

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 GOSIAN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 435 & 1140/JP/2019  
निर्धारण वर्ष/Assessment Year : 2010-11

Balveer Ram, Plot No. C-502, 4-C Scheme, Macheda, Sikar Road, Jaipur.	बनाम Vs.	I.T.O., Ward 4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ANFPR 8226 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rahul Pandya (Adv)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 18/10/2021  
उदघोषणा की तारीख / Date of Pronouncement : 10 /11/2021.

आदेश / ORDER

**PER: SANDEEP GOSIAN, J.M.**

These are the appeals filed by the assessee against the separate orders dated 31/01/2019 and 22/01/2019 of Id. CIT (A)-2, Jaipur for the assessment year 2010-11.

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. Both these appeals are related to each other, therefore, for the sake of convenience, a common order is being passed.
4. Firstly we take quantum appeal being ITA No. 435/JP/2019 for the A.Y. 2010-11. In this appeal, the assessee has raised following grounds of appeal:

- “ 1. That the Learned Assessing Authority ITO Ward 4(2), Jaipur have passed the order U/s 143(3) on Dt 15/12/2017 considered for Calculating Capital Gain U/s 54 of Income Tax Act in which AO considered only amount of Rs. 350000/- withdrawn from bank and did not considered the rest of the payment amount Rs. 261250/- stating that no details for the payment was produced. Sale Deed of Plot No. C-64 (South Part) 4-C, Scheme Macheda, Sikar Road, Jaipur indicating the receipt of cash amount was already produced during the Assessment proceedings and was communicated to AO during the Assessment proceedings. The Ld. CITA-2, Jaipur grossly erred in not allowing the benefit of section 54/54 F in spite of Details furnished.
2. That the Ld Income Tax Officer Ward 4(2) Jaipur Have initiated Penalty U/s. 271(1) (C) and the Ld. CITA-2, Jaipur grossly erred in initiating Penalty U/s 271 (1) ( C).
3. That learned lower authorities grossly erred in law and facts in passing order on the basis of assumption and presumptions.
4. That order of learned lower authorities are against principles of natural justice. Appellant was not confronted with the material used against the appellant and was not given opportunity of rebuttal.
5. That further submission shall be made at the time of hearing.
6. That appellant craves leave to add amend or alter all or any grounds of appeal and relief before or at the time of hearing of the appeal.”

5. In this appeal the assessee has mainly aggrieved by the order of Id. CIT(A) in not allowing the benefit of Section 54/54F of the Income Tax Act, 1961 (in short, the Act) as the AO had passed the order U/s 143(3) of the act in which A.O. had considered only amount of Rs. 3,50,000/- withdrawn from bank and did not consider the rest of the payment amount Rs. 2,61,250/- stating that no details for the payment was produced.

6. Having considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observed that the

assessee had sold residential property situated at C-64 (South Part) 4-C, Macheda, Sikar Road, Jaipur on 28/10/2009 for Rs. 971000/- and the details of receipt of sale consideration are as under:-

S. No.	Amount (Rs.)	Remarks
1.	21000/-	Advance received in cash
2.	400000/-	Cheque No. 624912 dated 28/10/2009
3.	230000/-	Cheque No. 501201 Dt 28/10/2009
4.	320000/-	Cash at the time of registry
Total	971000/-	

We noticed that after sale of property, the assessee invested Rs. 6,11,250/- [Rs. 350000/- was withdrawn from Bank Account on 03/11/2009 and rest Rs. 261250/- was paid out of amount received from selling of residential property (i.e. 320000/- cash received at the time of Registry) for construction of House Property situated at C-502, 4C Scheme, Loha Mandi Road, VKI Area, Jaipur. For construction of house, the contract was awarded @ Rs. 750/- per Sq. Ft. for 815 Sq. Ft. thus total amount of Rs. 611250/- was paid.

7. We also noticed that the assessee submitted copy of construction agreement for construction of residential house, which is at page No. 10-12 of Paper Book. Contract of construction of house was awarded to M/s Balaji Construction and the contract was awarded @ Rs. 750/-per Sq. Ft. for 815 Sq. Ft. thus total amount of Rs. 6,11,250/- was paid. The assessee paid Rs. 3,50,000/- withdrawn from bank account on 03/11/2009 and rest Rs. 2,61,250/- was paid out of amount received

from selling of residential Property (i.e 320000/- cash received at the time of Registry. In this regard, the assessee submitted affidavit, valuation report & photographs of the Construction of the said property and the assessee tried to prove the source and supporting evidences. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in case of CIT v. Daulatram Rawatmull [1964] **53 ITR 574** & *Umacharan Shaw & Bros. v. CIT* (1959) **37 ITR 271** (SC) wherein it was held that "even if circumstances raise a suspicion, suspicion cannot take the place of evidence".

8. We also observed from perusal of the record, that the claim is not disputed but the Section under which claimed deduction is disputed. That the CIT(A) allowed the Claim U/s 54F instead of Section 54. The basic conditions for claiming Deduction U/s 54 of Income Tax Act is as under:-

- i) The benefit of section 54 is available only to an individual or HUF.
- ii) The asset transferred should be a long-term capital asset, being a residential house property.
- iii) Within a period of one year before or two years after the date of - transfer of old house, the -taxpayer should - acquire- another residential house or should construct a residential house within a period of three years from the date of transfer of the old house. In case of compulsory acquisition the period of acquisition or construction will be determined from the date of receipt of compensation (whether original or additional).

Section 22 of Income Tax Act defines income from house property as the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other -than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property" which means:-

- a) The house property should consist of any building or land appurtenant thereto;
- b) The taxpayer should be the owner of the property;
- c) The house property should not be used for the purpose of business or profession carried on by the taxpayer.

The AO had allowed the claim U/s 54 but the Id CIT(A) allowed the claim U/s 54F, the deduction is not in dispute.

9. We also observed from perusal of the affidavit sworn by the assessee that he had sold a plot on 28/10/2009 and total amount of property was received at Rs. 9,71,000/- an after sale of property the assessee invested Rs. 6,11,250/-. The assessee also submitted that he has no residential house on the date of transfer of the original asset.

10. It is important to mention here that the sale deed was executed for sale of residential plot on 28/10/2009 and the assessee had given contract for construction of the house on 12/11/2009. It is a trite law that the benefit of

Section 54 is available only to an individual or HUF when the asset transferred should be a long-term capital asset, being a residential house property and sold within a period of one year before or two years after the date of - transfer of old house, the -taxpayer should - acquire- another residential house or should construct a residential house within a period of three years from the date of transfer of the old house. In case of compulsory acquisition the period of acquisition or construction will be determined from the date of receipt of compensation (whether original or additional). In the present case, the sale deed was executed on 28/10/2009 and the construction was started within one year from the date of sell. Therefore, considering the totality of facts and circumstances of the case, the assessee is entitled to get benefit of deduction of Rs. 6,11,250/- U/s 54 of the Act and we allow the claim of Rs. 6,11,250/- U/s 54 of the Act to the assessee. We order accordingly.

11. Now we take ITA No. 1140/JP/2019 for the A.Y. 2010-11.

This appeal has been filed by the assessee for levying and confirming the penalty U/s 271(1)(c) of the Act. Since we have allowed the claim of deduction U/s 54 of the Act to the assessee and decide the quantum appeal in favour of the assessee and against the Revenue, therefore, the levying and confirming of penalty U/s 271(1)(c) of the Act

has no legs to stand. Therefore, we direct to the delete the penalty. 8.

In the result, both these appeals of the assessee are allowed.

Order pronounced in the open court on 10/11/2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
( संदीप गोसाई )  
( SANDEEP GOSIAN )  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/11/2021.

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Balveer Ram, Jaipur.
2. प्रत्यर्थी / The Respondent-The I.T.O., Ward 4(2), 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. 435 & 1140/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar