आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 279/JP/2020
निर्धारण वर्ष/Assessment Year :2015-16

Prem Jain, 90, Bapu Bazar, Jaipur	बनाम Vs.	Principal Commissioner of Income Tax-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABZPJ4150C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Siddharth Ranka (Adv) &
Sh. Saurav Harsh (Adv.)
राजस्व की ओर से/ Revenue by : Sh. B. K. Gupta (PCIT)

सुनवाई की तारीख/ Date of Hearing : 15/06/2021
उदघोषणा की तारीख/Date of Pronouncement: 15/07/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. Pr. CIT-1, Jaipur dated 18.03.2020 wherein the assessee has taken the following grounds of appeal:-

"1. That on the facts and in the circumstances of the case, the ld. Principal Commissioner of Income-tax-I, Jaipur grossly erred in passing an order u/s 263 of the Income-tax and in holding that the assessment made by the ld. Assessing Officer is found to be erroneous in so far as it is prejudicial to the interest of the Revenue.

2. That on the facts and in the circumstances of the case, the ld. Principal Commissioner of Income-tax-I, Jaipur grossly erred in

holding that "the ld. AO passed the assessment order in a routine and casual manner without verification of the issue of the deduction claimed under section 54F of the Act" is wholly unjustified, bad in law and deserve to be quashed.

2.1 That the learned Assessing Officer passed the assessment order after appreciating all supporting documents and evidences which was just and proper therefore the assessment order passed by the learned assessing officer is neither erroneous nor is prejudicial to the interest of the Revenue.

2.2 That the learned Pr.CIT has gone on assumptions, presumptions, conjecture and surmises which is bad in law.

2.3 That on the facts and in the circumstances of the case, the Id. Principal Commissioner of Income-tax-I, Jaipur grossly erred in not treating plots of land of the assessee appellant as a singular unit with regard to deduction of Rs. 51,35,093/- under section 54F of the Act."

2. At the outset, it is noted that there has been a delay of 34 days in filing the present appeal. As per the affidavit submitted by the assessee, though he received the impugned order dated 18.03.2020 passed by the ld CIT(A) on 21.03.2020, however, due to Covid -19 pandemic and nationwide lockdown imposed by the Government, it was impossible for him to file the appeal within the prescribed limitation. It was further submitted that in view of the Hon'ble Supreme Court decision in Suo moto writ petition (Civil) No. 3/2020 in Re: Cognizance for extension of limitation dated 23.03.2020 wherein the limitation period in all such proceedings, irrespective of limitation prescribed under the general law or under any special laws, whether compoundable or not, shall stand extend w.e.f 15.03.2020 till further orders, the appeal so filed is within

the extended limitation period and hence, the same may be admitted for adjudication.

3. Per contra, the ld. DR fairly submitted that as per the orders passed by the Hon'ble Supreme Court, the period of lockdown may be excluded and the Revenue has no objection where the appeal is admitted for adjudication.

4. Heard both the parties and purused the material available on record. We respectfully note that the Hon'ble Supreme in aforesaid suo-moto matter has laid down that period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f 15th March 2020 till further orders. Thereafter, the Hon'ble Supreme Court in terms of subsequent order dated 22.05.2020 has held that in the cases where the limitation expired after 15.03.2020, than the period from 15.03.2020 till the date on which the lock down is lifted in the jurisdictional area where dispute lies or where the cause of action arises shall be extended for a period of 15 days after lifting of the lockdown. We also take note of the fact that the Ministry of Law and Justice, Govt. of India has also issued a notification dated 31.03.2020 wherein the due dates which falls during the period 20.03.2020 to 29.06.2020 has been extended to 30th June, 2020 in respect of appeals and applications under the specified Act which includes the Income Tax Act and which has further been extended up to 31st December, 2020. In the present case, due date for filing the appeal being 31.05.2020 that is, within two months from the end of the month in which the impugned order was communicated to the assessee on 21.03.2020 and the fact that the appeal has been filed with the Registry on 23.06.2020, respectfully following the decisions of the Hon'ble Supreme Court and the Taxation and other Laws (relaxation of certain provisions) Ordinance,

2020 as notified in the Gazette of India dated 31st March, 2020, the same is hereby admitted as filed within the extended limitation period.

5. Now, coming to the merits of the case. During the course of hearing, the ld AR submitted that the assessee is an individual, having income from house property, interest, rent, agricultural income, income from partnership firms, long term capital gains, etc. and is regularly filing her income tax returns from time to time. That the return of income for A.Y. 2015-2016 was filed on 31.08.2015 disclosing therein total income at Rs. 68,50,900/-. Long Term Capital Gains at Rs. 43,01,116/- was disclosed by the assessee on account of sale of Land at Siddharth Nagar, Jaipur. Deduction u/s. 54F of the Act was claimed at Rs. 51,35,093/- [723,755 + 44,11,338] on the basis of investment made of Rs. 54,41,816/- [770,816 + 46,71,000]. That the income tax return was selected for Limited Scrutiny vide notice dated 19.09.2016 with the reasons 'Deduction claimed under the head Capital Gains'. During the course of assessment proceedings, the assessee submitted copies of sale deed & purchase deed of property sold, copy of receipt no.'s 2367 & 2368 dated 23.10.2013 towards cost of plot [2485781+2320146 = 4805927], copy of allotment letter dated 23.10.2013 towards Plot No. C-128 & C-149, C-Block, Vardhman Nagar, Jaipur ad-measuring 612.22 sq. yards, copy of bill of contractor for construction work done dated 23.06.2015 for Rs. 5,71,820/- and copy of site plan of Plot No.'s C-128 & C-149. It was further submitted that these plots are joined from the rear side and both constitute a single residential unit. It was submitted that the Assessing Officer being fully satisfied and after complete verification of facts and law accepted the returned income vide assessment order dated 27.12.2017.

6. It was submitted that a show cause notice dated 05.02.2020 was thereafter issued by the ld. PCIT, Jaipur-1, Jaipur proposing to limit the

deduction claimed by the assessee to Rs. 30,57,601/- only on the ground that deduction u/s. 54F is available only for one house whereas the assessee has purchased two houses. In response, the assessee furnished reply dated 14.02.2020 wherein it was submitted that (1) both the plots are adjoining, (2) a single patta has been issued, (3) construction is done in such a manner that it is single unit, (4) scheme is under approval of Jaipur Development Authority, (5) there is no requirement that documents should be registered, (6) the order passed by the ld. Assessing Officer is in accordance with law and it neither erroneous not prejudicial to the interest of the revenue. Being not satisfied with the submission of the assessee, the ld. PCIT vide order dated 18.03.2020 held that the benefit u/s. 54F had to be restricted for one plot of land and that too, where the claim of the constructed portion of 625 sq. ft is found to be residential house in accordance with law. Being aggrieved with the findings and order of the ld PCIT, the assessee has filed the present appeal.

7. In the aforesaid background of the case, the ld AR submitted that the undeniable fact in the instant matter are that both the Plot No. C-128 & C-149 are adjoining/contiguous, one single patta for 612.22 sq. yards has been issued by the Developer for both the plots and two patta's have not been issued, there is no boundary wall in between the two plots, construction is done in such a manner that it is single unit, the bifurcation of plots is done by the builder/developer for its own internal purpose, local town-planning bye-laws and rules and those regulations have no relevance as far as assessee/buyer is concerned as it had purchased the afore-said plots as a single residential unit by a single patta and not by different patta's. It was submitted that it is for the assessee to decide as to how she wishes to construct a residential house and what would be the appropriate size of plot of land which would be reasonable for constructing the residential house and how the developer or the local

authorities have demarcated or treated the plots of land cannot be held against the assessee.

8. In support, reliance was placed on the following decisions:

- Hero Cycles Pvt. Ltd. vs. CIT (2015) 379 ITR 347 (SC)
- Mohammadanif Sultanali Pradhan v. DCIT (ITA 1797/Ahd/2018 dated 06.01.2020)
- Navin Jolly v. ITO (2020) 6 TMI 514 (Kar)
- Atul Kochar v. PCIT (2021) 3 TMI 997 (JP)
- Lata Phulwani v. PCIT (2020) 10 TMI 407 (JP)

9. Regarding the query raised by the Bench during the course of hearing as to whether benefit of deduction u/s. 54F can be extended to Long Term Capital Gains earned on sale of two different properties, it was submitted that firstly long term capital gains from sale of various long term capital assets is to be worked out and thereafter, if the total sale consideration received out of sale of capital asset is invested in purchase/construction of residential house, then benefit would be available against each such long term capital assets.

10. It was further submitted that the statute has used the word 'any' prior to the word long-term capital asset. The statute has consciously not used the word 'one' prior to the word long-term capital asset, hence entire Long Term Capital Gains has to be worked out and thereafter, if conditions of section 54F are being satisfied by the assessee, then deduction thereof, is to be allowed. Reliance is placed upon the following authorities who have also held that benefit cannot be restricted on sale of multiple assets:

- DCIT v. Pankaj Chimanlal Patel HUF (ITA 3179/Ahd/2016)
- ACIT v. Mohinder Kumar Jain (ITA 5254/Del/2014)
- Shashidhar Patil v. ITO (ITA 897/Bang/2019)

11. In light of above facts and legal provisions, it was submitted that the impugned order passed by the ld. PCIT deserves to be set-aside and quashed.

12. Per contra, the ld. PCIT/DR has relied on the order of the ld PCIT and our reference was drawn to the relevant findings as contained in paras 7 to 10 of the PCIT's order which read as under:-

> *"7. I have considered the assessment record and the submission made during the proceedings u/s 263. The assessment record indicates that though the case was selected for limited scrutiny on the issue of deduction claimed under capital gains, no query relating to the issue was raised in the first query letter dated 19-09-2016. The query was raised vide letter dated 24-08-2017. Part details were submitted on 18-09-2017. On 15-12-2017, the AO asked for the site map of properties purchased on which deduction u/s 54F was claimed. On 18-12-2017 the assessee submitted the site plan issued by M/s Gaurav Private Ltd stating that as the plots are adjacent to each other, they constitute a single unit. AO did not obtain any documents thereafter. These facts indicate that the AO did not conduct any further enquiry nor any independent enquiry to ascertain whether the plots constitute one single unit as claimed for the purposes of section 54F. The AO failed to consider that in the site plan the numbering of the plots itself indicated that the plots are two separate plots. The scheme of the plots shown in the site plan and the separate payment-receipts issued for plots 0-128 & 0-149 available on record clearly negate the existence of singularity of any sort as claimed by the assessee. Each plot is a separate plot as the Society has given separate numbers to these two plots as also to other adjacent plots of similar size. In absence of any evidence the assessee's claim of adjacency of the two plots of land to be treated*

as a singular unit with regard to deduction of Rs. 51,35,093/- u/s 54F of the Act is not justified and is not in accordance with law. The AO accepted the claim thereby committing error and causing prejudice to the interest of revenue.

7.2 As per the letter dated 23-06-2015 of the contractor filed during assessment proceedings, the constructed area is only 625 sq. feet. There is description of the exact construction work or activity. The AO was required to examine whether the construction work is eligible to be considered as a house u/s 54F. In any case, the stated unit has been constructed only on part of one plot. On the other plot, there is no construction, so that plot does not qualify to be treated as part of the land on which there is construction of one residential house in India. The AO failed to examine this aspect of the 54F claim.

7.3 In the computation of income available on the assessment record it is seen that the assessee has claimed deduction u/s 54F on two counts: of Rs. 7,23,755/- against capital gain from sale of plot number C-60 and Rs. 44,11,338/- against capital gain from sale of plot number C-61, both located at Siddarth Nagar, Jaipur. Total deduction u/s 54F has been claimed at Rs. 51,35,096/- . Thus there are two sets of `Original Asset' and 'New Asset' within the meaning of section 54F whereas the law envisages that deduction can be allowed for purchase of one New Asset against the capital gain derived from transfer of one Original Asset. The AO was required to examine the basis of claiming 54F deduction separately in parts on both the plots as also its admissibility.

8. As discussed above, the Assessing Officer failed to apply her mind on the material available on record and failed to invoke the applicable

provisions of law. This is turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non-application of mind to relevant material, an incorrect assumption of facts and an incorrect application of mind to the law which is prejudicial to the interest of the revenue and hence liable for revision under section 263 of the Income Tax Act. The Hon'ble Supreme Court in the case of Malabar Industrial Limited V/s CIT 243 ITR it has held as under-

"…… An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."

9. The assessee has relied upon the following judgements in support of the claim u/s 54F:

- *ACIT Vs Leela P Nanda 102 ITD 281(Mumbai Trib)*
- *CIT Vs Sunita Aggarwal 284 ITR 20 (Delhi High Court)*
- *CIT Vs Devdas Naik 366 ITR '12 (Bomaby High Court)*
- *CIT Vs Gita Duggal 357 ITR 153 (Delhi High Court)*

The facts of the above cases are clearly distinguishable from that of the assessee.

In case at serial no. 1 above, two contiguous flats were made into one unit. In the assessee's case, the plots are vacant with a very small portion on one plot having a small room.

In case at number 2, there is a clear finding that all the portions were being continuously used for residence. In the assessee's case, one plot is clearly vacant and uninhabitable/unlivable, and the other plot is only partly usable.

In case at number 3, there is clear finding of two residential flats conjoined to make one unit. A vacant plot of land cannot be equated with two conjoined flats.

In case at number 4, the property is a building having several units. In the assessee's case one property is a vacant plot of land & the other property has part of a unit constructed.

The ratio laid down in above cases does not apply to the assessee's case as the facts are clearly distinguishable and have to be independently considered with reference to the requirement of, section 54F.

10. Considering all the facts and circumstances of the case and for the reasons discussed above, the assessment order dated 27-12-2017 for A.Y. 2015-16 passed by the AO is held erroneous insofar as it is prejudicial to the interests of the revenue for the purpose of section 263 of the I.T. Act. The said order has been passed by the Assessing Officer in a routine and casual manner without verification of the issue of the deduction claimed u/s 54F the Act. The Assessing Officer has accepted the return of income, whereas the claim u/s 54F was required to be restricted for one plot that too if the claim of the constructed portion of 625 sq. ft. is found to be a residential house in accordance with law. The assessment has thus resulted in short levy of taxes. The order of the Assessing Officer is, therefore, liable to revision under the explanation (2) clause (b) and clause (a) of section 263 of the Income Tax Act. The assessment order is set aside to be made afresh in the light of the observation made in this order with regard to the deduction claimed u/s 54F of the Act and for a redetermination of the capital gains on sale of land. The AO is required to make necessary verification in respect of the capital gains arising on sale of land, to examine in depth the claim of deduction u/s 54F and to determine and finalize the assessment in accordance with the prevailing

law to determine the correct income of the assessee liable to tax for the A.Y 2015-16 after affording reasonable opportunity to the assessee."

13. Further, ld. PCIT/DR relied on the following decisions in support of his contentions as under:-

- Virbhadra Singh (HUF) Vs PCIT [2017] 86 taxmann.com 113 (HP)
- CIT vs Ballarpur Industries Ltd. [2017] 85 taxmann.com 10 (Bom)
- Jeevan Investment & Finance (P.) Ltd vs. CIT [2017] 88 taxmann.com 552 (Bom)
- Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC)
- Daniel Merchants P Ltd and others (SLP No. 23976/2017 dated 29.11.2017)
- In the High Court of Bombay at Goa in case of Sesa Sterlite Limited (Erstwhile Sesa Goa Ltd) vs. CIT (Tax Appeals No. 27/2015 and 28/2015 dated 2.11.2020)

14. We have heard the rival submissions and purused the material available on record. The assessee in her return of income, while computing income from the sale of the two plots of land, has claimed deduction u/s 54F of the Act in respect of investment made in house property. The investment in the house property has been claimed by way of purchase of two plots of land bearing plot no. C-128 & C-129 situated at C- Block, Vardhman Nagar, Jaipur costing Rs 48,05,927/- and carrying out construction thereon costing Rs 5,71,820/-. The return of income was selected for limited scrutiny for the purposes of verifying the assessee's claim of deduction under the head "Income from capital gains".

15. In the aforesaid facts, the issue that arises for consideration is whether the mandate of claim of deduction u/s 54F as so made by the assessee has been properly examined by the AO or not. For the purposes of claim of deduction u/s 54F, what is required to be fulfilled and duly examined by the

AO, being the mandatory conditions, are firstly, whether there is transfer of any long term capital asset, not being a residential house, secondly, whether the assessee has within a period of three years, after the date on which transfer of original asset took place, appropriated the net sales consideration from sale of the original asset and constructed one residential house in India.

16. In the instant case, the assessee has transferred two plots of land, both being long term capital assets and not being residential house. There has been no dispute which has been raised by the ld PCIT in the impugned order in terms of the said condition not been fulfilled by the assessee or not been duly examined by the AO. Thus, the first mandatory condition for claiming deduction u/s 54F of the Act is taken as duly fulfilled and examined by the AO and is thus, not the subject matter of dispute before us. Where the net sale consideration arising out of sale of these two original assets are appropriated as per second condition, the assessee shall be eligible for claim of deduction u/s 54F of the Act.

17. Regarding the second mandatory condition of appropriation of net sale consideration towards construction of one residential house in India, it is a settled position that cost of plot of land is integral to cost of construction of the residential house and therefore, where the net consideration is appropriated towards purchase of plot of land and thereafter, construction has been carried out thereon, the aggregate cost should be considered for determining the amount of deduction u/s. 54F provided that the acquisition of plot of land and the construction thereon are completed within the period so specified. In this regard, reference can be drawn to the CBDT Circular No. 667 dtd. 18.10.1993 [204 ITR (St) 103] and contents thereof read as under:

"1. Sections 54 and 54F provide for a deduction in cases where an assessee has, within a period of one year before or two years after the date on which the transfer of a capital asset takes place, purchased, or has within a period of three years after that date constructed, a residential house. The quantum of deduction is itself dependent upon the cost of such new asset. It has been represented to the Board that the cost of construction of the residential house should be taken to include the cost of the plot as, in a situation of purchase of any house property, the consideration paid generally includes the consideration for the plot also.

2. The Board has examined the issue whether, in cases where the residential house is constructed within the specified period, the cost of such residential house can be taken to include the cost of the plot also. The Board are of the view that the cost of the land is an integral part of the cost of the residential house, whether purchased or built. Accordingly, if the amount of capital gain for the purposes of section 54, and the net consideration for the purposes of section 54F, is appropriated towards purchase of a plot and also towards construction of a residential house thereon, the aggregate cost should be considered for determining the quantum of deduction under section 54/54F, provided that the acquisition of plot and also the construction thereon, are completed within the period specified in these sections.

18. In the instant case, there are, thus, two aspects of the matter which require due and proper examination. Firstly, the appropriation of net sale consideration from the sale of the original assets towards the purchase of plots of land on which residential house can be constructed, and secondly, appropriation of net sale consideration from the sale of the original assets towards actually carrying out construction of residential house thereon, both

within the prescribed time period. The emphasis is equally on both appropriation/utilization of net sales consideration and constriction of residential house in India. The dominant objective being the construction of residential house in India, the purchase of plot of land has to be coupled with construction of residential house thereon and where the funds are utilized towards merely purchase of plot of land meant for residential purposes and there has been no actual construction of residential house thereon, the mandate of the law cannot be said to be fulfilled as the investment would be in form of a plot of land and not in a residential house. Therefore, what is relevant is that there is an appropriation of net sale consideration towards actual purchase of plot of land as well as actual construction of a residential house thereon.

19. The satisfaction of the aforesaid second mandatory condition is under dispute before us and in this regard, we refer to the contentions advanced by both the parties. Firstly, we refer to the findings of the ld PCIT in the impugned order which have been reiterated by the ld PCIT/DR. The ld PCIT has stated in her order that pursuant to calling for a copy of the site plan from the assessee about the two plots of land which were purchased by the assessee, the AO didn't obtain any further documents or carried out any independent enquiry to ascertain whether the two plots of land constitute one singular unit as claimed by the assessee for the purposes of claiming the deduction u/s 54F of the Act. The ld PCIT thereafter proceeded to examine the scheme of the plots of land as depicted in the site plan and the payments receipts issued by the developer and held that in the site plan, there are separate numbers indicated for the two plots of land and there are separate payment receipts issued by the developer for respective plots of land which indicate that these are two separate plots of land and in absence of any evidence furnished by the assessee in support of his claim of adjacency of the two plots of land, they cannot be treated as a

singular unit for purposes of deduction u/s 54F of the Act. It was accordingly submitted by the ld PCIT/DR that the net sale consideration cannot therefore be treated as appropriated towards the purchase of the aforesaid two plots of land constituting a single residential unit and the claim of deduction has been rightly restricted to net sale consideration appropriated towards purchase of one plot of land.

20. On the other hand, the case of the assessee as contended by the ld AR is that both the plots of land are adjoining/contiguous, only one single patta for 612.22 sq. yards has been issued by the Developer for both the plots and two patta's have not been issued, there is no boundary wall in between the two plots, the bifurcation of plots is done by the builder/developer for its own internal purposes and for purposes of complying with the local town-planning bye-laws and regulations which have no relevance as far as assessee is concerned as she had purchased the aforesaid plots as a single residential unit by a single patta and not by different patta's. It was accordingly submitted that there cannot be any dispute that net sale consideration has been appropriated towards the purchase of the aforesaid two plots of land constituting a single residential unit and the claim of deduction has been wrongly restricted to one plot of land.

21. In light of aforesaid contentions, we find that the issues, in context of the satisfaction of the second condition, which has been specifically raised for our consideration is what would be an appropriate size of plot of land on which residential house can be built and can two plots of land be combined into one to construct one residential house thereon or not. In our understanding, the mandate of law and the dominant objective is very clear - the assessee has to construct one residential house in India within the specified period. Therefore, the plot of land should be such which enables the assessee to construct and

enjoy the fruits of one residential house. It is the prerogative and individual wisdom of the assessee to decide the locality and size/area of the plot of land where he/she wishes to construct the residential house. The same will differ from assessee to assessee depending upon individual preferences, and/or need of their respective families. Depending upon the availability and other factors, it may so happen that the assessee is unable to buy the requisite size/area of individual plot of land of his/her individual/family preference and need, and in such cases, he/she may decide to buy more than one plot of land as so demarcated by the developer and/or local authorities as so available at the relevant point in time in the given area/locality/society. In such cases, mandate of the statue can be said to be fulfilled so long as the individual plots of land form one contiguous piece of land and which enables the assessee to build one residential house thereon without any obstructions and/or external interference. How the developer has demarcated the individual plots of land, how the allotment letters have been issued by the developer, how the payments receipts have been issued and reflected in the developer's financial statements are matters which will differ in each case and no uniform yardstick can be applied across all cases in absence of any specific requirement as provided in the statue which we find is clearly absent. In other words, the statue by not providing for any such specific conditions has in fact provided for necessary flexibility to the assessees to purchase plot of land and construct one residential house thereon depending upon their individual preferences and as long as they fulfill the requirement of constriction of one residential house thereon within the specified period, rest all matters are extraneous and non-fulfillment thereof cannot be held against the assessee denying him/her the rightful claim of deduction u/s 54F of the Act.

22. In the instant case, we have gone through the site plan issued by the developer in respect of two plots of land bearing no. C-128 and C-149 and find

that both the plots of land bearing no. C-128 and C-149 form one contiguous piece of land measuring in total 612.22 sq. yards without any obstructions which allows the assessee to build a residential house. And we find that there could not be any better evidence than the site plan issued by the Developer and furnished by the assessee before the Assessing officer in support of his claim of both the plots of land forming one contiguous piece of land which has been duly taken on record and examined by the Assessing officer. It is assessee's prerogative to buy these two plots of land forming one contiguous piece of land for the purposes of constructing a residential house. These purchases are duly supported by a single allotment letter issued by the developer and payment receipts demonstrating discharge of consideration by the assessee.

23. Having said that, we find that the ld PCIT has returned a finding that both the plots are vacant with a very small portion on one plot having a small room measuring 625 sq. ft and on the other plot, there is no construction so that latter plot doesn't qualify as part of land on which construction has been carried on. We are also intrigued by the said fact given that the assessee has decided to purchase the contiguous piece of land measuring 612.22 sq yards equivalent to 5509.98 sq. ft approx and has merely carried out construction of one room measuring 625 sq. ft thereon on one plot of land. The said undisputed facts lead us to another facet of the matter which has apparently escaped the attention of the AO in terms of the extent of vacant land or open space which can be appurtenant to the constructed/built up residential area so as to qualify the total area within the overall ambit of a residential house. As we have noted above, the dominant objective being the construction of a residential house and not purchase of plot of land and where for the purposes of proper and convenient enjoyment of a residential house, where the assessee wishes to provide for open space for garden or other utilities, etc., the lands

appurtenant to the building can be considered as part of the residential house, however, the question is the extent of such land which can be held as appurtenant to the building. Though we have held earlier that the assessee has the necessary flexibility to buy two plots of land measuring 622 sq. yards forming one contiguous piece of land which by necessary implications means that the assessee given her social status and family requirement wishes to built a residential house of size and scale which would require such a large plot of land and has actually gone ahead and built such a residential house. However, where on facts, we find that the assessee has merely carried out construction of a small room measuring 625 sq. ft on one plot of land and even by assuming for sake of argument that such a room qualifies as residential house, can it be held that remaining vacant area measuring 90% approx. of total area will qualify as land appurtenant to proper and convenient enjoyment of such a residential house. In this regard, useful reference can be drawn to the decision of the Coordinate Bench in case of Tony J. Pulikal vs. Deputy Commissioner of Income-tax, Central Circle -1, Kochi [2013] 37 taxmann.com 221 (Cochin - Trib.) wherein it was held as under:

> *"6. We have considered the rival submissions on either side and also perused the material available on record. We have also carefully gone through the provisions of section 54F of the Act. For claiming exemption u/s 54F of the Act, the assessee has to construct a residential house one year before or two years after the date on which the capital asset was transferred. In this case, after transfer of the capital asset, the assessee has purchased 196.144 cents of land and constructed a house admeasuring 254.94 sq.mtrs. The assessee has also invested Rs.81,41,120 towards the cost of construction of the property. There is no dispute with regard to the cost of construction of the building. The dispute is with regard to the area of the land which is required for*

convenient enjoyment of 254.94 sq.mts of residential house. The area of the land which is required for convenient enjoyment of the house has to be determined with regard to the social status and profession, etc. of the individual assessee, profession, etc. An agriculturist may require a reasonable extent of land for housing their cattle, agricultural implements, etc. An industrialist may require car sheds to park his cars, servant quarters. etc. Moreover, the locality where the land also needs to be considered. In villages, one may have vast extent of land for garden, play ground, etc. However, such things may not be possible in urban cities. Therefore, the land appurtenant to the residential house has to be determined with regard to the locality where the residential house is situated, the social status of the individual assessee, profession of the individual and other factors for proper and convenient enjoyment of the residential house. This Tribunal is of the considered opinion that 5 cents of land determined by the CIT(A) is very less in the State of Kerala. The State of Kerala mainly being an agricultural area, this Tribunal is of the considered opinion that the CIT(A) is not correct in restricting the land appurtenant to the building at 5 cents without considering the relevant factors which prevail in the State of Kerala. However, the locality where the land is situated and other factors are not available on record. Therefore, this Tribunal is of the considered opinion that the Assessing Officer shall reconsider the issue afresh after considering all the factors mentioned above and thereafter determine the extent of land which is required for proper and convenient enjoyment of the residential house. Accordingly, the orders of the lower authorities are set aside and the issue of exemption u/s 54F is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh in the light of the discussion made above and the case laws relied upon by the

assessee and thereafter decide the issue in accordance with law after giving reasonable opportunity of hearing to the assessee."

24. In the instant case, where there is 90% approx. of open space and merely 10% of built up area by way of construction of a room, can it be said that assessee has constructed a residential house with land appurtenant thereto. In our considered view, the said matter has clearly escaped the attention of the AO and to that extent, the order so passed is clearly erroneous and prejudicial to the interest of the Revenue.

25. Now, coming to the related issue of construction of a room as to whether the same qualifies as a residential house on such contiguous piece of land measuring 612.22 sq.yards. The ld PCIT has recorded a finding that during the course of assessment proceedings, the assessee has submitted a letter dated 23.06.2015 issued by the contractor wherein the construction area has been stated to be only 625 sq. feet and there is no description of the exact construction work or activity undertaken by the contractor. The ld PCIT has further stated that the AO was required to examine whether the construction work is eligible to be considered as a residential house or not for the purposes of claim of deduction u/s 54F and which the AO has failed to examine rendering the order so passed as erroneous. The ld PCIT enquired about the matter during the course of revisionary proceedings and the ld AR in the written submission has stated that a single dwelling unit comprising one room, toilet and kitchen was constructed wherein a chowidar is presently residing and taking the same into consideration, the ld PCIT has returned a finding that both the plots are vacant except a small portion of one plot wherein a small room has been constructed and has therefore directed the AO to restrict the claim to one plot of land subject to verifying construction measuring 625 sq ft as to whether the same qualifies as a residential house in accordance with law.

26. During the course of hearing before us, the ld AR has reiterated the earlier submissions and stated that there is no dispute that the construction has been done in such a manner that it constitutes a single residential unit and it is again the wisdom of the assessee whether she wants to built a single room residential unit or multiple room residential units and so long as even a single room qualifies as a residential house, the assessee qualifies for deduction u/s 54F of the Act.

27. As held by the Courts from time to time, the term 'residential house' has not been given any statutory definition and, thus, has to be assigned meaning as understood in common parlance. As per dictionary meaning, it means abode, a dwelling place or a building for human habitation. A building, in order to be habitable by a human being, is ordinarily required to have minimum facilities of washroom, kitchen, electricity, sewerage, etc. In the instant case, though it has been claimed by the ld AR before the ld PCIT that besides the room, a kitchen and toilet has been built, however nothing has been brought on record before the ld PCIT in terms of building plan, photographs etc which lends credence and demonstrate such facilities being actually built and therefore, where the ld PCIT has held that only a small room has been built, we don’t see any infirmity in the said findings and the AO having failed to verify the same during the course of assessment proceedings, setting-aside the same for necessary verification and examination as to whether the construction so carried out qualifies as a residential house or not.

28. In light of the aforesaid decision and in the entirety of facts and circumstances of the case, we find that the claim of deduction u/s 54F has not been properly examined by the AO as per the requirement of law and accordingly, uphold the exercise of jurisdiction by the ld PCIT u/s 263 of the Act and directs the AO to examine the matter of claim of deduction u/s 54F a

fresh in light of aforesaid discussion and decide as per law after providing reasonable opportunity to the assessee.

In the result, appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 15/07/2021.

Sd/-	Sd/-
(संदीप गोसाई)	(विक्रम सिंह यादव)
(Sandeep Gosain)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 15/07/2021
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Prem Jain, Jaipur
2. प्रत्यर्थी/ The Respondent- Pr. CIT-1, Jaipur
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 279/JP/2020}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar