

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.174/Del/2018
Assessment Year : 2012-13**

ACIT, Circle-34(1), New Delhi.	vs	Sanjay Khanna (HUF), B-127, Ashok Vihar, Phase-I, New Delhi-110052. PAN-AAIHS9436G
APPELLANT		RESPONDENT
Appellant by	Sh. Prakash Dubey, Sr.DR	
Respondent by	Sh. Y.K.Kapoor, Adv.	
Date of Hearing	26.07.2021	
Date of Pronouncement	31.08.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue for the assessment year 2012-13 is directed against the order of learned CIT(A)-25, Delhi dated 29.09.2017. The Revenue has raised following ground of appeal:-

1. *“Whether the CIT(A) has not erred in deleting the addition of Rs.4,55,00,000/- made by the Assessing Officer by rejecting the assessee’s claim of deduction u/s 54 of the IT Act, 1961?”*
2. The facts giving rise to the present appeal are that the return of income declaring total income of Rs.4,53,85,150/- was filed by the assessee on 03.08.2012. Thereafter, the case was selected for scrutiny. While framing the scrutiny assessment, the Assessing Officer observed that on perusal of the

computation, it was seen that the assessee had received enhanced compensation of Rs.13,15,68,759/- (inclusive of interest) on account of compulsory acquisition of his immovable property held in the year 2001-02. The assessee had disclosed Rs.5,44,45,242/- as enhanced compensation and Rs.7,71,23,517/- as interest income on enhanced compensation under the head of income from other sources. In respect of the enhanced compensation under the head of Long Term Capital Gain, the assessee had claimed exemption u/s 54 of the Income tax Act, 1961 ("the Act") by investing Rs.4,55,00,000/- in the capital gain scheme, Rs.25,00,000/- as litigation expenses and the balance amount of compensation of Rs.64,45,242/- offered to tax under the head income from capital gains. The Assessing Officer observed that property in question was acquired on account of development of Delhi Metro Rail at Civil Lines, Delhi. Thereafter, the assessee had received the compensation and declared capital gain in the Assessment Year 2003-04. In the same Assessment Year, the assessee had claimed exemption u/s 54 of the Act on the original compensation by investing the same into capital gain FDR scheme. However, the same was not utilized for the specified purpose later on tax was paid in Assessment Year 2005-06 on the original amount of compensation. In the current Assessment Year, the assessee had again claimed deduction u/s 54 of the Act by investing the enhanced compensation received in the relevant Assessment Year into the capital gain scheme. The Assessing Officer, therefore, vide order sheet entry dated 22.12.2014 called upon the assessee to substantiate the claim of deduction u/s 54 of the Act in

respect of the enhanced compensation received in the relevant Financial Year. In response thereto, a reply vide letter dated 05.01.2014 was filed. However, the Assessing Officer did not accept the explanation offered by the assessee and proceeded to make addition of Rs.4,55,00,000/- in respect of enhanced compensation. Thus, he assessed the income at Rs.4,53,85,150/- against the income declared as per the return of Rs.4,55,00,000/-

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions and relying upon the provision of section 54H of the Act and the case laws as relied upon by the Ld. Counsel for the assessee, allowed the claim of deduction u/s 54H of the Act.

4. Now, the Revenue is in appeal before this Tribunal.

5. Ld. Sr. DR on behalf of the Revenue vehemently argued that Ld.CIT(A) was not justified in allowing the claim of the assessee. Ld. Sr. DR strongly supported the assessment order. He submitted that Ld.CIT(A) has erroneously allowed the benefit of section 54H of the Act which would not be available to the assessee. In the present case, the assessee had received enhanced compensation amounting to Rs.13,15,68,759/- that included the interest on enhanced compensation of Rs.7,71,23,517/- so far the interest is concerned, the same has been offered for tax as income under the head "income from other sources". However, for the component of enhanced compensation, the assessee claimed exemption u/s 54 of the Act by investing Rs.4,55,00,000/- under the capital gains scheme. He submitted that Ld.CIT(A) erroneously applied section

54H of the Act. He drew our attention to the provision of section 54H of the Act in support of his contention that the benefit of section 54H of the Act is not available to the assessee.

6. Per contra, Ld. Counsel for the assessee opposed these submissions and supported the order of Ld.CIT(A). He submitted that there is no ambiguity under law and on facts, there is no dispute with regard to the fact that the assessee had received enhanced compensation on compulsory acquisition of his property. He further submitted that Hon'ble Delhi High Court while granting stay of demand has held that the assessee's claim for treatment of the enhanced amount received towards compensation u/s 54 of the Act is *prima facie*- a strong one, since the event which led him to claim such higher amount was on account of the acquisition itself. In other words, there was an intrinsic link between the reference which led to the enhancement and the acquisition u/s 54(H) of the Act.

7. We have heard the rival contentions of the parties and perused the material available on record. For effective adjudication and clarity, section 54H of the Act is reproduced hereunder:-

54H. *“Notwithstanding anything contained in sections 54, 54B, 54D, 54EC and 54F, where the transfer of the original asset is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period for acquiring the new asset by the assessee referred to in those sections or, as the case may be,*

the period available to the assessee under those sections for depositing or investing the amount of capital gain in relation to such compensation as is not received on the date of the transfer, shall be reckoned from the date of receipt of such compensation :

Provided *that where the compensation in respect of transfer of the original asset by way of compulsory acquisition under any law is received before the 1st day of April, 1991, the aforesaid period or periods, if expired, shall extend up to the 31st day of December, 1991.”*

8. As per the Revenue, no benefit can be given to the assessee u/s 54H of the Act as the facts in the present case are that the assessee had claimed deduction u/s 54H of the Act for the compensation received in respect of Assessment Year 2003-04. It is contended that section 54/54H of the Act neither speak about the investment of additional compensation nor about the extension of the time limit in respect of claim of deduction u/s 54 of the Act qua the additional compensation into the capital gains scheme. It is further submitted that the assessee had claimed exemption u/s 54 of the Act on the original compensation by investing the same into capital gain FDR scheme which has not been utilized for the specific purpose for which he had to pay capital gain tax in the original Assessment Year 2005-06. There is no dispute with regard to the fact that in the present case, there was compulsory acquisition. The quantum of compensation was increased by the Ld. Court of Addl. District Judge (North), Delhi. We find that Ld.CIT(A) relying on the judgement of the Hon'ble Andhra Pradesh High Court in the case of *Chakri Ashok Kumar, Ongole vs ITO, 2014 (11) TMI 937 vide order dated 23.07.2014 in*

ITA No.47 of 2002 which has been reproduced in the impugned order wherein Hon'ble Andhra Pradesh High Court has held as under:-

".....Since the very adjudication before various authorities proceeded on the assumption that there exists a separate component of additional compensation and since we find that such a concept is alien to the Scheme and the Act of for that matter, the I.T.Act, we allow the appeal and accordingly set aside the impugned order."

9. It was directed that benefit of section 54H of the Act shall be extended to the entire amount of compensation as enhanced by Hon'ble High Court. The Revenue has not brought any contrary binding precedents to our notice, therefore, we do not see any infirmity in the order of Ld.CIT(A) and the same is hereby affirmed. Thus, ground raised by the Revenue is rejected.

10. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 31st August, 2021.

Sd/-
(DR.B.R.RKUMAR)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI