

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'F' NEW DELHI]**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 1650/DEL/2018 (A.Y 2014-15)
(THROUGH VIDEO CONFERENCING)**

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| ACIT Circle-11 (2), New Delhi. (Appellant) | Vs. | Shri Tarun Seth, 149, Jasola, Pocket-I, New Delhi – 110 025. PAN: AATPS2410H (Respondent) |
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| Appellant by : | Shri Kamlesh Chaurasia, C. A.; |
| Respondent by: | Shri Amitabh Kumar Sinha, [CIT] – DR; |

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| Date of Hearing : | 01.11.2021 |
| Date of Pronouncement: | 10.11.2021 |

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the Revenue against the order dated 11.12.2017 passed by CIT(Appeals)-4, New Delhi, for assessment year 2014-15.

2. The grounds of appeal raised is as under:-

“Whether CIT (A) was justified in deleting the addition made by AO on account of disallowance of deduction u/s 54F ignoring the fact that as per the Delhi Government policy, 90% of land acquired on which deduction was claimed could not be used for other than agriculture purpose? “

3. The assessee is Director in M/s. Hitachi Micro Clinic India Pvt. Ltd. and drawing salary from this company. The assessee on the long term capital gain

during the year under consideration filed its return of income on 31.07.2014 declaring total income of Rs.15,32,46,720/- after claiming the deduction under Chapter VIA of Rs.3,80,500/-. The Assessing Officer made disallowance of Rs.32,33,80,439/- towards long term capital gain, which was claimed under Section 54H of the Income Tax Act, 1961 (the Act).

4. Being aggrieved by the assessment order, assessee filed appeal before the CIT (Appeals), who allowed the appeal of the assessee.

5. The ld. DR submitted that the assessee has purchased agricultural land and has built the house only in 10% of the land itself. Therefore, the assessee claimed deduction under Section 54F of the Act and the Assessing Officer has rightly deleted the said deduction. The ld. DR further submitted that the CIT (Appeals) ignored the fact that as per the Delhi Govt. Policy, 90% of land acquired on which deduction was claimed could not be used for other than agricultural purposes.

7. The ld. AR relied upon the order of the CIT (Appeals).

8. We have heard both the parties and perused all the relevant material available on record. The Assessing Officer has not doubted that it is not a residential property. The policy of the Delhi Govt. for market use allowed maximum coverage of 10% of the total agricultural land, but the assessee has purchased the property in its entirety and constructed the house on construction of land which solely cannot deny the benefit of Section 54H of the Act. The reliance of the ld. AR on the Circular No. 77 dated 18.10.1993 is relevant in the present case as the entire case of the plot has to be included while working out the deduction under Section 54H of the Act. There is no percentage of construction of house mentioned or any presence of land to be vacant is mentioned in Section 54H of the Act. The assessee has not changed the status of the land or that of the house. Therefore, the CIT (Appeals) has rightly allowed the appeal of the assessee.

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

Order pronounced in the Open Court in presence of both the parties on this 10th Day of Nov., 2021.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 10 /11/2021

MEHTA

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI