

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 364/DEL/2017  
[A.Y 2013-14]

Shri Gulshan Arora  
C/o Atul Puri & Company  
121, Shankar Road Market  
New Delhi

Vs.

The A.C.I.T  
Circle - 1(1)  
Gurgaon

PAN: ACOPA 5803 G

(Applicant)

(Respondent)

Assessee By : Shri Atul Puri, CA

Department By : Shri S.N. Meena, Sr. DR

Date of Hearing : 19.12.2019  
Date of Pronouncement : .12.2019

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 1, Gurgaon dated 02.12.2016 pertaining to assessment year 2013-14.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in denying full exemption u/s 54 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] in respect of capital gain derived by the assessee during the year under consideration.

3. Briefly stated, the facts of the case are that the assessee filed his return of income on 24.06.2013 declaring taxable income of Rs. 36.76 lakhs. Return was selected for scrutiny assessment through CASS and, accordingly, statutory notices were issued and served upon the assessee. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that there is long term capital gain of Rs. 62.07 lakhs, which the assessee has claimed as exempt u/s 54 of the Act. The assessee was asked to furnish the details in respect of the claim of exemption u/s 54 of the Act.

4. The assessee explained the details by furnishing the following chart:

S.No.	Reinvestment -Purchase Cost	Cost Type	FY	Document attached	Page No
1	7,60,000	Builder Cost	Sep-09	Builder Receipt	84
2	3,70,825	Builder Cost	Feb-10	Builder Receipt	85

3	1,27,475	Builder Cost	Apr-10	Builder Receipt	86
4	10,52,850	Builder Cost	Apr-10	Builder Receipt	87
5	2,25,000	Builder Cost	May-10	Builder Receipt	88
6	947467=00	Builder Cost	Jun-11	Builder Receipt	50-Submitted dated 18.01.2016
7	1065016=0	Builder Cost	Jul-11	Builder Receipt	51-Submitted dated 18.01.2016
18	940537=0	Builder Cost	Sep-11	Builder Receipt	52-Submitted dated 18.01.2016
9	1017185=00	Builder Cost	Nov-11	Builder Receipt	53-Submitted dated 18.01.2016
10	817185=00	Builder Cost	Jan-12	Builder Receipt	54-Submitted dated 18.01.2016
11	200000=00	Builder Cost	Jan-12	Builder Receipt	55-Submitted dated 18.01.2016
12	182585=00	Builder Cost	May-12	Builder Receipt	56-Submitted dated 18.01.2016
13	51545=00	Builder Cost	Jun-12	Builder Receipt	57-Submitted dated 18.01.2016
14	764567=00	Builder Cost	Mar-13	Builder Receipt	58-Submitted dated 18.01.2016
15	382284=00	Builder Cost	May-13	Builder Receipt	59-Submitted dated 18.01.2016

/	51545=00	Builder Cost	May-13	Builder Receipt	60- Submitted dated 18.01.2016
Sub Total	89,56,066 (6419916)	*declared as in return FY 2012-13			
17	800998	Builder Cost	Jan-15	Builder Receipt	61 -64 Submitted dated 18.01.2016
Grand Total	97,57,064=00				

5. After perusing the details furnished by the assessee, the Assessing Officer observed that agreement for purchase has been agreed upon by the assessee with the builder on 24.09.2009 which is two years 10 months prior to the transfer of the original asset. Referring to the provisions of section 54 of the Act, the Assessing Officer was of the opinion that the assessee is not eligible for claim of deduction as he has entered into an agreement with the builder on 24.09.2009, which is prior to one year before the transfer of original asset i.e. 28.07.2012.

6. The assessee strongly contended that agreement with the builder may be treated as an agreement for construction and claim for deduction u/s 54 of the Act be allowed since the assessee has

constructed property within three years from the date of transfer of original asset.

7. The Assessing Officer partly accepted the claim of the assessee. However, the Assessing Officer observed that the claim of the assessee shall only be restricted to the amount of investment/instalments made after the date of transfer of original asset i.e. 28.07.2012. The Assessing Officer, accordingly, disallowed the claim of exemption of the assessee u/s 54 of the Act to the extent of Rs. 50.08 lakhs.

8. The assessee carried the matter before the ld. CIT(A) but without any success.

9. While dismissing the appeal of the assessee, the ld. CIT(A) observed that since the assessee has filed his return of income on 24.06.2013, the amount utilised by him towards construction of house till that date only can be allowed as deduction u/s 54 of the Act. The ld. CIT(A) found that this amount has already been allowed by the Assessing Officer. Therefore, the assessment was confirmed.

10. Before us, the ld. counsel for the assessee vehemently stated that since more than 50% of the cost of the new asset was already invested by the assessee towards new asset since the date of agreement with the builder i.e. September 2009, the same is also eligible for claim of deduction u/s 54 of the Act.

11. Strong reliance was placed on the decision of the Hon'ble High Court of Delhi in the case of Bharti Mishra 567/2013. It is the say of the ld. counsel for the assessee that since during construction of the flat, the assessee has invested entire proceeds from sale of old asset, the assessee is very much eligible for claim of exemption u/s 54 of the Act.

12. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

13. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the flat was sold on 28.07.2012 whereas the assessee has started giving instalments to the builder since September 2009, which is prior to one year from the date of transfer of the asset. It is also not in dispute that the assessee filed

his return of income on 24.06.2013. In our considered opinion, the assessee is eligible for deduction u/s 54 of the Act for the instalments paid prior to one year from the date of sale of asset which is 28.07.20120 and, accordingly, the assessee is entitled for benefit of instalments paid on and after 28.07.2011. The findings of the Id. CIT(A) are, accordingly, modified and the ground raised by the assessee is partly allowed.

14. In the result, the appeal of the assessee in ITA No. 364/DEL/2017 is partly allowed.

**The order is pronounced in the open court on 31.12.2019.**

**Sd/-**

**[SUSHMA CHOWLA]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 31<sup>st</sup> December, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	
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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	