

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 282/Del/2016 : Asstt. Year : 2012-13

ITA No. 174/Del/2021 : Asstt. Year : 2012-13

Rajeev Jain, 46, Vrindavan Garden, Meerut, Uttar Pradesh-250001	Vs	ACIT, Circle-2, Meerut-250001
(APPELLANT)		(RESPONDENT)
PAN No. AAMPJ8115H		

Assessee by : Sh. Shiv Kumar, Adv.

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 29.12.2021

Date of Pronouncement: 30.12.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A), Meerut dated 31.08.2015 and 19.11.2015.

ITA No. 282/Del/2016

2. The facts of the case in brief are that the assessee is a salaried person working in PSU Power Corporation Ltd. and derived income from salary, capital gains and income from other sources.

3. The assessee has sold a residential plot situated at Indirapuram for a consideration of Rs.90,00,000/- and shown

capital gain of Rs.77,57,239/- and claimed deduction u/s 54F of the Income Tax Act, 1961 of Rs.66,37,503/- by making investment in house property amounting to Rs.76,28,144/-. The AO disallowed the deduction u/s 54F on the amount which the first owner paid to the builder disregarding the fact that the amount paid by the assessee includes the total value of the asset.

4. The Id. CIT(A) rightly deleted the addition made by the AO but at the same time held that out of the amount invested in the new property, an amount of Rs.20,00,000/- has been paid by the assessee from the loan taken from HDFC and hence the amount paid for acquisition of new asset out of the loan cannot be eligible for deduction u/s 54F. The Id. CIT(A) erred in holding that the same amount which was received by sale of property should be invested in acquisition of new property. In this case, the entire capital gains have been invested in the acquisition of new property. What is to be seen is, as to whether the "amount of capital gains" acquired by the assessee has been invested in the acquisition of new property or not but not whether the "same amount" is utilized or not. The Id. CIT(A) erred in viewing the issue myopically.

5. With regard to the disallowance of Rs.2,00,000/- which was invested in finishing work of the flat and an amount of Rs.3,00,000/- which was withdrawn from capital gains deposit account to meet the registration expenses of the new property was disallowed by the Id. CIT(A). On going through the details filed with regard to finishing work of the flat, the date of sale of old asset and date of purchase of new flat, we hold that the

amount utilized is rightly eligible for deduction u/s 54F of the Act.

6. In the result, the appeal of the assessee is allowed.

7. Since, the matter has been adjudicated on merits in ITA No. 282/Del/2016, the ITA No. 174/Del/2021 which has been filed by the assessee involving the same issue is liable to be dismissed as infructuous.

8. In the result, the appeal in ITA No. 282/Del/2016 is allowed and the appeal in ITA No. 174/Del/2021 is dismissed.
Order Pronounced in the Open Court on 30/12/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 30/12/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR