

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 886/Mum/2017  
(Assessment Year: 2013-14)**

Chandramohan Manohar Potdar  
145/17, Pansare Building,  
Sane Guruji Marg, Chinchpokli,  
Mumbai – 400 011

ACIT-21(3)  
Mumbai  
Vs.

PAN – AABPP0701G

**(Appellant)**

**(Respondent)**

Appellant by: Shri Rajesh P. Shah, A.R  
Respondent by: Kumar Padmapani Bora, D.R  
Date of Hearing: 30.01.2020  
Date of Pronouncement: 20.02.2020

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-33, Mumbai, dated 08.11.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated nil for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in disallowing the claim made under section 54F of the Act of Rs.2,00,04,970.
2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in disallowing the claim under section 54F of the Act without fully appreciating the facts.
3. On the facts and circumstances of the case and in law, the learned CIT(A) has wrongly arrived at conclusion that the Appellant was owning two premises on the date of sale of land, though, one of the premises was not ready for occupation and hence wrongly disallowed claim under section 54F of the Act.
4. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that investment in property of Rs.49,50,500 is not allowable under section 54F of the Act.

5. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance u/s 54 of the Act in respect of deposit in Capital Gain account Scheme of Rs.1,50,54,470.
6. On the facts and circumstances of the case and in law, the learned CIT(A) did not consider the grounds in respect of denial of liability to charging of interest under section 234A and 234B of the Act.”

2. Briefly stated, the assessee had e-filed his return of income for A.Y. 2013-14 on 31.03.2015, declaring a total income of Rs.19,33,68,623/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had in his return of income reflected income under the head ‘Long Term Capital Gain’ (LTCG) from sale of land. On a perusal of the records, it was gathered by the A.O that the assessee had as against the LTCG of Rs.21,78,21,992/- arising in his hands claimed certain deductions, as under:

Sr. No.	Amount	Section	Nature of Investment
(i)	Rs.50,00,000/-	U/s. 54EC	Investment of REC
(ii)	Rs.49,50,500/-	U/s.54F	Investment of Rs.50,00,000/- towards purchase of residential property.
(iii)	Rs.1,50,54,470/-	U/s. 54F	Deposit of Rs.1,52,05,000/- under capital gain account scheme toward purchase of another residential property.

Accordingly, the assessee after claiming the aforesaid deductions had reflected the balance LTCG of Rs.19,28,17,022/- in his return of income for the year under consideration. It was observed by the A.O that the assessee had claimed deduction under Sec. 54F in respect of investments which were claimed to have been made by him towards in two different residential units viz. (i) investment towards purchase of residential property at Pune, vide registered agreement dated 05.02.2013: Rs.49,50,500/-; and (ii) investment towards deposit in capital gain account scheme for purchase of another residential property: Rs.1,52,05,000/-. Observing, that as the provisions of Sec.54F restricted the deduction only in respect of an investment made in one residential unit, the A.O called upon the assessee to explain his entitlement towards claim of deduction in respect of his investment in the aforesaid two different residential properties, wherein one was purchased while for the other one was intended to be purchased at a later date. As the assessee failed to furnish any reply, therefore, the A.O restricted the entitlement of the assessee towards claim of deduction under Sec. 54F only in respect of the

investment that was made by him towards purchase of one residential unit at Pune, vide agreement dated 05.02.2013 for Rs.49,50,500/-. Accordingly, the claim of the assessee for deduction under Sec. 54F in respect of the investment that was made by him under 'Capital Gain Account Scheme' account ('CGAS') for purchase of another residential property was declined by the A.O

4. In the course of the assessment proceedings it was observed by the A.O, that the assessee on the date of transfer of the 'Original' asset (i.e land) owned two residential properties viz. (i) residential property at Lonawala: Rs.8,63,000/-; and (ii) residential house at Kamothe: Rs.5,94,150/-. Observing, that as per 'Proviso 1' of Sec.54F, no deduction was to be allowed to an assessee who owned more than one residential house on the date of transfer, other than the new asset, the A.O called upon the assessee to explain his eligibility for claim of deduction under Sec. 54F, in the backdrop of the fact that he owned two residential properties as on the date of transfer of the 'Original' asset. In reply, it was submitted by the assessee that though he had purchased the residential house at Lonawala for use for his weekly holidays, however, due to its poor quality of construction the possession of the same was not taken by him and the matter was sub-judice in the court. As regards the residential house at Kamothe, it was the claim of the assessee that the same was occupied by his son. On the basis of his aforesaid submissions, it was the claim of the assessee that he was not having any residential accommodation on the date of transfer of the 'Original' asset i.e sale of land.

5. The A.O after deliberating on the contentions advanced by the assessee was however not persuaded to subscribe to the same. As regards the property owned by the assessee at Lonawala, the A.O was of the view that irrespective of the purpose for which the said residential property was acquired by the assessee, and also the fact as to whether the possession of the same was not taken by him, he was vested with the ownership of the same. Insofar, the residential house at Kamothe was concerned, the A.O was of the view that though the assessee had allowed his son to use the said residential property for his accommodation, however, he remained the legal owner of the said property. Accordingly, the A.O not finding favour with the aforesaid reasoning that was given by the assessee to buttress his claim towards deduction under Sec. 54F of the Act, declined to allow the same. However, as the A.O had already disallowed the assessee's claim for deduction under Sec. 54F in respect of the

investment that was made by him in CGAS account, therefore, he restricted the disallowance under Sec.54F to the extent of the balance claim that was raised by him on the basis of the investment made towards purchase of residential property at Pune for Rs.49,50,500/- . As such, the A.O on the basis of his aforesaid observations declined the assessee's claim for deduction under Sec. 54F aggregating to an amount of Rs.2,00,04,970/- [Rs.49,50,500/- (+) Rs.1,50,54,470/-]. On the basis of his aforesaid deliberations the A.O re-worked the LTCG in the hands of the assessee at Rs.21,28,21,992/-.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not finding favour with the contentions that were advanced by the assessee in support of his entitlement towards claim of deduction under Sec. 54F of the Act, declined to accept the same. Accordingly, not finding any infirmity in the rejection of the assessee's claim for deduction under Sec. 54F by the A.O, the CIT(A) upheld the same and dismissed the appeal.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. It was submitted by the Id. A.R that the lower authorities had on the basis of misconceived facts rejected the assessee's entitlement for claim of deduction under Sec.54F of the Act. Adverting to the observations of the lower authorities that the assessee on the date of transfer of the 'Original' asset i.e sale of land was owner of two residential properties viz. (i) residential house at Lonawala; and (ii) residential house at Kamothe, it was submitted by the Id. A.R that the said observations were factually incorrect. In order to buttress his aforesaid claim, it was submitted by the Id. A.R that as the residential house at Lonawala on account of its poor quality of construction was unfit for human habitation, therefore, the possession of the same had not been taken by the assessee till date. Also, it was submitted by the Id. A.R that as the land on which the aforesaid property is situated was a forest land, therefore, there is an ongoing dispute between the assessee and the seller on the said issue too. It was averred by the Id. A.R that the dispute of the assessee with the builder is pending before the Consumer Dispute Redressal Forum at Pune. In order to drive home his aforesaid claim, the Id. A.R took us through the relevant extract of the complaint filed by the assessee against the builder/developer (Page 77-103) of assessee's paper book (for short 'APB'). The Id. A.R drawing our attention to the aforesaid complaint, therein submitted, that the assessee had complained

with the consumer forum as regards the poor quality of construction of the property under consideration which had rendered it unfit for human habitation. Further, the Id. A.R drew our attention to a letter of an architect, dated 03.09.2005, wherein he had certified that the construction of the property under consideration was critical and not good. Also, the Id. A.R in order to buttress his claim that the property under consideration was unfit for habitation, therein took us through certain other documents forming part of the APB. In order to drive home his claim that the concept of habitability is inherent in the word 'house' and unless it is habitable, the word would not answer the common sense meaning of 'house', the Id. A.R relied on the judgment of the Hon'ble High Court of Madras in the case of R. Venkatavaradha Raddier Vs. Commissioner of Wealth Tax (1995) 214 ITR 76 (Mad). On the basis of the aforesaid facts, it was the claim of the Id. A.R that as the property situated at Lonawala was not a residential house in possession of the assessee, therefore, the lower authorities were in error in concluding to the contrary. As such, it was the claim of the Id. A.R that as the assessee on the date of sale of the 'Original' asset i.e land was not an owner of more than one residential house, therefore, he was duly eligible for claim of deduction under Sec. 54F of the Act.

8. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that as the assessee was beyond any doubt owner of the aforesaid two residential properties at the time of sale of the 'Original' asset (i.e land) on 01.03.2013, therefore, the lower authorities had rightly declined his claim for deduction under Sec. 54F of the Act. Accordingly, it was submitted by the Id. D.R that as the lower authorities had rightly rejected the assessee's claim for deduction under Sec. 54F, therefore, the appeal of the assessee being devoid and bereft of any merit was liable to be dismissed.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the A.O had held the assessee to be ineligible for claim of deduction under Sec. 54F of the Act, for the reason, that as on the date of sale of the 'Original' asset the assessee owned more than one residential property viz. (i) residential house at Lonawala : and (ii) residential house at Kamothe. On the basis of his aforesaid observations, the A.O had declined the assessee's claim of deduction

under Sec. 54F aggregating to an amount of Rs.2,00,04,970/- [Rs.49,50,500/- (+) Rs.1,50,54,470/-]. In order to test the maintainability of the view taken by the lower authorities, it would be relevant to cull out Sec. 54F of the Act, which reads as under:

“54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

*Provided that nothing contained in this sub-section shall apply where —*

(a) *the assessee-*

- (i) ***owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or***
  - (ii) *purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*
  - (iii) *constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and*
- b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation- for the purpose of this section,-

- (1) XXXX
- (2) XXXX
- (3) XXXX

- (4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case .not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset.”

On a perusal of the aforesaid statutory provision, we find, that for entitling the assessee to claim deduction, the same inter alia contemplates that the assessee on the date of transfer of the 'Original' asset should not own more than one residential house, other than the new asset. As observed by us hereinabove, the controversy in the present case hinges around the aspect as to whether or not the assessee as on the date of transfer of the 'Original' asset i.e the sale of the land on 01.03.2013 owned more than one residential house, other than the new asset. It is the claim of the revenue that the assessee on the date of transfer of the 'Original' asset owned two residential properties viz. (i) residential house at Lonawala and (ii) residential house at Kamothe. Rebutting the aforesaid observations of the lower authorities, it had consistently been the claim of the assessee that he did not own more than one residential house on the date of transfer of the 'Original' asset. As is discernible from the orders of the lower authorities, it has been the claim of the assessee that though he had acquired the property at Lonawala for his weekly holidays, however, as the same was poorly constructed and was unfit for human habitation, therefore, its possession was not taken by him. Apart from that, the assessee has drawn our attention towards certain documents which therein reveals that certain disputes as regards the quality of construction etc. are ongoing inter se the assessee and the builder/developer. In sum and substance, it is the claim of the assessee that as the possession of the property at Lonawala could not be taken by him, for the reason, that the same was unfit for human habitation, therefore, it would be incorrect to conclude that the assessee was an owner of a residential house at Lonawala.

10. We have deliberated at length on the issue under consideration, and are unable to persuade ourselves to subscribe to the contentions advanced by the Id. A.R in support of the assessee claim of deduction under Sec. 54F of the Act. As observed by us hereinabove, the assessee would be inter alia eligible for claim of deduction under Sec. 54F of the Act, if on the date of transfer of the 'Original' asset he does not own more than one residential house, other than the new asset. In the case before us, the Id. A.R had tried to impress upon us that the assessee did not own the residential house at Lonawala. It is the claim of the Id. A.R that as the residential house at Lonawala due to its poor quality of construction was unfit for human habitation, and for the said reason the possession of the same had not be taken by the assessee, therefore, the same would not fall within the realm of the meaning of a residential

house. We are afraid that the aforesaid contentions advanced by the Id. A.R does not find favour with us. On a plain literal interpretation of Sec.54F, it can safely be gathered that the same only contemplates 'ownership' of more than one residential house on the date of transfer of the 'Original' asset, for rendering the assessee ineligible for claim of deduction under the said statutory provision. As is discernible from the documents forming part of the assessee's paper book (for short 'APB'), we find, that the assessee had vide a registered 'agreement', dated 06.02.2002 purchased a plot at Lonawala viz. S. No. 32 at Village Dudhiwari, Taluka Maval, District Pune. On the very same date i.e on 06.04.2002 the assessee had entered into an 'agreement' for construction with M/s Chaitanya Enterprises (hereinafter referred to as 'contractor') for construction of a Bungalow measuring about 75.32 sq. mtr., i.e 800 sq. ft. on the aforesaid plot (Page 57-66) of APB. As per the aforesaid 'agreement' for construction, the contractor was bound to complete the construction of the Bungalow within 6 months or before the 31<sup>st</sup> December, 2002 (Page 61) of APB. A copy of the Bungalow plan which was proposed to be constructed is found at Page 66 of APB. However, as the assessee was thereafter not satisfied with the quality of the Bungalow that was constructed by the aforesaid contractor, therefore, he along with his family members had filed a complaint against the contractor viz. M/s Chaitanaya Dham Associate and its partners with the Consumer Dispute Redressal Forum, Pune. (Page 77 – 103) of APB. On a perusal of the aforesaid complaint filed by the assessee, we find that he had complained about the quality of the construction of the Bungalow on multiple grounds. The relevant extract of the aforesaid complaint of the assessee filed with the Consumer Dispute Redressal Forum, Pune by way of an 'affidavit' under Sec. 13(4) of the Consumer Protection Act, 1986 reads as under:

- “(ii) I state that, though the work of construction of the bungalow was agreed to be as specified in the said agreement for Construction dt. 6/4/2002; whereas the quality and workmanship is so poor that the Walls, Joints, Ceilings have all got cracks and there is heavy leakage during rains and the paint and other outer parts of the walls are peeling off at almost every place;
- (iii) I state that, the Bungalow having its measurements 21'-9" x 31'-7" at plinth/stilt level with open RCC staircase 3'-7" wide leading to its first floor; and the plinth is of very thin structure unable to bear the load of the entire structure;
- (iv) I state that, the entire stilt area is spanned by only 10 Nos. of RCC column without any intermediate column support to a width of 21'-9" square; which is very dangerous and unsafe, as the entire bungalow is constructed on stilt on just 10 no. of small size columns;

- (v) I state that, though the building was constructed on stilt, yet the stilt is of low quality with very thin pillars, in that the building may collapse any time;
- (vi) I state that, the remaining columns are of 10 VT x 10 Yi" at every extreme side; thus, making it unbearable to bear the load of the entire structure;
- (vii) I state that, the entire load of the First floor is loaded on the 21'-9" spanned beams and its Columns of which the maximum size is only about 16 &" x 10 ½ "
- (viii) I state that, Walls on the upper floor are not constructed on the beams and not on any support from the ground level and as such the structure has become most unsuitable and most dangerous to live in or even in during weekends, as our lives and property are put in danger because of construction;
- (ix) I state that, the height of the stilt floor under the beam bottom is 7 ft. 3". However column height under the slab is 7ft. 11";
- (x) I state that, the roof slab has given cracks at all places;
- (xi) I state that, the ridge tiles are in uneven placement and in broken state;
- (xii) I state that, due to non-provision of roof at the time of construction, leakage is caused to the junction of roof and the walls and have damaged the Inside plaster and furniture;
- (xiii) I state that, the columns and beams are of improper dimension;
- (xiv) I state that, there is no provision for future leakage solutions;
- (xv) I state that, there is improper water-proofing treatment;
- (xvi) I state that, the total workmanship is very poor;
- (xvii) I state that, the structural beams are not of the proper sizes;
- (xviii) I state that, the materials used are not of proper quality;
- (xix) I state that, the structure needs proper method of waterproofing;
- (xx) I state that, the structure needs very heavy repairs;
- (xxi) I state that, the structure requires demolition of the entire plaster and re-do it;
- (xxii) I state that, the bungalow needs entirely reconstruction by demolishing the original structure;
- (xxiii) I state that, the construction is so bad that renovation will be equal to new construction costing about Rs, 10,00,000/- (Rs. Ten Lacs)
- (xxiv) I state that, the Opponents have not installed ISI marked Electrical Appliances thereby there is risk of short-circuit any time the said appliances are under use;
- (xxv) I state that, Pure drinking water tap for drinking is not provided;
- (xxvi) I state that, W.B.M. Colony Road not done;
- (xxvii) I state that, General cleanliness of common areas i.e, Road, common open space, amenities area not provided;
- (xxviii) I state that, RCC precast slabs for roofing not provided;
- (xxix) I state that as the wooden flush doors with wooden/ms frames not provided by the Opponents, the Complainants fixed Burma teak wood doors etc.
- (xxx) I state that, As the MS grills not properly fitted by the Opponents, we have got the grills properly fitted;
- (xxxi) I state that, ISI marked electrical appliances were not used by the Opponents;"

On a perusal of the aforesaid facts as had been deposed by the assessee before the Consumer Redressal Forum, it stands revealed beyond any scope of doubt that pursuant to the 'agreement' for construction, dated 06.04.2002 executed by the assessee with the aforesaid contractor viz. M/s Chaitanaya Dham Associate, a Bungalow was constructed on the aforesaid plot that was purchased by the assessee, vide purchase agreement dated 06.04.2002. In sum and substance, the fact that the assessee during the period relevant to the year under consideration viz. A.Y. 2013-14 was the owner of the Bungalow stands proved beyond any scope of doubt. As a matter of fact, we find that the assessee in his aforesaid complaint had sought a demolition of the aforesaid constructed structure along with a refund of the cost of construction from the contractor. However, it is not the case of the assessee either before the lower authorities or before us that that the aforesaid Bungalow was thereafter demolished and as such was non-existent at the time of transfer of the 'Original' asset (i.e land) during the year under consideration. On the contrary, it has been the claim of the assessee that as the aforesaid residential property/Bungalow at Lonawala due to its poor quality of construction was unfit for human habitation, and for the said reason its possession was not taken by him, therefore, it would be incorrect to conclude that he owned a property which could be construed as a 'residential house'. As observed by us hereinabove, we are unable to find ourselves to be in agreement with the contentions advanced by the Id. A.R before us. In our considered view, as the assessee had been shown beyond doubt to be the owner of the residential house/Bungalow situated at Lonawala, therefore, irrespective of the fact that the said property was not occupied by him due to its poor quality of construction, the same continued to be a residential house which was owned by the assessee. On the basis of our aforesaid observations, now when it stands proved that as on the date of transfer of the 'Original' asset i.e land on 01.03.2013, the assessee in addition to the residential house at Kamothe also owned a Bungalow at Lonawala, therefore, being an owner of more than one residential house on the said relevant date, he was ineligible to claim deduction under Sec. 54F of the Act. As regards the claim of the Id. A.R that the fact that the A.O while framing the assessment under Sec. 143(3) for the year under consideration had not assessed the 'Annual Lettable Value' (ALV) of the aforesaid Bungalow at Lonawala under Sec. 23 of the Act, therein proved that the assessee was not the owner of the said residential property during the year under consideration, we are afraid does not find favour with us. As observed by us hereinabove, the

documents forming part of the APB clearly reveals beyond any scope of doubt that the assessee during the year under consideration was the owner of the residential house/Bungalow at Lonawala. Accordingly, finding no infirmity in the view taken by the CIT(A), who in our considered view had rightly affirmed the declining of the assessee's claim for deduction under Sec. 54F by the A.O, we uphold the same. **Grounds of appeal No. 1 to 5** raised by the assessee are disposed off in terms of our aforesaid observations.

11. The assessee has further assailed the levy of interest under Sec. 234A and 234B of the Act before us. As the levy of interest under the aforesaid statutory provisions is mandatory as per the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Anjum M.H. Ghaswala (2001) 252 ITR 1 (SC), therefore, finding no infirmity in charging of the aforesaid interest by the A.O, we uphold the same. **Ground of appeal No. 6** is dismissed.

12. Resultantly, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 20.02.2020

Sd/-  
(M. Balaganesh)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 20/02/2020

Rohit, P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**