

**INCOME TAX APPELLATE TRIBUNAL**  
**[DELHI BENCH "F": NEW DELHI]**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**A N D**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
**(Through Video Conferencing)**

ITA. 4840/Del/2017  
(Assessment Year: 2011-12)

ACIT, Circle : 31 (1) New Delhi.	Vs.	Shri Rajat Bhandari, E-567, Eastern Avenue, Sainik Farm, New Delhi - 110 068. PAN: AAFP3089D
(Appellant)		(Respondent)

Department by :	Shri Govind Singhal, Sr. DR
Assessee by:	Shri Satish Bansal, C. A.
Date of Hearing :	04/08/2021
Date of pronouncement :	16/09/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by the Id Asst. Commissioner of Income Tax, Circle-31(1), New Delhi for Assessment Year 2011-12 against the order passed by the Id CIT(A)-11, New Delhi dated 08.05.2017 raising following grounds of appeal:-

" 1. Whether Ld. CIT(A) was justified in allowing the claim of deduction of Rs. 2,36,96,898/- u/s 54F of the I.T.Act,1961 made by assessee despite the fact that the assessee owned more than one residential property at the time of making claim of deduction. Further, Ld. CIT(A) also did not take into the account the fact that the assessee was failed to produce any legal documents relating to establish the ownership of house properties in the name of others as claimed by him during the assessment proceedings.

2. Whether the Ld. CIT(A) was justified in ignoring the finding made by the AO which revealed that the credit card expenses of Rs. 32,61,606/-were booked under the heads entertainment, sales promotion and travelling expenses against which the assessee could not produced bills/vouchers. However, the same had been booked in the books of account of assessee's proprietorship firm. Further, during the assessment proceedings the assessee could not established that these expenditures were incurred for business purpose.

*3. Whether the Ld. CIT(A) was justified in ignoring the facts that no expenditure were incurred to earn dividend income.*

*4. The department craves leave to add, alter or amend the grounds of appeal at a later stage. "*

2. Brief facts of the case shows that the assessee is an individual, who filed its return of income on 30.09.2011 declared income of Rs. 81,30,630/-. The assessment u/s 144 read with section 145 passed on 28.03.2014. Several additions were made in the hands of the assessee as well as denial of deduction u/s 54F of the Act was also made. The assessee preferred an appeal before the LD CIT (A) who allowed the appeal of the assessee and therefore, revenue is aggrieved.
3. The first ground of appeal is against the deduction of Rs. 2,36,96,898/- allowed by the Id CIT(A) u/s 54F of the Act. The facts of the issue are that the assessee has sold a property at Patparganj, Delhi for Rs. 3.10 crores on 20.10.2010. The assessee claimed exemption u/s 54F of the Act stating that he has purchased a new farmhouse at Sainik Farms, New Delhi in September 2011. The Id AO noted that based on the information submitted by the assessee that before the purchase of new residential house in the shape of farmhouse in September 2011 the assessee has already purchased two residential properties and sold one of them. Therefore, the Id AO was of the view that the assessee is not entitled for deduction u/s 54F of the Act. He held that it is not possible to collect the direct evidence to prove that the assessee owned more than one residential house, on the date of transfer of original asset. He further noted that after taking consideration of the totality of the facts and circumstances of the case one could draw the inference that the assessee did not fulfill the conditions for exemption u/s 54F. He even otherwise held that the assessee has purchased a farmhouse and no deduction u/s 54F should be allowed on that, as income from farm is not taxable.
4. The second issue he noted that the assessee has incurred an expenditure through his credit card. The assessee submitted that these credit cards expenditure have been incurred on behalf of the employer. Assessee submitted permanent account number of the employer company as well as the copy of account where all those expenditure been incurred, the

expenses also been reimbursed to the assessee by that company. The Id AO did not believe and made an addition of Rs. 32,61,606/- in the hands of the assessee.

5. On appeal, Ld CIT(A) deleted the above disallowance and additions in the hands of the assessee and therefore, revenue is in appeal before us.
6. We have carefully heard the Id Sr. DR and AR. We have also considered the written submissions submitted by the Id AR along with paper book filed. We have also perused the orders of the lower authorities. We have also considered the several judicial precedents placed before us.
7. The first ground of appeal relates to disallowance u/s 54F of the Act of Rs. 2,36,96,898/-. The Id AO has denied exemption u/s 54F of the Act without disputing the fact of the transactions but merely noting that the assessee has more than one house and is also owner of the many residential houses. For this proposition, the Id AO noted address of the assessee on the return of income, on bank account, on insurance receipts as well as other legal documents placed before him. He noted that the assessee has many residential houses and therefore deduction u/s 54F cannot be made. He was also of the view that farmhouse is not a residential unit and therefore, deduction u/s 54F is not eligible on a purchase of residential property by the assessee at Sainik Farm, New Delhi. Before the Id AO, the assessee specifically submitted that the assessee has given advances for the purchase of the property to M/s. Real Capital Sky Scrapers Pvt. Ltd, who could not deliver the property and therefore money was returned. However, the Id AO wrongly assuming that advances/ loans given to M/s. Lincoln Developers Pvt. Ltd is for the property. The assessee stated that it has purchased only one property.
8. The Id CIT(A) dealt with the above issue in para No. 5.2 as under:-

*"5.2 I have perused the facts of the case and the submissions alongwith the documents produced by the AR. It is observed that the appellant had explained all the transactions and ownership status of the various properties which were doubted by the AO at the time of assessment. Despite this, the AO has made the addition without having any material on record to show that the appellant was having more than one residential house or that he had invested in more than one residential house. The appellant has duly*

*explained that he had made advance of Rs. 3.22 crores to M/s Real Capital Sky Scapers Pvt. Ltd. for purchase of residential house which was received back by him as the company could not deliver the property. The appellant has furnished a copy of the cancellation agreement to confirm the same. Further, the appellant had contended that it had given a loan of Rs. 1.5 crores to M/s Lincoln Developers Pvt. Ltd. from which he has received interest on which TDS has been deducted and the said payment was not linked to purchase of property. The only residential house which has been purchased by him is out of the sale consideration received by him for which the new asset i.e. the residential house has? been purchased in Sainik Farms, Delhi from M/s Portrait Infrastructure & Developers Pvt. Ltd. In addition, the appellant has explained the ownership of various properties alleged by the AO to be owned by the appellant. Moreover, it is noticed that the appellant has purchased a residential house in Sainik Farms which is the name of a locality in Delhi and the AO seems to have mistaken the same with purchase of a Farm. In view of these facts, it is observed that there is no material basis to hold that the appellant does not fulfil the conditions for claim of deduction u/s 54F of the Act. Therefore, the addition made by the AO is deleted and the ground of appeal is allowed.”*

9. The Id DR could now show that the assessee has more than one property. The Id AO himself says that he could not prove whether the assessee has more than one property. Furthermore, with respect to the objection of the learned assessing officer, that assessee has purchased a farmhouse and therefore it is not a residential house property is also devoid of any merit. Farmhouse can be residential house also. It is not the case of the revenue that assessee has purchased excessive land and has constructed a small house thereon and thereby claiming the deduction on the total value of land and small property constructed thereon. If that had been the case perhaps, the assessee would have been eligible for proportionate deduction to the extent of residential house property as well as lender pertinent thereto. There is no finding by the learned assessing officer that assessee has purchased excessive land which would be used as a farmland and has for namesake constructed a residential house property. Merely because a property is called a farmhouse, it does not become a non-residential house property unless otherwise proved. In view of this, we do not find any reason to upset the order of the Id CIT(A). Accordingly, ground No. 1 is dismissed.

10. Second ground is with respect to addition made by the Id AO on the credit card expenditure. The assessee has submitted that he has three credit cards, which are exclusively used for the purpose of the business of assessee's employer M/s. Makino Auto Industries where the assessee is CEO. The various expenditure incurred by him through these credit cards is in fact reimbursed by the above company. The assessee also produced the proof of the payment as well as the PAN of that firm. The Id AO disbelieved and made an addition of Rs. 32,06,606/- in the hands of the assessee. The Id CIT(A) deleted the above addition as per para 6.2 of his order as under:-

*"6.2 I have gone through the facts of the case and the submissions made by the appellant. It is observed that the appellant was holding three credit cards. It is contended by the appellant that these cards were being used by him for the business purposes of M/s Makino Auto Industries in which he is working as CEO and all the expenditure incurred through these cards has been duly accounted for in the books of the said concern. The appellant has furnished the completed details of the expenses. It is also noted that the AO has made the addition by stating that the appellant has not produced the bills/vouchers of the expenses incurred and has also held that the appellant has derived personal benefits by the use of these credit cards. At the same time, the AO has also acknowledged that the employer firm of the appellant has recorded these expenses in its books under various heads. No evidence has been brought on record by the AO to show that the appellant had derived personal benefits by use of these cards. There is no material on record to show that the appellant was entitled to any such perquisite in addition to his salary from the firm which allowed him to make personal expenses through these credit cards. It is also contended by the appellant that no such addition has been made by the AO in AY 2013-14. In view of these facts, I am of the opinion that the addition made by the AO has no basis and therefore, the same is deleted."*

11. We have carefully perused the reasons given by the Id CIT(A). In fact, when the expenditure is incurred merely because this expenditure has been incurred through his credit card there is no reason to make an addition in the hands of the assessee. The assessee also stated that he continues to make such expenditure on behalf of the firm through his credit card in subsequent years also and no such additions have been made in the subsequent year. This fact remains uncontroverted. In view

of this, we do not find any infirmity in the order of the Id CIT(A) in deleting the addition of Rs. 32,61,606/-. Ground No. 2 of the appeal is dismissed.

12. In the result, the appeal filed by the LD AO is dismissed.  
Order pronounced in the open court on 16/09/2021.

**-Sd/-  
( KUL BHARAT )  
JUDICIAL MEMBER**

**-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated : 16/09/2021.

\*AK KEOT\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi