

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 8318/Del/2018  
Assessment Year: 2009-10

BALAK RAM,  
GARH DIDALI,  
MURADNAGAR,  
GHAZIABAD  
UTTAR PRADESH-201206  
(PAN: BPXPR8270)  
**(ASSESSEE)**

VS. ITO, WARD-1(5),  
GHAZIABAD

**(RESPONDENT)**

**Assessee by:** Sh. Anoop Sharma, Adv. &  
Sh. Sanjay Parashar, Adv.

**Revenue by:** Ms. Ekta Vishnoi, Sr. DR.

**ORDER**

This appeal is filed by assessee against the Order dated 25.07.2018 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2009-10.

2. At the time of hearing, Ld. Counsel for the assessee reiterated the contention raised in the grounds of appeal and stated that Assessee has submitted all the documents before the revenue authorities which have not been properly appreciated. He further stated that the assessee has purchased the house in the name of his wife which is not prohibited by any law of the Income Tax Act, 1961. He argued that section 54 F of the Income Tax Act mandate that the house should be purchased by the assessee and it does not mean that the house should be purchased in the name of assessee only. There are many cases cited by the Tribunal as well as by the Hon'ble High Court deciding the issue in dispute in favour of the assessee. In support of his contention, he relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kamal Wahal (2013) 351 ITR 4 (Delhi).

3. On the contrary, Ld. DR relied upon the orders passed by the revenue authorities and stated that the benefit of section 54 F can be given if the assessee has purchased the house in his name only and not in the name of his wife.

4. I have heard both the parties and perused the records, especially the impugned order and the case laws cited by the Assessee's AR. I am of the view that Ld. CIT(A) has rightly held that the computation of Long Term Capital Gain (LTCG) presuming the share of assessee to be @1/7<sup>th</sup> whereas according to the assessee his share should have been computed @1/9<sup>th</sup>. Ld. CIT(A) has accepted the contention of the assessee and issued the directions to the AO to re-compute the capital gain by treating the 1/9<sup>th</sup> instead of 1/7<sup>th</sup>. But however, the claim of assessee under section 54F has been rejected by the Ld. CIT(A) mainly on the ground that assessee has not made the investment in the new property in the name of himself and not in the name of other person meaning thereby Ld. CIT(A) has rejected the claim u/s. 54F in spite of the fact that Assessee has purchased the house in the name of his wife. In my view this finding of the Ld. CIT(A) has been considered and rejected by the various order of the Tribunal and the Hon'ble High Court including the decision of the Hon'ble Delhi High Court decision in the case of CIT vs. Kamal Wahal (2013) 351 ITR 4 (Delhi), the relevant portion thereof is reproduced as under:-

*"We have not hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgements of the Madras and Karnataka High Courts (supra) are in favour of Courts (supra) are in favour of the assessee, the Revenue fairly brought to our notice a similar view of this court in CIT v. Ravinder Kumar Arora [2012] 342 ITR 38 (Delhi). That was also a case which arose under section 54F of the Act. The new residential property was acquired in the joint names of the assessee and his wife. The income-tax authorities restricted the deduction under section 54F to 50 per cent. On the footing that the deduction was not available on the portion of the investment*

*which stands in the name of the assessee's wife. This view was disapproved by this court.*

*It noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, section 54F in terms does not require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased / constructed "a residential house".*

*This court in the decision cited alone also noticed the judgment of the Madras High Court (supra) and agreed with the same, observing that though the Madras case was decided in relation to section 54 of the Act, that section was in pari materia with section 54F. The judgment of the Punjab and Haryana High Court in the case of CIT v. Gurnam Singh [2010] 327 ITR 278 (P&H) in which the same view was taken with reference to section 54F was also noticed by this court.*

*It thus appears to us that-the predominant judicial view, including that of this court, is 'that for the purposes of section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is more- over to be noted that the assessee .in the present case has not purchased the new house in the name of a stranger or some bod who is unconnected with him. He has purchased it on in the name of his wife. There is also no dispute that the entire investment has come out of the sale process and that there was no contribution from the assessee's wife.*

*Having regard to the rule of purposive construction and the object which section 54F seeks to achieve and respectfully agreeing with the judgment of this court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against*

*the Revenue. The appeal is accordingly dismissed with no order as to costs."*

4.1 After going through the aforesaid findings of the Hon'ble Delhi High Court in the case of CIT vs. Kamal Wahal, I am of the view that the issue in dispute is squarely covered in favour of the assessee and therefore, respectfully following the same, the addition in dispute is deleted and the Appeal of the assessee is allowed.

Order pronounced on 24/10/2019.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date 24/10/2019

**"SRB"**

**Copy forwarded to: -**

1. Appellant -
  2. Respondent -
  3. CIT
  4. CIT (A)
  5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches