

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.2794/Del/2018
Assessment Year: 2009-10

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| Sh. Prashanta Kumar Ghose, D-7/8023, DDA SFS Flats, Vasant Kunj, New Delhi | Vs. | ACIT, Circle-61(1), New Delhi |
| PAN :AAHPG7599R | | |
| (Appellant) | | (Respondent) |

| | |
|---------------|-----------------------|
| Appellant by | None |
| Respondent by | Sh. Atiq Ahmed, Sr.DR |

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| Date of hearing | 29.03.2022 |
| Date of pronouncement | 29.03.2022 |

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 20.02.2018 of learned Commissioner of Income Tax (Appeals)-20, New Delhi, for the assessment year 2009-10.

2. When the appeal was called for hearing, none appeared on behalf of the assessee to represent the case. On perusal of record, it is observed, on previous four occasions, when the appeal was listed for hearing there was no representation from assessee's

side. In view of the aforesaid, we proceed to dispose of the appeal ex-parte qua the assessee after hearing learned Departmental Representative and based on materials on record.

3. The effective grounds raised by the assessee read as under:

1. *That the Ld AO has erred in disallowing the claim LTCG of Rs 20,70,000/- without appreciation the explanation made by the Assessee and facts of the case and the Ld CIT (Appeal) has also erred in confirming the disallowance of Relief of LTCG u/s 54 of IT Act on a totally different Ground after having Accepting the submissions made by the Appellant against the stand taken by the Ld AO. Thus the Relief of LTCG of Rs 20,70,000/- may please be allowed.*
2. *That the Ld CIT (Appeal) has erred in presuming LTCG of Rs. 20,70,000/- was not invested in the residential property, but was made for commercial purpose for running a clinic of the appellant. Jaypee Green Noida where Investment has been made a residential complex and no commercial activity can take place there only Professionals like Doctors are allowed to run their clinics in addition to their residence as well under the Municipal Rules & thus the Relief of LTCG of Rs 20,70,000/- may please be allowed.*

4. Briefly the facts are, the assessee is a resident individual and is a doctor by profession. For the assessment year under dispute, the assessee had filed his return of income originally on 29.09.2009 declaring total income of Rs.25,49,723/-. Subsequently, the assessment was reopened under section 147 of the Income-tax Act, 1961 (for short 'the Act') and in response to notice issued under section 148 of the Act, assessee filed his return of income declaring the same income which was offered in the original return of income. As per the AIR information available

on record, the Assessing Officer noticed that in the year under consideration the assessee has sold an immovable property at Rs. 40 lakhs, however, no income on account of capital gain was offered by the assessee. When the assessee was called upon to explain the reason for not doing so, the assessee submitted that the gain derived from sale of property was invested in purchase of another immovable property, a residential flat. Hence, as per section 54 of the Act, the assessee is eligible to claim deduction. The Assessing Officer, however, refused to entertain the claim of the assessee, as, the deduction under section 54 of the Act was not claimed, either in the original return of income or by filing a revised return of income. While coming to such conclusion, he relied upon the decision of the Hon'ble Supreme Court in case of Goetze (India) Ltd. vs. CIT, dated 24th March, 2006. Challenging the aforesaid decision of the Assessing Officer, the assessee preferred an appeal before learned Commissioner (Appeals). While deciding the issue on merits, learned Commissioner (Appeals) observed that deduction under section 54 of the Act could have been given to the assessee had he invested gain in purchase of a residential house. He held, since, the assessee has purchased the

property for commercial use as a clinic, no deduction under section 54 of the Act can be granted to the assessee.

5. We have heard learned Departmental Representative and perused the materials on record. As could be seen from the submissions made by the assessee, in course of proceedings before the departmental authorities, during the year under consideration, the assessee has sold a resident house (flat at Noida) for a consideration of Rs.40 lakhs. During the year, the assessee also invested sum of Rs.52,47,196/- towards purchase of a flat at Jaypee Green, Noida. It is the specific contention of assessee before the departmental authorities that Jaypee Green, Noida, is a residential housing society and the assessee has invested the capital gain towards purchase of a residential flat, where he not only intends to reside but use a part of it as his clinic.

6. In our view, the aforesaid contention of the assessee merits consideration. If the new asset purchased by the assessee is, by nature, a residential house, the assessee is eligible to claim deduction under section 54 of the Act, as, even a residential house can also be exploited for commercial purpose. In our considered opinion, if the new asset purchased by the assessee

qualifies as a residential house, merely because a part of it is used as clinic, will not disentitle the assessee from claiming deduction under section 54 of the Act. In view of the aforesaid, we direct the Assessing Officer to factually verify assessee's claim that the investment made in the new asset is by nature and character a residential house and partially used for the purpose of clinic. In case assessee's version is found to be correct, the Assessing Officer is directed to allow the claim of deduction under section 54 of the Act. Grounds are allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 29th March, 2022

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

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 29th March, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi