

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 3051/DEL/2018 (A.Y 2015-16)

Shantanu Kumar Bose B-9/6263, Vasant Kunj, New Delhi AFXPB1157P (APPELLANT)	Vs	ACIT Circle-33(1) Block E-2, Pratyaksha Kar Bhawan, Civic Centre, Delhi-110002 (RESPONDENT)
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Appellant by	Sh. S. S. Khan, CA
Respondent by	Sh. N. K. Bansal, Sr. DRs

Date of Hearing	13.03.2019
Date of Pronouncement	03.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 29/12/2017 passed by CIT(A)-11, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

“1. That, on the facts and circumstances of the case and the provisions of law, the order passed by the Learned Assessing Officer under section 143(3) is erroneous, arbitrary, without application of a judicial mind, and bad in law.

2. That, on the facts and circumstances of the case and the provisions of law, the Learned AO erred in rejecting the claim for deduction of Rs. 1,08,58,660/- u/s 54F.

3. That, on the facts and in the circumstances of the case the Learned AO completely overlooked the fact that section 54F is a beneficial provision which requires to be interpreted in a liberal manner, particularly in a case where the Appellant had established its bonafide.

4. *That, on the facts and in the circumstances of the case the Learned AO erred in ignoring the fact that the possession and title deeds of the Okhla property was handed over to the buyer on 5.10.2013 itself in part performance of the Moll, while the purchase deed for the Lucknow house was entered on 10.10.2013.*

5. *That, on the facts and in the circumstances of the case the Learned AO erred in ignoring the fact that the house property purchased at Lucknow required additional construction for which permission was sought from the local authorities on 23.12.2013, and the construction was completed on 30.03.2015.*

6. *That, on the facts and in the circumstances of the case, the Learned AO erred in holding that the investment in the house at Lucknow was made beyond the period permissible under Section 54F.*

7. *That the Learned AO erred in initiating penalty proceeding U/s 271(l)(c) even though the Appellant had disclosed all material facts and furnished all information sought by the AO.*

3. The assessee filed the return of income on 08.09.2015 declaring total income of Rs. 42,63,600/-. The case was selected for scrutiny under CASS. During assessment, the Assessing Officer observed that the assessee sold an industrial property at Okhla for Rs. 2.60 crores and the sale deed was executed on 26.03.2015. The assessee has shown income from long-term capital gains of Rs. 27,25,191/- after claiming deduction u/s 54F of the Act for Rs. 1,08,58,660/- and of Rs. 50 lakhs u/s 54EC of the Act. For claiming deduction u/s 54F of the Act, the assessee stated that he had purchased a residential property at Lucknow on 10.10.2013 for Rs. 87,23,200/- and had made improvements on this property for a sum of Rs. 21,35,460/-. The Assessing Officer asked the assessee to show cause as to why deduction u/s 54F of the Act should not be disallowed in view of the fact that the original asset was transferred on 26.03.2015 and the new asset was purchased on 10.10.2013 which is beyond the prescribed time of one year before the transfer of original asset. It was contended by the assessee that he had applied for grant of free

hold rights in the property (sold) on 31.03.2013 and the possession was handed over to the buyer on 05.10.2013 and due to the delay in getting free hold rights, the execution of sale deed was delayed to 26.03.2015. The Assessing Officer was not satisfied with the contention of the assessee and disallowed the deduction claimed u/s 54F of the Act by stating that the new asset was purchased earlier than the prescribed period of one year.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the sole dispute relates to disallowance of claim u/s 54F (Rs. 1,08,58,660/-). The Ld. AR filed the following details:

(i) Capital gains arising on Sale of industrial property at Okhla

Sale price of Okhla Property	2,60,00,000/-
Brokerage paid	2,60,000/-
Net sale consideration	2,57,40,000/
Less: indexed cost of acquisition	71,56,149
Long Term Capital Gain	1,85,83,851
Less deduction u/s 54EC	50,00,000/-
Net Long Term Capital Gain (as determined by AO. Page 37 of Paper book)	1,35,83,851/-

(ii) **Date of transfer of Okhla Property:**

Event	Date
MOU for sale of Okhla property for total consideration of Rs. 2.60 crore entered with the buyers	31.05.2013
Possession and title documents handed over to buyers against receipt of advance payments totaling Rs.1.75 crore (through 7 cheques between 31.05.2013 and 20.08.2013)	05.10.2013
Conversion of leasehold title to freehold title by DSIDC	19.03.2015

Sale deed for Okhla property registered	26.03.2015
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(iii) Purchase and construction of new residential house at Lucknow:

Event	Date/Amount
Purchase deed for Lucknow property executed on	10.10.2013
Purchase consideration paid by Appellant: (Rs.10,00,000/- on 01.08.2013, Rs. 69,20,000/- on 7/10/2013, and TDS Rs. 80,000/- on 10.10.2013)	80,00,000/-
Total Purchase consideration including Stamp duty & expenses	87,23,200/-
Expenditure on construction of additional floor between 23.12.2013 and 30.03.2015	21,35,460/-
Total investment in new property	1,08,58,660/-
Relief claimed u/s 54F (rejected by AO)	1,08,58,660/-

The Ld. AR submitted that construction of the new residence at Lucknow by the assessee is within the time permitted u/s 54F(1) of the Act. The Ld. AR submitted that Section 54F(1) gives two options to an assessee, namely, to:

- Purchase a new residential house within a period of *one year before or two years after* the date on which the transfer took; *OR*
- Construct a residential house in India within a period of three years after that date.

The Ld. AR further submitted that the Assessing Officer erred in treating the case of the assessee to be falling under the first limb of Section 54F(1) namely purchase of a new residential property, whereas the assessee's case came under the second limb, namely construction of a new residential house property. The assessee purchased the residential house at Lucknow on

10.10.2013 and completed construction of an additional floor on it by 30.03.2015. Since construction was completed within three years of execution of the sale deed of Okhla property on 26.03.2015, the requirement of second limb of Section 54F stood fulfilled. The Ld. AR submitted that in cases of construction of new residential house, the statutory requirement is only of construction within three years after the date of transfer. There is no requirement that the land or building on which construction is to be carried out should be purchased after the date of transfer of the old property. There is also no requirement that the land or building on which construction is to be carried out should have been purchased within one year before the sale of the old property. The Ld. AR relied upon the following decisions:

1. CIT Vs. Bharti Mishra [2014] 41 TAXmann.com 50 (Delhi)
2. CIT(A) Vs. H. K. Kapoor [1998] 234 ITR 753 (Allahabad)
3. Tarun Jalali Vs. DDIT- ITa No. 2376/Del/2014 (Del. Trib.)
4. B. B. Sarkar Vs. CIT(A) [1981] 7 Taxman 239 (Cal.)
5. Mrs. Rahana Siraj Vs. CIT(A) [2015] 58 taxmann.com 333 (Karnataka)
6. Rustom Homi Vakil Vs. ACIT [2016] 69 Taxmann.com 42 (Trib.- Mumbai)
7. Mrs. Gulshanbanoo R. Mukhi Vs. JCIT [2002] 83 ITD 649 (Trib.- Mum)
8. CBDT Circular 667, dated 18/10/1993
9. CIT(A) Vs. Bharti Mishra [2014] 41 Taxmann.com 50 (Delhi)
10. CIT(A) Vs. Kuldeep Singh [2014] 49 taxmann.com 167 (Delhi)
11. Narasimha Raju Rudra Raju Vs. ACIT [2013] 35 taxmann.com 90 (Hyderabad-Trib.)
12. Smt. V. A. Tharabai Vs. DCIT [2012] 19 taxmann.com 276 (Chennai-Trib)
13. ITO Vs. Narayana Rao [2017] 83 taxmann.com 73 (Hyderabad-Trib.)

The Ld. AR further submitted that the assessee had transferred possession of Okhla property and its title documents on 05.10.2013 against receipt of advance

sale consideration of Rs. 1.75 crore. Therefore, in terms of definition of Transfer in Section 2(47)(v) of the Act the transfer of Okhla property took place on 05.10.2013. For this reason also purchase of Lucknow property on 10.10.2013 and construction of an additional floor thereupon till 30.03.2015 was within the time limit permitted u/s 54F(1) read with Section 2(47)(v).

6. The Ld. DR submitted that the Assessing Officer in assessment order observed that during the year under consideration the assessee has shown the gross total income of Rs. 42,63,000/- comprising of income from capital gains at Rs. 27,25,191/- at income from other sources at Rs.15,38,409/-. Further, the assessee claimed deduction under Chapter VIA of the Act at Rs.27,880/- and declared total income at Rs.42,63,600/-. The assessee sold an industrial property at Okhla Industrial Area for Rs. 2,60,000/- vide sale deed executed on 26/3/2015. The assessee claimed the deduction u/s 54F for capital gain received on sale of property. A new residential property was purchased at Lucknow for Rs. 87,23,200/- vide sale deed executed on 10/10/2013. The cost of improvement incurred for the Lucknow Property amounts to Rs. 2,35,460/-. The Ld. DR further submitted that the original capital asset was transferred through a registered sale deed only on 26/5/2015. The conveyance deed was executed on 21/3/2015. On perusal of the memorandum of understanding, the same was executed on 31/5/2013 as it is noticed that the buyer have agreed to purchase the free hold industrial property from the assessee. The free hold industrial property in question was obtained on 21/3/2015. The MOU mentioned the conditions of free hold for the transfer of the capital asset. Hence, the transfer of rights associated with the property was actually took place on 21/3/2015 whereas the free hold was obtained from the government agency as per MOU signed by the assessee at 31/5/2013. Thus, the Assessing Officer held that the original long term capital asset i.e. an industrial property at Okhla Industrial area was sold on 26/3/2015 a new residential house at Lucknow for Rs. 87,23,200/- was purchased on 10/10/2013 i.e. one year five months 15 days before the transfer of the original capital asset. The cost of improvement incurred

for the Lucknow property amounts to Rs. 21,35,460/-. The assessee claimed a deduction of Rs. 1,08,58,660/- u/s 54F. The assessee has also claimed a deduction u/s 54EC on his investment in NHAI Bounds amounting to Rs.15 lakhs. The deduction claimed by the assessee u/s 54EC is allowable on the investment in NHAI bounds was done on 30/04/2015. Thus, the deduction claimed by the assessee u/s 54F was disallowed as the assessee fails to satisfy the eligible conditions maintained u/s 54F of the Income Tax Act. The Ld. DR also relied upon the decision of CIT(A) Vs. Balbir Singh Maini 398 ITR 531 wherein the Hon'ble Apex Court held that the income from capital gain on a transaction which never materialized is based on hypothetical transaction.

7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

“5.3. I have considered the facts of the case and the submission made by the AR. It is contended that the appellant had entered into an MOU for sale of property on 31.05.2013 and had handed over the possession of the original asset to the buyer on 05.10.2013 and therefore, the property can be said to has been transferred on that date, in accordance with the provisions of section 2(47)(v) of the Act. It is further contended that if the date of registered sale deed is to be considered as the date of transfer, in that case also, deduction u/s 54F should be allowed as the construction of the new property was completed on 30.03.2015 which is within the period of three years from the date on sale deed. It is further contended that the appellant had purchased a residential house on 10.10.2013 for Rs. 87,23,200/- and had subsequently, constructed a floor by making an investment of Rs. 21,35,460/- and the said construction is claimed to be completed on 30.03.2015. “

5.3.1. On perusal of the documents furnished by the AR, it is observed that the appellant had entered into an MOU for sale of property on 31.05.2013 as per which the appellant was required to get the leasehold property converted into freehold before transfer of the rights in property to the buyer.

Subsequently, on 05.10.2013, the appellant had handed over the physical possession to the buyer with the condition that the balance payment of Rs. 85 lakhs was to be paid to the appellant at the time of registration of the sale deed and vide this document (and as per the terms of MOU), the buyer was entitled to use/lease the said property. However, it is to be observed that complete rights in the property were not transferred to the buyer as the buyer was entitled to only use/lease the said property but was not given the right to transfer/ sell the property. The complete rights in the property were transferred to the buyer only by the way of the sale deed executed in his favour on 26.03.2015. Accordingly, it is clear that the property was transferred in accordance with the provisions of section 2(47) of the Act only on 26.03.2015.”

5.3.2. In view of the original property being sold on 26.03.2015, the eligibility of the appellant for claim of deduction u/s 54F of the Act is to be analyzed with reference to this date only. It is observed that the appellant has purchased a residential house on 10.10.2013 for Rs. 87,23,200/- i.e. the new residential property was purchased by the appellant much before the prescribed period of one year i.e. one year five months and fifteen days before the transfer of the original asset. In view of this, I am of the opinion that the appellant is not entitled for deduction u/s 54F of the Act, as the investment by way of purchase of new residential house was not made in the stipulated time of one year prior to the date of the transfer of the original asset. As far as the improvement in this new house for Rs. 21,35,460/- is concerned, the same is also not eligible for deduction u/s 54F of the Act as the said deduction is not available for making improvement/renovation in the old house already acquired before he transfer of the original asset.

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5.3.6. In view of the facts as discussed above and the legal position as upheld by various courts in the case laws referred above, it is held that the original asset was transferred in accordance with the provisions of section

2(47) of the Act only on 26.03.2015 and the appellant has not purchased the new house within the stipulated time of one year prior to the date of transfer of original asset and the deduction u/s 54F of the Act is not available for making renovation to the old house which was purchased before the date of transfer of original asset. Accordingly, the addition made by the AO by disallowing deduction u/s 54F of the Act is upheld and the grounds of appeal are dismissed.”

From the records, it can be seen that the assessee did not purchase new house within the stipulated time of one year prior to the date of transfer of original asset as per the requirement while claiming deduction u/s 54F. Besides this renovation to old house which was purchased before the date of transfer of original asset will not entitle the assessee to claim deduction u/s 54F of the Act. It is pertinent to note that the decisions relied upon by the Ld. AR will also not support the case of the assessee as in assessee's case the purchase of new house was on 10.10.2013 while sale deed of Okhla Property was executed on 26.03.2015. Thus, the CIT(A) was right in dismissing the appeal of the assessee. The appeal of the assessee is dismissed.

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

Order pronounced in the Open Court on 3rd June, 2019.

Sd/-
(G. D. AGRAWAL)
VICE PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 03/06/2019
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	11.03.2019
Date on which the typed draft is placed before the dictating Member	12.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	03.06.19
Date on which the fair order is placed before the Dictating Member for pronouncement	03.06.19
Date on which the fair order comes back to the Sr. PS/PS	03.06.19
Date on which the final order is uploaded on the website of ITAT	03.06.19
Date on which the file goes to the Bench Clerk	03.06.19
Date on which the file goes to the Head Clerk	