

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5174/Del/2016
(Assessment Year: 2013-14)**

Pratap Chand Khanna & Sons (HUF), 17, Alipur Road, Civil Lines, Delhi 110054.	Vs.	Assistant Commissioner of Income Tax, Circle - 35(1), New Delhi.
PAN No: AAAHP4200R		
APPELLANT		RESPONDENT

Assessee By : Smt. Lalita Krishnamurty, Adv.
Ms. Vidhi Agarwal, CA
Revenue By : Shri Surender Pal, Sr. DR

Per Anadee Nath Misshra, AM

(A) This appeal by Assessee is filed against the impugned appellate order dated 29.07.2016 of Learned Commissioner of Income Tax (Appeals)-12, New Delhi, ["Ld. CIT(A)", for short], for Assessment Year 2013-14. Grounds taken in this appeal of Assessee are as under:

- "1. *That the sustaining of disallowance of exemption claimed by the assessee under Section 54/54F of the Act by the ld. CIT(Appeals) in respect of the additional compensation received on account of compulsory acquisition in respect of immovable property no. 13*

Shamnath Marg, Civil Lines, Delhi, for the purpose of the Delhi Metro Rail Corporation (DMRC) is arbitrary, unjust and unwarranted on facts and law.

2. *That the AO/CIT (Appeals) ought to have allowed the exemption claimed by the assessee under Section 54/ 54 F in accordance with law and not considered by them.*
3. *That the CIT (Appeals) has erred on facts and under the law in observing that the accessibility of the receipt of compensation will be linked with respect to the claim of section 54 and not subject to claim being allowed.*
4. *That the sustaining of interest levied under Section 234B is unjust, unwarranted and not tenable on facts and law.*
5. *The above grounds are independent and without prejudice to one another.*
6. *Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing."*

(B) The main issue in this appeal is regarding allowability of the assessee's claim for exemption under Section 54 / 54F of the Income Tax Act, 1961 ("I.T. Act", for short). From perusal of the aforesaid impugned appellate order dated 29.07.2016 of the Ld. CIT(A), we find that the facts of this case are identical to the facts in the cases of Praveen Chand Khanna & Sons HUF in appeal No. 60/14-15 and Naveen Chand Khanna & Sons HUF in appeal No. 59/14-15. In paragraph 9.6 of her aforesaid impugned appellate order dated 29.07.2016, the Ld. CIT(A) has stated that she was following the orders dated 29.02.2016, in the cases of Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF. The relevant portion of the aforesaid impugned appellate order dated 29.07.2016 of the Ld. CIT(A) is reproduced below, for the ease of reference:

9. DECISION

9.1 Assessee derived income from business & profession, house property, income from capital gain and income from other sources. He had filed return of income declaring total income of Rs.3,19,61,200/-.

9.2 During the year, Appellant had received enhanced compensation on account of compulsory acquisition in the year 2003-04 of certain immovable property at Rs.4,51,89,208/- and Appellant claimed exemption u/s 54/54F at the same amount. During the course of assessment proceedings, Appellant filed a revised computation showing returned income at Rs.4,51,49,927/-. He claimed exemption of Rs.1,88,11,755/- u/s 54/54F and showed Nil income under the head Long Term Capital Gain. Further, interest received on the enhanced compensation amounting to Rs.2,63,77,453/- was shown under the head Income from Other Sources thereby claiming deduction @ 50% u/s 57 of Rs.1,31,88,726/- from the interest income. Assessing Officer made an addition of Rs.1,31,88,726/- to the total income of Assessee and disallowed the claim of exemption u/s 54 r.w. Section 54H of Rs.1,88,11,755/-.

9.3 Assessing Officer observed that enhanced compensation received is taxable during the year and Section 45(5) will have no application in the case of Appellant as it does not deal with the deduction to be claimed in respect of enhanced compensation received by the Appellant. Assessing Officer further held that Section 54H deals with the extension of time for acquiring new asset or depositing or investing Capital Gain with reference to the compensation first received. He held that Section 54/54H neither speaks about the amount of additional compensation nor about the extension of time limit in respect of deposition of the additional compensation under Capital Gain deposit Scheme. He held that amount of enhanced compensation has

been deposited into the Capital Gain Scheme after the lapse of the specified time u/s 54 of the Income Tax Act and hence, Appellant was not entitled for any exemption in respect of amount of enhanced compensation received.

9.4 Appellant has stated that he had received enhanced compensation amounting to Rs.1,88,11,775/- on account of compulsory acquisition and he had claimed exemption u/s 54 by depositing the amount of enhanced compensation in the Capital Gain Fixed Deposit Scheme. Appellant claimed that he is entitled to exemption in view of Section 54H as it extends the time for acquiring the new property or depositing or investing the amount of Capital Gain in Capital Gain Account Scheme where the transfer of the original immovable property is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by him on the date of such transfer. He further stated that since Section 54H starts with a non-obstante clause, Section 54H will have application in his case. He also stated that amount of compensation includes enhanced compensation.

9.5 The facts of the case and written submissions of the Appellant case fully considered. Appellant has submitted that CIT(A) in the case of Praveen Chand Khanna & Sons HUF in Appeal No. 60/14-15 and Naveen Chand Khanna & Sons HUF in Appeal No. 59/14-15 for A.Y. 2012-13 has confirmed the additions on account of claim of exemption u/s 54 read with Section 54H. It is seen that CIT(A) vide order dated 29.02.2016 for A.Y. 2012-13 in the case of Praveen Chand Khanna & Sons has inter alia held that :-

9.6 From perusal of Section 54H, it is seen that Section 54H is with respect to extension of time limit in respect of the amount of compensation first received. It is seen that in Section 54H word used is 'compensation'. Further, there is no ambiguity in the provisions of Section 54H. Taking a strict interpretation, it is seen that Section 54 / 54H does not talk about either additional compensation or enhanced compensation. The language employed in a statute is the determining factor of the legislative intent and it is seen that word used is 'compensation' and not 'enhanced compensation'. Hon'ble Supreme Court in the case of Tarulata Shyam, 108 ITR 345 (SC) have held that there is no scope for imposing into the statute word which are not there.

9.7 Therefore, it is seen that in Section 54H the extension of time limit in the case of compulsory acquisition is only with respect to the compensation which was received in the first instance or part of it. The amount of enhanced / additional compensation which is not received or receivable on or before the date of transfer cannot be extended the benefit of Section 54H and Section 54. In this case, amount of enhanced compensation was

received after the date of transfer of capital asset and, therefore, Assessing Officer has correctly not allowed the deduction u/s 54. However, in the case of Chakiri Ashok Kumar vs. ITO, 50 taxman.com 108, Hon'ble Andhra High Court have held that benefit of Section 54H is to be extended to amount of compensation as enhanced by High Court. Therefore, claim of the Appellant appears to be tenable.

9.8 Though in view of the judgment of Hon'ble Andhra High Court, the claim of Appellant appears to be tenable, however, it is seen that Appellant has got enhanced compensation and interest amounting to Rs.5.37 Crore for land measuring 832 sq. meters and 456 sq. meters at 15, Sham Nath Marg, Delhi. The essential requirement for availing exemption u/s 54 is that there shall be transfer of residential house or land appurtenant thereto. From perusal of Award No. 2/1999-2000 and Award No. 2/DCN/2001-2002, it is seen that compensation was given for the plot of land and for boundary wall with gate. Therefore, it is apparent that there was no residential building on the plot of land at 15, Sham Nath Marg. Further, it is seen that from Award No. 2/DCN/2001-2002 that no one was residing on the land under reference and it was held that land was vacant and there was no construction appurtenant thereto and, therefore, no compensation was allowed towards the loss of any structure. Hence, in this case, the land had been acquired for Mass Rapid Transit System Project by Delhi Metro Rail Corporation. From the perusal of the awards also it is seen that award were mainly for acquisition of land. Therefore, it is evident that capital gain has not arisen from the transfer of house property. In the case of T.N. Vasavan vs. CIT, 197 ITR 163 (Ker) it was held that capital gain not arising out of transfer of house property, exemption u/s 54 was not available.

9.9 In the case of Union Co. (Motors) Ltd., 283 ITR 445 (Mad) Hon'ble Madras High Court held that when demolition of old building was to be done, long term capital gain was on account of land alone. In the instant case also, any structure or super structure which was on the plot 15, Sham Nath Marg, Delhi was to be demolished and, therefore, capital gain arising was only on account of land only. The intention of the parties was also transfer of land only. Therefore, Appellant is not entitled to the claim of deduction u/s 54.

9.10 It was also enquired from the Appellant whether the amount of Rs.2,09,16,389/- deposited in the Capital Gain Account Scheme was utilized for the purchase or construction of new asset within the specified period, Counsel of the Appellant has stated that the amount of Rs.2,09,16,389/- could not be utilized and no construction could be done within the stipulated period. Further, Appellant has submitted that income would accrue in law u/s 45 of the Act in the previous year relevant to the year in which the period of three years from the date of receipt of compensation expire only if relief u/s 54 of the Act is given to the Assessee in this year. However, it is seen that accrual of income is linked to the claim of Section 54 and not subject to the claim being allowed. The deposit in the Capital Gain Account Scheme was made on 20.06.2012 and the period of three years has expired on 21.06.2015. However, Appellant has not deposited any tax so far. Further, Appellant has given a conditional reply only. Therefore, in view of the facts and totality of circumstances, order of Assessing Officer is sustained.

9.6 It is seen that the facts of this case are identical to the aforesaid cases which I have decided vide order dated 29.02.2016. Therefore, following the order of CIT(A) in the aforesaid cases, addition of Rs.1,88,11,755/- is confirmed.

10. Ground No. 3 relates to charging of interest u/s 234B. This Ground of Appeal pertains to charging of interest u/s 234B of the I.T. Act. Interest u/s 234B is mandatory in nature. The Assessing Officer is directed to charge interest as per law after giving effect to decision given above. This Ground of Appeal gets disposed off accordingly. //

(C) Revenue has filed this present appeal against the aforesaid impugned appellate order dated 29.07.2016 of the Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), a Paper Book containing following particulars was filed from assessee's side:

1. *Written submissions dated 31.05.2016.*
2. *Original computation of income of assessee for AY 2013-14*
3. *Revised computation of income for AY 2013-14*
4. *Capital Gains Account Scheme deposit receipt*
5. *Award No. 2/1999-2000 announced by LAC in respect of 13 Sham Nath Marg Delhi 110054*
6. *Copy of cheque No. 995054 dated 10.09.2012*
7. *Court order dated 14.07.2011 for 506 sq. mtrs.*
8. *Chart of enhanced compensation and interest subsequent to ADJ order in respect of Award No. 2/1999-2000*
9. *Copy of 26AS*
10. *Copy of challans dated 30.03.2016 and 30.06.2015"*

(D) At the time of hearing before us, the Ld. Counsel for assessee submitted, at the outset, that the issue in dispute is squarely covered by orders of Co-ordinate Bench of ITAT, Delhi in the cases of Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF, vide order dated 23.11.2017 in ITA Nos. 1912/Del/2016 and 1913/Del/2016. She further submitted that the facts of the present appeal are identical to the facts of the aforesaid appeals vide ITA Nos. 1912/Del/2016 and 1913/Del/2016 in the aforesaid cases namely Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF. She further drew our attention to the relevant portion of the aforesaid order dated 23.11.2017 of Co-ordinate Bench of ITAT, Delhi, which is reproduced below for the ease of reference:

"2. Relevant facts for the disposal of these appeals are that while scrutinizing the return of income of the assesseees, the AO found that during the year 2003-04 the property of the assesseees was compulsorily acquired, and during the financial year -20,11-12 the assesseees has, received enhanced amount of compensation on account of such compulsory acquisition. Assesseees claimed exemption under Section 54/54F of the Act in respect of such enhanced compensation in the AY 2012-13. Ld. AO held that the provisions under Section 45 read with section 54 deal with the exemption to be claimed in respect of compensation but not the enhanced compensation and inasmuch as the exemption under Section 54 is available only in respect of the' compensation, the claim of the assesseees in respect of enhanced compensation was not acceptable. He recorded a finding that in this case, transfer by way of compulsory acquisition had to be considered in the year when the compensation was first received by the assesseees i.e.. in the financial year 2003-04, On this premise, the AO rejected the claim for deduction under Section ,54 of the Act and added the amount of enhanced, compensation.

3. In the appeals preferred by the assesseees, learned CIT(A) considered the case law on this aspect and while following the decision of the Hon'ble Andhra Pradesh High Court in Chakiri Ashok Kumar vs. ITO 50 taxmann.com 108 held that the benefit Of Section- 54H is to be extended to the amount of compensation as enhanced by the High Court, therefore, the claim of the assesseees on that count was tenable. However, learned CIT(A) denied the relief to the assesseees on the ground that what was acquired in this matter' was not a residential house nor the land appurtenant thereto, but it is only a vacant plot with boundary wall and gate. According -to him there was no residential building and he stated that according to the Award no one was residing in the land under reference- therefore learned

CIT(A) had returned a finding that no relief could be granted under Section 5.4 (1) of the Act unless there was any superior structure in the land that was acquired. He also rejected the contention of the assesseees that the time frames under Section 54 of the Act are relevant only when the relief under Section 54 of the Act was granted to the assesseees. Hence challenging such finding by the learned CIT(A). the assesseees have filed these appeals.

4. It is the argument of the learned AR that in this matter it could be seen from the third paragraph of the assessment order, the assesseees had claimed exemption not only under Section 54 of the Act but also there was a claim under Section 54F of the Act and when the learned CIT(A) found that there was no residential house in the land that was acquired authority, he was under an obligation to consider the claim of the assessee under Section 54 of the Act, but the learned CIT(A) failed to consider the same. The next contention of the assesseees is that the finding of the learned CIT(A) that there was no residential building in the property was factually incorrect inasmuch as the property was assessed to house tax and which is riot possible without there being any building. According to the learned AR there has been a, building and what was acquired is the land appurtenant, thereto and if an opportunity is granted to the assessee, "the assesseees are ready to prove the fact of the existence of building in the property that was acquired, Learned DR heavily placed reliance on the orders of the authorities below.

5. We have gone through the orders, of the authorities below. Ld. AO rejected the claim of the assesseees holding that the law permits the exemption in respect of the compensation only in the year in which the transfer takes place, but the enhanced compensation, standing on a. different footing is not qualified for such exemption, learned CIT(A) is perfectly legal in accepting the contention of the assesseees that in view of the decision of Chakiri Ashok KumUr vs., JTO (Supra) the benefit of Section 54(H), has to be extended to the 'amount of compensation as enhanced by the Courts.*

6. However, in so far as the findings of the learned CIT(A) that there was residential structure in the land -under acquisition concerned, record does not reveal that the learned CIT(A) had undertaken any enquiry on this aspect. He placed reliance, on the award to say that no one was residing in the land under reference and it was a vacant land. We are unable to see any basis for the learned CIT(A) to observe so. What was acquired was vacant land, as such it is but natural that reference would 'read only about the vacant land. But the question that falls for consideration under Section 54 of the Act is whether such vacant land is appurtenant it; any residential house or not. Recitals of Award need not be the final source on that aspect. Inasmuch as learned AM stated in that the property was assessed to house tax and there is evidence to show that house lax was collected, we find that this requires to verification, there was no occasion for the assessee to produce such evidence before the Ld. AO.

7. Further the learned CIT(A) has not considered the case of the assesseees under Section 54F of the Act when he reached A conclusion that the property that was acquired is not a residential house or the land was appurtenant thereto. We, therefore, find it just and proper to direct the AO to verify whether the land under

acquisition was the land appurtenant to a residential house or not and dependent upon the outcome he may grant the relief, under Section 54 or Section 54P of the Act, as the case may be. We, therefore, set aside the issue to the file of the AO for compliance with the above direction after giving; an opportunity to the assesseees to produce relevant evidence.”

(D.1) The Learned Departmental Representative (“Ld. DR”, for short) agreed with the contention of the Ld. Counsel for the assessee that the issue in dispute in the present appeal is squarely covered by the aforesaid impugned appellate order dated 23.11.2017 of Co-ordinate Bench of ITAT, Delhi.

(E) We have heard both sides. We have perused the materials available on record. We find that the Ld. CIT(A), vide her aforesaid impugned appellate order dated 29.07.2016 has followed her own orders dated 29.02.2016 in the cases of Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF. The Ld. CIT(A) has also observed that the facts of this case are identical to the facts of the aforesaid cases namely Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF. We further find that the Co-ordinate Bench of ITAT, Delhi has already decided the issue in dispute vide aforesaid order dated 23.11.2017 in ITA Nos. 1912/Del/2016 and 1913/Del/2016. At the time of hearing before us, both sides were in agreement that facts of the present appeal are identical to facts of the aforesaid cases namely Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF; and further, that the issue in dispute is squarely covered by the aforesaid order dated 23.11.2017 of Co-ordinate Bench of ITAT, Delhi. Neither side has brought any distinguishing facts and circumstances to our notice to persuade us to take a view

different from the view taken in identical facts and circumstances, by Co-ordinate Bench of ITAT, Delhi in the aforesaid order dated 23.11.2017 in the cases of Praveen Chand Khanna & Sons HUF and Naveen Chand Khanna & Sons HUF. Therefore, in view of the foregoing and respectfully following aforesaid order dated 23.11.2017 of Co-ordinate Bench of ITAT, Delhi; we set aside the issue regarding assessee's claim for exemption under Section 54 / 54F of I.T. Act to the file of the Assessing Officer to pass fresh order after verifying whether the land under acquisition was the land appurtenant to a residential house and accordingly decide the dispute regarding assessee's claim under Section 54 / 54F of the I.T. Act; after giving opportunity to the assessee to produce relevant evidences. As far as the ground of appeal regarding interest under Section 234B of I.T. Act is concerned; this is consequential in nature. The Assessing officer is directed to levy interest under Section 234B of I.T. Act, in accordance with law, at the time of giving effect to this order.

(F) In the result, appeal of the Assessee is partly allowed for statistical purposes.

Order is pronounced in Open Court on 20/12/19.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 20/12/19
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	