

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

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

**I.T.A. No. 6432/DEL/2015
A.Y 2012-13**

Sh. Vijay Chaudhary C/o Ravi Gupta, Advocate E-6A, Kailash Colony New Delhi 110 048 PAN: AHIPC1553B	Vs	ITO, Ward 4(4) Gurgaon
(Appellant)		(Respondent)

Appellant by	Sh. Rajesh Jain, C.A.
Respondent by	Sh. Amit Katoch, Sr.D.R.

Date of Hearing	04.06.2019
Date of Pronouncement	10.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 28/09/2015 passed by the CIT(A)-2, Gurgaon for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

- “1. That the Ld.CIT(A) has erred in law and on facts in confirming the order of the AO.*
- 2. That the Ld.CIT(A) has erred in law and on facts in sustaining the reduction of exemption u/s 54 by Rs.46,75,657/-.*
- 3. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.*

4. *That the appellant craves leave to add, alter any/all grounds of appeal before or at the time of hearing of the appeal.”*

3. The assessee has filed return declaring total income of Rs.6,40,320/- on 27.9.2012. During the course of assessment proceedings the Assessing Officer noted that the assessee sold residential house situated at Raj Nagar, Ghaziabad on 19.08.2011 for a consideration of Rs.1,05,00,000/-. Capital gain on this transaction was shown at Rs.1,02,03,907/-. This capital gain was claimed as exempt u/s 54 of the Income Tax Act, 1961 (the Act) on the ground that the assessee constructed the residential house within the stipulated time. The Assessing Officer observed that the assessee purchased a residential plot in Sector 9, Gurgaon on 12.05.2011 for an amount of Rs.52,65,000 + Stamp duty of Rs.2,63,250/- in the name of his wife Smt. Renu Chaudhary. After purchasing the plot, the assessee constructed a house which was completed within 3 years as the Competent Authority issued the Occupation Certificate on 25.07.2014. The assessee, however, did not deposit the unutilized part of the sale consideration in an account in a specific bank or Institution before due date of filing return u/s 139(1). The assessee before the Assessing Officer submitted that the whole of funds for purchase of new plot for the purpose of construction of new residential house to claim exemption u/s 54 of the Act were utilized by the assessee out of advance money received from sale of old residential house. The sale funds though invested by assessee in his wife's name were out of sale proceeds of old house only. The assessee further submitted before the Assessing Officer that in these circumstances the investment towards purchase of plot in the name of his wife out of advance received from sale of house was eligible for deduction u/s 54 of the Act. The assessee also relied upon various case laws before the Assessing Officer. The Assessing Officer after considering assessee's contentions, disallowed Rs.46,75,657/- as claimed by assessee as deduction u/s 54 of the Act. The Assessing Officer held that the claim of deduction on the balance amount was

not allowable as assessee failed to deposit the balance amount in the account in specified bank or Institution before due date of filing of return u/s 139(1) of the Act.

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

5. The Ld. AR submitted that the assessee has purchased the residential plot from the sale proceeds of the earlier residential house. The sale proceeds were utilized for construction of residential house and, therefore, deduction u/s 54 is rightly claimed by the assessee. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Shri K Ramchandra Rao (2014) 89, CCH 396. (Kar HC).

6. The Ld. DR distinguished the decision of Hon'ble Karnataka High Court and submitted that the Assessing Officer as well as the CIT(A) rightly disallowed the claim u/s 54 made by the Assessee.

7. We have heard both the parties and perused all the material available on record. The Hon'ble Karnataka High Court in case of Shri K Ramchandra Rao (supra) held as under:

“3.....

2) *Whether the assessee invests the entire sales consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due dated prescribed under Section 139(1) of the IT Act?*

.....

4. *Re. Question No. 2:*

As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a

residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.

5. For the aforesaid reasons both the substantial questions of law are answered in favour of the assessee and against the Revenue. Therefore, we do not see merit in any of the appeals. Accordingly, all the four appeals are dismissed.”

In the present case, the assessee has purchased the residential plot from the sale proceeds of the earlier residential house. The sale proceeds were utilized for construction of residential house with the three years itself. The decision of the Hon'ble Karnataka High Court is apt in the present case as the Hon'ble High Court held that it is not a pre-condition to invest the money in the specified Central Govt. Scheme of the sale proceeds if the property is purchased and constructed for residential purposes. Though the Ld. DR tried to distinguish the factual matrix but the same is not tenable as the ratio and the facts determined by the Hon'ble Karnataka High Court are similar to the present assessee's case as well. Therefore, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 10th June, 2019.

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

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 10/06/2019

**Gmv*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

	Date
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Date of dispatch of Order.	