

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.114/Del./2020
Assessment Year: 2016-17

Shri Ashok Kumar Wadhwa, C/o- Raj Kumar & Associates L-7A (LGF), South Extension, Part-II, New Delhi	Vs.	ACIT, Circle-39(1), New Delhi
PAN :AAKPW0189J		
(Appellant)		(Respondent)

Appellant by	Shri Raj Kr. Gupta, CA & Shri J.P. Sharma, CA
Respondent by	Mrs. Alka Gautam, Sr. DR

Date of hearing	22.02.2021
Date of pronouncement	02.03.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 07/11/2019 passed by the Learned CIT(Appeals)-13, New Delhi [in short the Ld. CIT(A)] for assessment year 2016-17 raising following grounds:

1. *That under the facts and circumstances, Rs.2,62,88,000/- being the amount invested for purchase of new residential house on 12.04.2017 i.e. within the specified period of two years from the date of sale of original asset being plot, sold on 15.04.15, should be held as eligible for calculating the deduction u/s. 54F while calculating the taxable LTCG on sale of said plot.*

2. *That under the facts and circumstances, indexed cost of expenses incurred in construction/improvement of Rs.2,02,500/- made in F.Y. 2001-02 should be allowed as a deduction for computing the taxable LTCG on sale of residential plot.*

2. Briefly stated facts of the case are that the assessee is a doctor by profession and filed return of income on 05/06/2017, declaring income of ₹ 31,81,320/-. In the return of income filed, the assessee claimed deduction/exemption under section 54F against capital gain on sale of property. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The scrutiny assessment was completed on 26/12/2018 wherein the deduction/exemption under section 54F was denied. On further appeal, the Learned CIT(A) upheld the denial of deduction under section 54F of the Act. Aggrieved, the assessee is in appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal') by way of grounds reproduced above.

3. Before us, the parties appeared through Video Conferencing facility and filed paper-book and other documents electronically. The Learned Counsel of the assessee submitted that ground No. 2 of the appeal was not pressed by the assessee and accordingly same is dismissed as infructuous.

4. In ground No.1 the assessee has contested that investment in purchase of the new residential house amounting to ₹ 2,62,88,000/- should be allowed a deduction under section 54F of the Act.

4.1 The facts in brief qua the issue-in-dispute are that the assessee along with one co-owner sold a residential plot situated

in Gurgaon on 15/04/2015 for a sum of ₹ 6,26,23,000/-. The assessee had 50% ownership of the plot. The assessee deposited sale proceeds of the plot in a saving bank account maintained with Axis Bank. Subsequently, the assessee purchased a residential house at Rohini Delhi for a sum of ₹ 2,48,00,000/- on 12/04/2017 under his full ownership. The due date of the filing of the return of income in the case of the assessee was on 31/07/2016, which was extended to 05.08.2016, but the assessee filed return of income belatedly on 05/06/2017 in terms of section 139(4) of the Act. In the return of income filed, the assessee claimed deduction/exemption under section 54F of the Act. The Learned Assessing Officer after examining the submission of the assessee show caused to the assessee that he was not entitled for the benefit of exemption/deduction due to the reason that the sale consideration was not deposited in bank account maintained as per 'Capital Gain Accounts Scheme' before the due date of the filing of return of income under section 139(1) of the Act i.e. 05.08.2016. The assessee submitted that he was not aware the provisions of depositing in the 'Capital Gain Scheme Account', however, investment in the new residential property as required under section 54F had been done within two years from the sale of the residential plot and, therefore, in substance he has complied with the provisions of the section. In the assessment order passed, the Assessing Officer denied the deduction claimed by the assessee. The Ld. CIT(A) explained that when the provisions of the law are clear and there is no ambiguity, the assessee cannot invoke legislative intent of the provisions and held as under:

“4.3.2 A perusal of the same clearly brings out that the capital gains which is not appropriated by purchasing a new asset, shall be deposited before furnishing such return, not later than the due date applicable for furnishing return of income under subsection (1) of section 139, in an account in such bank or institution as may be specified in, and utilized in accordance with any scheme notified by the Central Government in the official Gazette. In the case of the appellant, he deposited the proceeds in the savings account and not the Capital Gains Account Scheme and invested in the new property two years later on 12.04.2017. As against the due date i.e. 31.07.2016 (which was extended to 05.08.2016), the appellant filed his return u/s 139(4) as a belated return on 05.06.2017. Thus, the appellant has violated the beneficial provisions, enabling provisions and thus, the charging provision. Accordingly, the addition of Rs. 2,66,96,000/- under the head ‘Long term capital gains’ made by disallowing the claim u/s 54 of the Income Tax Act, 1961 is hereby confirmed.”

4.2 Before us, the Learned Counsel of the assessee submitted that the assessee has made investment in the residential house within the specified period of two years from the date of the sale of the property and therefore, he has substantially complied with the provision of section 54F(1) and, therefore, deduction/exemption should be allowed to the assessee. In support of the contention, he relied on the decision of the Hon’ble Karnataka High Court in the case of CIT Vs. K. Ramachandra Rao, 56 taxmann.com 163 (Karnataka). He also relied on the decision of the Tribunal in the case of Smt. Vastala Asthana, (2019) 110 TAXMANN. COM 173 (Del. Trib.)

4.3 The learned DR, on the other hand, relied on the order of the lower authorities.

4.4 We have heard rival submission of the parties and perused the relevant material on record. In case of LTCG from sale of property deduction U/s. 54F is available in respect of payment towards purchase of new residential house up to due date of

filling return of income prescribed u/s. 139 which includes section 139(4) of the Act. The Sec. 54F(1) provides that, if new house is purchased within a period of 1 year prior or within 2 years after the date of transfer of the property, the assessee will be entitled for exemption u/s. 54F. The sale of Plot took place on 15.04.2015 hence the investment in new house was to be done on or before 14.04.2017. The assessee made investment in new house on 12.04.2017, i.e., within 02 years and within the time allowed u/s. 54F(1). These facts are Un-disputed. In this case, the ITR was filed on 05.06.17 u/s. 139(4) while the period u/s. 139(1) was originally upto 31.07.16, which was extended upto 05.08.16. The benefit has been denied only for reason that assessee was required to deposit the sale consideration in specified Capital Gain bank deposit schemes up to 05.08.2016 i.e. time allowed u/s. 139(1) of the Act and since he failed to do so, he has been held as not eligible for exemption u/s. 54F.

4.5 In our opinion, Sec. 54F(1) is a mandatory and substantive provision while Sec. 54F(4) is only a procedural section providing only the procedural requirements. In case, the mandatory and substantive provision stands satisfied, the assessee should be eligible for benefit U/s. 54F. In this case, it is undisputed that the assessee satisfied the mandatory and substantive requirements of sec. 54F(1) by purchasing the new residential house within a period of 02 years from the date of sale of plot. Under these facts, no dis-qualification would arise on account of non-deposit of sale consideration in specified capital gain bank deposit schemes U/s. 54F(4). Moreover, the assessee had deposited the sales

consideration in Saving Bank account, instead of capital gain account.

4.6 The hon'ble High Court of Karnataka in the case of **CIT Vs. K Ramachandra Rao** (supra) has held that where the assessee has invested entire sale consideration in construction of a residential house within 03 years from the date of transfer, he could not be denied exemption u/s. 54F on ground that he did not deposit said amount in Capital Gain Account Scheme before due date prescribed u/s. 139(1) of the Act.

4.7 In the case of **Smt. Vastala Asthana** (supra), the Tribunal held that in case of LTCG from sale of property deduction u/s. 54F would be available in respect of payment towards purchase of new residential house upto due date of filing return of income prescribed U/s. 139 which includes section 139(4) of the Act.

4.8 Respectfully following the finding of the Hon'ble High Court (supra) in the Tribunal (supra), we set aside the finding of the lower authorities and direct the Assessing Officer to allow the deduction/exemption under section 54F of the Act in accordance with law.

5. The ground No.1 of the appeal of the assessee is accordingly allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 2nd March, 2021

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 2nd March, 2021.

RK/-(DIDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi