

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'SMC', NEW DELHI)**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
ITA No:-938/Del/2018  
(Assessment Year: 2014-15)**

Smt. Yoga Sikka (UPPAL) New Khushal Nagar, Station Road, Moradabad	Vs.	Income Tax Officer Ward 1 (1) Moradabad
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Sh. Piyush Kaushik, Advocate  
**Revenue by** : Sh. S. L. Anuragi, Sr. DR

**Date of Hearing** : 20.05.2019  
**Date of Pronouncement** : 21.05.2019

**ORDER**

**PER: N. K. BILLAIYA, AM**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals], Moradabad, dated 30.08.2017 for Assessment Year 2014-15.

2. The only grievance of the assessee is that the CIT(A) erred in confirming the addition made by the Assessing Officer on account of long term capital gain on sale of jewellery amounting to Rs.4,88,902/-.

3. Facts on record show that during the year under consideration the assessee sold 22 carat jewellery of 383.32 grams for Rs.10 lacs. The indexed cost of acquisition was taken at Rs.511098/- which resulted into long term capital gain of Rs.4,88,902/-.

4. The assessee claimed the same as exempt u/s. 54F of the Act being investment made in a residential house property. However, the claim of exemption was denied by the Assessing Officer who was of the opinion that that the assessee has not purchased any residential house but has purchased only land. Accordingly the addition of Rs.4,88,902/- was made.

5. Assessee agitated the matter before the CIT(A) and the claim of exemption was reiterated. The CIT(A) dismissed the appeal of the assessee by observing that there was no corroborative evidence of construction/ completion of a house to prove the bonafide intention of construction and without proof the benefit of section 54F cannot be given.

6. Before me the counsel for the assessee stated that cost of investment in land is also eligible for the benefit of section 54F of the Act. The counsel produced a completion certificate issued by Nagar Nigam

Moradabad. It is the say of the counsel that this certificate conclusively confirms that construction of building in the plot was completed on 10.10.2016 which is well within stipulated period of three years from the sale of jewellery subject to capital gain for the purpose of availing exemption u/s 54F of the Act.

7. The DR strongly supported the findings of the CIT(A) and stated that this certificate was never produced before the lower authorities.

8. I have given a careful consideration to the orders of the authorities below. There is no dispute that the assessee has invested the full sale consideration received on the sale of jewellery in the purchase of the plot of land. It is also not in dispute that before the lower authorities the assessee could not adduce any evidence. The certificate from municipal corporation, Moradabad has been furnished for the first time. In the interest of justice I restore this issue to the files of the Assessing Officer. The Assessing Officer is directed to verify the certificate of construction issued by Municipal Corporation, Moradabad and decide the issue afresh as per provisions of law, keeping in mind that the cost of investment in land is also part of cost of construction of the residential house to avail the

exemption u/s. 54 F Act. Needless to mention the Assessing Officer shall give a reasonable opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 21.05.2019.

**Sd/-**  
**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

Dated: 21.05.2019

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	20.05.2019
Date on which the typed draft is placed before the dictating Member	20.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	