the purchase of flat to the developer of Rs.62,68,311/-. The fact of payment of the same and the transaction of purchase of flat are not in dispute. The only issue is that assessee could not obtain the possession and got the purchase deed executed within the period of three years. The delay was on account of developer and not on account of the assessee. We have also perused the paper book, where we find that there is a complaint filed by La Tropicana, Resident Welfare Association against the developer with National Consumer Disputes Redressal Commission. Thus, the fact that delay in obtaining possession and getting purchase deed executed was on account of the developer and was by reason beyond the control of the assessee. The assessee has made substantial payment of Rs.62,68,311/-. In such peculiar facts and circumstances, we are inclined to agree with the contentions of the assessee that exemption under section 54 cannot be denied to the assessee. The assessee has done all what he

could have done. There is no failure on the part of the assessee. Our above view is supported by judgment of the Hon'ble Delhi High Court in the case of Balraj vs CIT 254 ITR 22 wherein a similar issue of purchase deed having not been executed had come up for consideration and the Hon'ble Court after analyzing the facts and provision of section 54 has held as under:

> *"For the purpose of attracting the provisions of section 54 of the Income-tax Act, it is not necessary that the assessee should become the owner of the property. Section 54 of the said Act speaks of purchase. Moreover' the ownership of the property may have different connotation in different statutes. The question which arises for consideration appears to be squarely covered by a decision of the apex court in CIT v. T. N. Aravinda Reddy [1979] 120 ITR 46, where it has been held that 'the word 'purchase' occurring in section 54(1) of the Act had to be given its common meaning, viz., buy for a price or equivalent of price by payment in kind or adjustment towards a debt or for other monetary consideration. Each release in this case was a transfer of the releasor's share for consideration to the releasee and the transferee, the assessee, 'purchased' the share of each of his brothers and the assessee was, therefore, entitled to the relief under section 54(1)". The question now is no longer res integra having regard to the decision of the apex court in CIT v. Podar Cement Pvt. Ltd. [1997] 226 ITR 625. The apex court categorically held that section 22 of the Income-tax Act, 1961, does not require registration of sale deed. The meaning of the word "owner" in the context of section 22 has been held to be a person who is entitled to receive income in his own right. The apex court in Mysore Minerals Ltd. v. CIT [1999] 239 ITR 775 and this court in CIT v. B. L. Sood [2000] 245 ITR 727 have held that registration of the document is not mandatory for claiming depreciation on the property. In this view of the matter, we have no doubt in our mind that the learned Tribunal went wrong in holding that for the purpose of applicability of section 54, registration of document is imperative. We, therefore, answer the question in the negative, i.e., the assessee is entitled to exemption in terms of section 54 of the Act."*

7. We further get support on the issue of possession not being delivered within the period of three years, from decision of jurisdiction Delhi High Court

in the case of CIT vs R.L. Sood 245 ITR 727 where the Hon'ble Court has held as under:

> *"In our view, the Tribunal was justified in declining to make a reference on the proposed question to this court. Admittedly, the assessee had paid a sum of Rs. 2,39,850 out of the total sale consideration of Rs. 2,75,000 for the purchase of the flat within the period of one year from the date of sale of his old residential house. Thus, on payment of a substantial amount in terms of the agreement of purchase dated September 25, 1981, i.e., within four days of the sale of his old property, the assessee acquired substantial domain over the new residential flat within the specified period of one year and complied with the requirements of section 54 of the Act. Merely because the builder failed to hand over possession of the flat to the assessee within the period of one year, the assessee cannot be denied the benefit of the said benevolent provision. This would not be in consonance with the spirit of section 54 of the Act."*

In view of the above facts and decisions of Hon'ble Jurisdictional High Court, we are of the considered opinion that CIT(A) was not justified in denying the exemption of Rs.62,68,311/- claimed by the assessee under section 54 and direct the assessing officer to delete this addition.

8. On the issue of disallowance of exemption of Rs.19,00,000/- in respect of amount deposited by the assessee in the capital gain account on the ground that the same was not utilised within the period of three years, the ld. AR of the assessee submitted that during the year under consideration, assessee had deposited an amount of Rs. 19,00,000/- in Capital Gain account Scheme with State Bank of India, Chandni Chowk, Delhi. The bank statement of the account is placed at PB Page 76-77, the benefit of which was not given to the assessee. It was further submitted before us as also before the Ld. AO that assessee had paid further an amount of Rs. 10,60,311/- on 01.06.2013 to M/s Parsvnath

Landmark Developers Pvt. Ltd. which is evident from the bank statement placed at Paper book Page 81-82, the benefit of which was not given to the assessee. However, the assessee could not utilize the balance amount of Rs. 8,39,689/- as the National Consumer Disputes Redressal Commission vide its order dated 02.06.2014 (PB Page 73-74) had put stay on M/s Parsvnath Landmark Developers Pvt. Ltd. As such the reason for non-utilisation was by reason beyond the control of the assessee. The Ld. AR also made an alternative submission that even otherwise the amount is not taxable in the current assessment year. The Ld. AR invited attention to section 54 (2) whereby the addition if any on account of non-utilisation can be made in the year in which the prescribed period of three years expires.

9. The ld. DR, on the other hand, relied on the orders of the authorities below.

10. Having considered the rival submissions, we observe that as held above, the delay in the present case was on account of the developer and not on account of the assessee. The assessee had deposited the amount in capital gain account. The balance amount could not be utilised as there was a dispute and stay by the National Disputes Redressal Commisison. Accordingly, for the reasons stated hereinabove, we hold that the ld. CIT(A) was not justified in confirming the action of the Assessing Officer and direct the AO to delete this addition of Rs.19,00,000/- too. Even otherwise the alternative contention that

addition in this year cannot be made is correct in terms of section 54(2) of the Act, which read as under :

> "(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme30 which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :
> Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—
> (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
> (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

In view of the aforesaid provisions, it is clear that even if the amount deposited by the assessee in the capital gain account scheme is to be charged to tax, then it could be taxed only after the expiry of the prescribed period not in the year to which the capital gain pertains to. In view of the above the addition made by the Ld. AO and sustained by the Ld. CIT(A) deserves to be deleted.

11. Regarding addition of Rs.20,450/-, it was submitted that the Assessing Officer has not taken into consideration a sum of Rs.20,450/- being expenses incurred by the assessee at the time of purchase of property. It was argued by

the ld. AR that during the year under consideration, the assessee had sold the property located at Pitampura, Delhi, which was purchased by the assessee for a total consideration of Rs. 2,20,450/- in the year 1985-86. However, the Assessing Officer has taken cost of acquisition at Rs. 2,00,000/- as against Rs. 2,20,450/-. The difference in cost of acquisition is on account of stamp duty charges, registration charges etc. It is normal practice that at the time of purchase of any property, stamp duty charges, registration charges and other charges have to be paid for taking full right over the property. Since the property was purchased in F.Y. 1985-86 and the additional cost of acquisition of Rs. 20,450/- was genuinely incurred and just for want of specific documentary evidence(s), the AO cannot reject the same when it has been expressly submitted that said cost was incurred in year of acquisition of land. The amount of Rs. 20,450/- on the purchase value of Rs. 2,00,000/- is validly claimed by the assessee as includible in the cost of acquisition. Therefore, in view of the above facts the addition of difference in indexed cost of acquisition made by the Ld. AO and sustained by the Ld. CIT(A) is liable to be deleted.

12. The Ld. DR, on the other hand, submitted that in the absence of any evidence that the assessee has incurred such expenses the Assessing Officer was justified in disallowing the same.

13. We have heard the rival submissions and have perused the record. On going through the assessment order, we note that assessee failed to submit any evidence in respect of the expenses incurred at the time of purchase of the

property. Before us also the ld. AR has not produced any evidences. Therefore, in absence of any evidence on record, the claim of the assessee does not stand substantiated. We, therefore, support the addition made by the Assessing Officer and sustained by the ld. CIT(A). Finding no infirmity in the impugned order on this score, this issue is decided against the assessee.

14. The last issue pertains to disallowance of Rs.52,867 on account of cost of improvement. It was submitted by the Ld. AR that the assessee had purchased the said property in the year 1985-86 and was sold by the assessee in the year 2011-12.During this period, the assessee had constructed a room on the terrace of the plot sold by the assessee, the benefit of which was not given to the assessee, which is allowable as per section 55 of the Act. Since the property was constructed long back and the additional cost of improvement was genuinely incurred, just for want of specific documentary evidences, the Assessing Officer cannot reject it where it has been expressly submitted that said cost was incurred in year of acquisition of land. Even the AO and CIT(A) has confirmed the addition merely on the ground that proofs were not submitted. No personal visits were made by the AO or CIT(A) to know whether there is said construction or not. Therefore, the said addition made by the Ld. AO and sustained by the Ld. CIT(A) is liable to be deleted.

15. The ld. DR, on the other hand, supported the order of the AO and submitted that in the absence of any evidence, the AO was justified in ignoring the claim of the assessee.

16. Having considered the rival submissions we find that the facts of this issue are identical to the issue of disallowance of cost of improvement dealt by us above wherein we have upheld the action of the Assessing Officer in ignoring the expenses in the absence of any evidence. Here also, in the absence of evidences, we hold that Assessing Officer was correct in rejecting the claim of the assessee. The department is not supposed to make spot enquiry even when the assessee fails to adduce any evidence in support of its claim. Accordingly, this addition also deserves to be sustained.

17. Ground No. 9 pertaining to charging of interest u/s. 234B and 234C are consequential and the Assessing Officer is directed to give consequential effect. Other grounds are general in nature and need no independent adjudication, as the same are covered by our discussion on the three issues involved in this appeal.

18. In the result appeal is partly allowed.

Order pronounced in the open court on 06.03.2019.

Sd/-	Sd/-
(Amit Shukla)	**(L.P. Sahu)**
Judicial member	**Accountant Member**

Dated: 06.03.2019
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Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi