

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 1388/Del/2019  
Asstt. Year: 2015-16

Shri Varun Seth 1, Under Hill Road, Civil Lines, New Delhi-110 054.	Vs.	ACIT Cir-47(1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Akarsh Garg, Advocate, CA Shri Karan Kumar, CA
Assessee by :	Shri Surender Pal, Sr. DR
Date of Hearing	26/02/2019
Date of pronouncement	14/05/2019

**ORDER**

**PER AMIT SHUKLA, J.M**

The aforesaid appeal has been filed by the assessee against impugned order dated 15.01.2019, passed by Ld. CIT (Appeals)-16, New Delhi, on the following grounds:-

*“1. That the Ld. AO erred in having denied the claim of the appellant u/s 54 of the Income Tax Act, 1961 against the LTCG of Rs.1,58,00,000/- received on sale of residential house.*

*2. That the Ld. AO and the CIT(A) erred in assuming that the transfer through registered instrument of conveyance,*

*being dated 28/11/2014 in the case of the appellant, shall only amount to sale and not when the appellant agreed to sale, vide agreement to sale dated 07/04/2014, after receiving 1/3rd of consideration, thereby extinguishing all rights except of receiving balance consideration and executing conveyance deed in favour of the purchaser.*

*3. That the Ld. AO failed to appreciate and the CIT(A) wrongly confirmed that the consideration received on the execution of agreement to sale dated 07/04/2014 was rightly invested by the appellant on 01/06/2013 for purchase of new residential unit which was well within 1 year prior to the date of sale.*

*4. That the Ld. CIT(A) has wrongly assumed that investment in a plot of land for purposes of construction of a residential property thereon did not amount to purchase of residential house within the meaning of section 54 of the IT Act, 1961.*

2. The facts in brief assessee had filed his return of income on 30.12.2015 showing income of Rs. 1,99,55,220/- wherein assessee had declared long-term capital gain of Rs.1,92,80,160/-, on sale of property at Under Hill Road, Civil Lines, Delhi on 28.11.2014 for sum of Rs. 6,10,50,000/-. While computing long-term capital gain, assessee had claimed exemption under section 54 of Rs. 1,58,00,000/- on acquisition of allotment of a residential plot No. Q-168, Kensington Park, Sector 133, Noida, DIS Gautam Budh Nagar, UP at Jaypee Green, Noida on 01.06.2013 and for Rs. 25,10,000/- deposited in Capital Gain Account No. 0115001000443162 with PNB, Civil Lines, Delhi to be utilized in the construction of new residential house thereon.

2.1 The case was selected for scrutiny through CASS and in the assessment order, Ld. Assessing Officer allowed the

exemption for Rs. 25,10,000/- deposited in Capital Gain Account No. 0115001000443162 with PNB, however, he denied the exemption of Rs. 1,58,00,000/- for the investment made in Plot No. Q-168 at Jaypee Green, Noida for the reasons given in paragraph 6 of his order, which can be summarised as under:-

- (a) In the given case assessee neither purchased a house nor constructed a house within the stipulated time u/s 54 which expired on 28-11-2017.
- (b) Assessee has not filed any substantial document in regard to financial crisis of Jaypee Greens and he has not even provided the proof of payments made to the contractor or any kind of contract made with the builder.
- (c) The said plot was purchased more than one year before transfer of the capital assets taken place. Therefore, conditions required u/s 54 is not satisfied.

3. Aggrieved by the action of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A).

3.1 The Ld. CIT(A) held that the Assessing Officer was fully justified in rejecting the claim of the assessee under section 54 of the Act and confirmed the action. He first of all noted following facts: -

- (a) assessee purchased Plot No. 168, Kensington Park, Sector 133, Noida on 01.06.2013 which is clearly beyond the period of 1 year which is mandatory requirement of law;
- (b) Obviously, assessee did not purchase residential property within a period of two years from the date of transfer;

(c) As per Inspector report, no construction has been made within the stipulated period of 3 years.

Ld. CIT (A) further observed that, from perusal and examination of the provisions of Section 54, it is clear that the investment in purchase of residential property/construction of residential property has not been made within the period stipulated under the provisions of section 54 of the Income Tax Act. He held that provisions of Section 54 require the assessee to purchase a residential property within a period 1 year before or 2 years after the transfer of property or construction of property within 3 years after the date of transfer. According to him, it is clear that the requirement was to purchase residential property within a period of 1 year before the transfer. So, any discussion regarding whether the date of sale should be treated as the date listed in the agreement to sell or in the sale deed becomes academic. Further, after referring to various case laws, Ld. CIT(A) held that provisions of section 54 are unambiguous and has to be interpreted literally and there is no infirmity in the order of the AO.

4. Before us Ld. Counsel for the assessee submitted that, section 54 of the Act is a beneficial provision and had to be construed liberally, keeping in view the legislative intent and where substantial compliance has been made in accordance with the legislative intent, exemption deserves to be allowed and in support of this proposition, he relied on the judgment of the Hon'ble Supreme Court in the case of **Sanjeev Lal Vs. CIT [2014] 365 ITR 389 (SC)**, wherein while interpreting the

provisions of section 54 court applied the purposive interpretation.

4.1 He further submitted that till the time of agreement to sell on 07.04.2014, assessee had received Rs. 2,05,00,000/- in his bank account with HDFC and invited our attention to page 14, 15, 16 & 17 of the Paper Book and pointed out that sums so received as advance, assessee invested Rs. 1,58,00,000/- in the acquisition of allotment of a residential plot No. Q-168 at Jaypee Green, Noida (a township developed by JP Group) as evidenced by communication dated 01.06.2013 of Jaiprakash Associates Limited (Pg. 6 of the PB). However, due to delay in the handing over of the possession of the plot by the developer for the reasons which were beyond the control of the assessee, he could not construct residential house within a period of three years. In support, he invited our attention to the submissions made before the lower authorities, as supported by various news paper reports and information downloaded from the website (pg. 21-25 of the PB) to show that as Jaypee (Developer) failed to clear land dues to the tune of Rs. 10,205 crores towards Noida Authority, consequently Developer was unable to offer possession and execute the registry. He submitted that the law does not compel to perform a thing which is impossible to perform and, therefore, the non-construction of the residential house was beyond the control of assessee and therefore, the investment made in the acquisition of plot itself should be considered as sufficient investment for claiming exemption under section 54 of the Act.

4.2 Further, he submitted that cost of plot forms an integral part of cost of residential house and the same is to be considered and allowed as exemption under section 54 of the Act as endorsed by the CBDT in Circular No. 667 dated 18.10.1993. He submitted that there is no embargo to purchase plot or start construction prior to the sale of house and in support relied upon the decision of **CIT v. J.R. Subramanya Bhat [1987] 165 ITR 571 (Karnataka)** and **CIT v. H.K. Kapoor (Decd.) [1998] 234 ITR 753 (All)** and **C. Aryama Sundaram Vs. CIT [2018] 407 ITR 1 (Madras)**.

4.3 Lastly, Ld. Counsel submitted that assessee claimed exemption only for the amount actually invested for the purpose of constructing house thereon and also made deposit in the Capital Gain Account with PNB, so as to complete the construction thereon and in support relied upon the decision in the case of **Smt. V.A. Tharabai Vs. Dy. CIT [2012] 14 ITR (Trib) 15 (Chennai)** wherein it was held that benefit of section 54F could not be denied where though assessee invested sale consideration for purchasing land but could not construct building due to Court's order.

5. The learned DR relied upon the order of the AO and CIT(A) and submitted that the AO has demonstrated on facts that as no residential house was constructed within the mandatory period of three years which is the condition precedent for claim of exemption under section 54. Such a condition has not been fulfilled and therefore, the disallowance of claim of deduction under 54 was rightly sustained by the CIT(A).

6. We have heard the rival submissions, perused the relevant finding given in the impugned order as well as the material referred to before us at the time of hearing. In this case the issue is, whether amount invested in the purchase of plot on 01.06.2013 for constructing residential house is eligible for claiming exemption under section 54 of the Act from the capital gain arising on the sale of house vide registered sale deed dated 28.11.2014, which was agreed to be sold vide unregistered agreement to sell dated 07.04.2014, although assessee failed to construct the new residential house within a period of three years from the date of sale i.e. up till 27.11.2017.

7. Before dealing with the issue involved in the present appeal, it will be apposite to refer the relevant provisions of section 54 of the Act which reads as under:

***“Profit on sale of property used for residence.***

*54. (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head “Income from house property” (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, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

- (i) *if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*
- (ii) *if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.*
- (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 scheme 11 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.”

7.1 On perusal of aforesaid provision, the condition precedent for exemption of capital gain from being charged to income-tax are as under: -

- (i) The assessee should have purchased a residential house in India either one year before or two years after the date of transfer of the residential house which resulted in capital gain or alternatively constructed a new residential house in India within a period of three years from the date of the transfer of residential property which resulted in the capital gain.
- (ii) If the amount of capital gain is greater than the cost of the residential house so purchased, or constructed, the difference between the amount of the capital gain and the cost of the new asset is to be charged under section 45 as the income of the previous year.
- (iii) If the amount of the capital gain is equal to or less than the cost of the new residential house, the capital gain shall not be charged under section 45.

7.2 Ergo, what can be claimed for exemption against the capital gain in the instant case is the cost of construction of new residential house and the cost of the new residential house would necessarily include the cost of land as clarified by the CBDT in circular No. 667 dated 18.10.1993.

8. So far as the controversy in the present case, relates to the issue whether investment in the purchase of plot on 01.06.2013 can be considered for the claim of exemption, as it had been made more than one year before the date of sale/transfer of property on 28.11.2014. We are of the considered opinion that on facts of the present case, date of investment made in the purchase of residential plot is not relevant, because, what is relevant is that the investment made in the purchase of land forms an integral part of the cost of new residential house and the same is allowable as exemption along with the cost of construction and other related cost of construction of the new residential house within a period of three years. Besides in the instant case, investment for purchase of plot has been made out of the part sale consideration received as advance only, so as to construct the house thereon and there is no embargo to the purchase of plot or start construction prior to the sale of house property, as held by the Hon'ble Karnataka High Court in the case of **CIT vs. J.R. Subramanya Bhat [1987] 165 ITR 571 (Karnataka)** which was followed by the Hon'ble Allahabad High Court in the case of **CIT vs. H.K. Kapoor (Decd.) [1998] 234 ITR 753 (All)**.

9. The real issue in the present case is that new residential house has not been constructed within a period of three years from the date of the transfer of the residential property which resulted in the long-term capital gain. On this issue, the assessee's contention has been that inspite of having made payment for the plot, the Jaypee (Developer) failed to offer possession and execute sale deed even up till the expiry of three years from the date of sale of property by him, because of reasons beyond his control which cannot be disputed. This vital fact assumes great significance as assessee had taken all the steps to make the investment for the purchase of house, and also assessee had deposited Rs. 25,10,000/- in the capital gain account with PNB so as to construct the house. This unequivocally demonstrate that assessee really intended to construct the new residential house thereon. It was based on this bonafide intention assessee had claimed exemption under section 54 of the Act. Without the purchase of land, house could not have been constructed. The first step was to purchase the land, which was done. Thereafter the developer was to handover the plot, so that assessee could have constructed the house within time allowed of 2 years. However, no step could be put forward thereafter because possession of land was not given by the Developer, for reasons beyond the control of the assessee. If an assessee sells his house property and utilises the money for acquiring a plot for the construction of the house and if facts and circumstances point out that assessee intended to construct the house, which has been found so, then it is clear that he wants to avail exemption as provided under the law. Now if the developer

after receiving the money could not fulfill the obligation within time, then can assessee be held responsible for not complying the law.

10. The Hon'ble Supreme Court in the case of **Sanjeev Lal Vs. CIT [2014] 365 ITR 389 (SC)** has laid down the purposive interpretation of section 54 to give a liberal approach to the assessee who clearly intended to claim benefit of section 54. Their Lordships held that section 54 is a beneficial provision and is to be construed keeping in view the intention of the Legislature to give relief in the matter of payment of tax on the long-term capital gain, relevant observation of their Lordships reads as under: -

*“22. In addition to the fact that the term "transfer" has been defined under section 2(47) of the Act, even if looked at the provisions of section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, **the intention of the Legislature is to give him relief in the matter of payment of tax on the long-term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under section 54 of the Act, the Legislature does not want him to be burdened with tax on the long-term capital gain and, therefore, relief has been given to him in respect of paying income-tax on***

**the long-term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief.** Though it has been very often said that common sense is a stranger and an incompatible partner to the Income-tax Act and it is also said that equity and tax are strangers to each other, still this court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of *Oxford University Press v. CIT* [2001] 3 SCC 359 this court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which sub-serve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. **Considering the afore stated observations and the principles with regard to the interpretation of statute pertaining to the tax laws, one can very well interpret the provisions of section 54 read with section 2(47) of the Act, i.e., the definition of "transfer", which would enable the appellants to get the benefit under section 54 of the Act."**

*[Emphasis in bold is ours]*

11. If we apply the law as clarified by the Hon'ble Apex Court, on the facts of the instant case, then we are of the opinion that

the amount utilized by the assessee in the acquisition of land should be construed as amount invested in purchase/ construction of residential house. The intention of the statute as provided in section 54 has been fully satisfied by the assessee in the present case. Thus, on the facts of the present case, we hold that the assessee is entitled for exemption under section 54 of the Act and AO is directed to allow the exemption us/ 54.

12. In result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 14<sup>th</sup> May, 2019.

sd/-

sd/-

**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 14/05/2019

***Veena***

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

