

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 233/RPR/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Smt. Kiran Agrawal
Flat No.A-405, V-3, Dharohar,
Shankar Nagar, Raipur (C.G.)
PAN : AMWPA4001F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri Prafulla Pendse, CA
Revenue by :Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 03.08.2022

घोषणा की तारीख / Date of Pronouncement : 29.08.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-1, Raipur, dated 04.03.2016, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 29.01.2015 for assessment year 2012-13. Before us the assessee has assailed the impugned order on the following grounds of appeal:

- "1. That the order of the Ld. CIT(A) is bad in law as well as on facts.
2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in sustaining addition of Rs.1,50,39,153/- out of addition of Rs.1,69,89,153/- made by the Assessing Officer on account of Long term capital gains while adjudicating claim under section 54F.
3. Without prejudice to above, the addition is excessive high and be reduced reasonably.
4. That the appellant denied her liability to interest charged under section 234C of the Income Tax Act, 1961 which the Ld. CIT(A) failed to adjudicate.
5. That any other relief/deduction which the Hon'ble Court may deem fit be granted to you appellant.
6. That the appellant craves leave, to urge, add, amend, alter, enlarge, modify, substitute, delete any of the ground or grounds and to adduce fresh evidence at the time of the hearing the appeal."

2. Succinctly stated, the assessee had filed her return of income for the assessment year 2012-13 on 20.03.2013, declaring an income of Rs.23,67,189/-. The return of income filed by the assessee was initially processed as such u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had disclosed Long Term Capital Gain (LTCG) of Rs.1,54,45,297/- on sale of land situated at Village: Gondwara on 30.03.2012 for a consideration of Rs.2,11,00,000/-. It was observed by the A.O that the assessee had purchased the aforesaid land in question way back in the year 1989 for a consideration of Rs.49,400/-. It was further observed by the A.O that LTCG of Rs.1,54,45,297/- was computed by the assessee after claiming certain deductions, viz.(i). selling expenses: Rs.29,36,801/-; (ii). indexed cost of acquisition: Rs.2,25,459/-; and (iii). indexed cost of improvement: Rs.24,92,443/-. Apart from that it was observed

by the A.O that the assessee had claimed deduction towards brokerage expenses of Rs.11 lac that was stated to have been paid to four persons to facilitate the sale of the aforesaid property. It was also noticed by the A.O that the assessee had claimed deduction u/s.54F of the Act as regards a new residential house that was purchased by her vide a registered deed dated 31.03.2012 for a consideration of Rs.39,85,378/-(including cost of registration). It was further gathered by the A.O that the assessee had also included an expenditure of Rs.1,16,12,809/- that was incurred by her towards interior work of the new residential house while computing her claim of deduction under Sec. 54F. Also the assessee had sought deduction of an amount of Rs.1 lac that was claimed to have been paid by her towards brokerage for facilitating the purchase of the new residential house.

4. After deliberating at length on the aforesaid quantification of LTCG and claim of deduction that was raised by the assessee u/s.54F of the Act the A.O was not persuaded to accept the same

as such. The AO being of the view that though the assessee had claimed deduction towards cost of improvement of the property that was sold, viz. (i) murrum/filling expenses: Rs.10,22,500/-; and (ii) expenditure incurred towards construction of a compound wall and boring work: Rs.2,05,000/- but had failed to substantiate her claim on the basis of supporting documentary evidence, thus, disallowed the same. It was further observed by the A.O that the assessee had claimed to have incurred brokerage expenses of Rs. 11 lac that was stated to have been paid through banking channel to four brokers for facilitating the sale of the property. It was observed by the A.O that the aforesaid impugned brokerage/commission of Rs.11 lac was paid by the assessee on 20.07.2011 i.e. much prior to the execution of the sale transaction that took place on 30.03.2012. Also, it was noticed by the A.O that there was no written agreement between the brokers and the owner of the property i.e. the assessee. Accordingly, the A.O being of the view that the assessee had failed to substantiate her claim of having paid the aforesaid brokerage

expenses of Rs.11 lac to facilitate the sale of the property, thus, disallowed the same.

5. As regards the claim of the assessee of having paid an amount of Rs.1 lac towards brokerage/commission for purchase of the new residential house, the same too did not find favor with the AO. It was observed by the A.O that now when the assessee had purchased the new residential house from a famous builder/developer, therefore, there was no reason for her to have availed the services of a commission agent. Accordingly, the A.O disallowed the assessee's claim for deduction of brokerage expenses of Rs.1 lac that was stated to have been incurred for purchase of the new residential house.

6. Adverting to the assessee's claim of deduction u/s.54F of the Act, it was observed by the A.O that the assessee had invested an amount of Rs.38,85,378/- towards purchase of the new residential house. The AO was of the view that as the assessee had filed a belated return u/s.139(9) of the Act, and thus, had failed to utilize the net sale consideration of the land that was

sold towards purchase of a new residential house; or deposit the unutilized amount of such net sale consideration in a notified bond on or before the “due date” of furnishing of her return of income as contemplated under Sec. 139(1) of the Act, therefore, her claim for deduction u/s.54F as regards the balance amount was liable to be rejected on the said count itself. Also, the A.O being of the view that the assessee’s claim for deduction u/s.54F of the Act was liable to be restricted to the extent she had utilized the amount of net sale consideration towards purchase of the new residential house, thus, disallowed her claim for deduction of an amount of Rs. 1,16,12,809/- that was stated to have been incurred towards improvement of the said house subsequent to taking of possession of the same. Accordingly, the A.O restricted the assessee’s claim of deduction u/s.54F to an amount of Rs.38,85,378/- i.e. price of the new residential house that was purchased by her. Also, the claim of the assessee for deduction of the stamp duty expenses that was incurred by her on sale of old property vide registered deed dated 30.03.2012 was declined

by the A.O. On the basis of his aforesaid observations the A.O vide his order passed u/s.143(3), dated 29.01.2015 reworked out the LTCG on the sale of the aforesaid land in question to an amount of Rs. 1,69,89,153/- i.e after restricting the assessee's claim for deduction u/s.54F to an amount of Rs.38,85,378/-.

7. Aggrieved, the assessee assailed the order passed by the A.O u/s.143(3) dated 29.01.2015 before the CIT(Appeals). Observing that the assessee had failed to substantiate on the basis of supporting documentary evidence her claim for deduction of murrum filling expenses of Rs.10,22,500/- that was stated to have been incurred over the period i.e 1986 to 2008, the CIT(Appeals) though allowed her claim for deduction of an amount of Rs.1,50,000/- that was incurred towards construction of a boundary wall, but upheld the disallowance of the balance amount. As regards the claim of the assessee of having paid brokerage expenses of Rs.11 lac to four persons in order to facilitate the sale of the property in question, the CIT(Appeals) taking cognizance of the facts, viz. (i) there was no agreement of

the assessee with the alleged brokers; (ii) that the sale transaction was completed six months after the payment of brokerage; and (iii) it was beyond comprehension that for a single deal the assessee would have paid commission/brokerage to four persons, thus, restricted her claim for deduction of brokerage expenses to an amount of Rs.3 lac and upheld the disallowance of the balance amount. As regards the assessee's claim of having incurred stamp duty expenses w.r.t the registered sale deed of the property sold by her, the CIT(Appeals) was of the view that as per the prevailing practice the stamp duty a/w. registration charges were borne by the purchaser of the property, therefore, the aforesaid unsubstantiated claim of the assessee did not merit acceptance. Adverting to the assessee's claim for deduction u/s.54F of the Act i.e. towards her investment made in the new residential house, it was observed by the CIT(Appeals) that as the assessee had purchased the property from a reputed builder/developer, therefore, as observed by the A.O, and rightly so, there was no justification for her to have paid a brokerage of

Rs.1 lac in respect of the said purchase transaction. As regards the assessee's claim for deduction u/s. 54F in respect of the expenditure that was claimed by her to have been incurred towards interior decoration of the new residential house, it was observed by the CIT(Appeals) that it was beyond comprehension that the expenditure to the said extent would have incurred by the assessee. Also, it was noticed by the CIT(Appeals) that the assessee had failed to substantiate her aforesaid claim of having incurred expenditure of the aforesaid magnitude towards interior decoration of the flats on the basis of any supporting bills/vouchers. Although, the CIT(Appeals) concurred with the assessee that to the extent the expenses towards the new residential house were incurred to render the same habitable the same would form part of her claim for deduction u/s.54F of the Act, but haunted with a conviction that her claim of deduction of an expenditure of Rs.1.16 crore on the interior decoration of a 3-4 BHK flat valued at Rs. 38.87 lac was highly exorbitant, thus, restricted her said unsubstantiated claim of deduction to an

amount of Rs. 15 lac. Accordingly, the CIT(Appeals) on the basis of his aforesaid deliberations partly allowed the appeal of the assessee.

8. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

9. We have heard the Ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

10. On a perusal of the details available on record, it transpires that the assessee had computed the LTCG on sale of the property in question at Rs.1,54,45,286/-which after claim of deduction u/s. 54F of Rs.1,32,64,097/- was scaled down by her to an amount of Rs.21,81,189/-, as under:

Capital Gain	Rs.1,54,45,286/-
Less : Exemption u/s.54F :	
-Purchase of Flat	Rs.39,85,378/-

- Interior work	Rs.1,16,12,809/-	
(Total Investment Rs.1,55,98,187)		Rs.1,32,64,097/-.

Taxable Capital gain		<u>Rs.21,81,189/-</u>

11. We shall now deal with the grievance of the assessee to the extent she has assailed before us the modification of the assessee's computation of LTCG and claim of deduction u/s.54F by the lower authorities, as under: -

(A) Expenditure incurred on sale :-

12. It is the claim of assessee that the lower authorities have erred in disallowing her claim for deduction of expenditure that was incurred towards stamp duty/registration charges of the registered sale deed dated 31.03.2012. On a perusal of the aforesaid registered sale deed dated 31.03.2012, Page 13-17 of APB, it transpires that as per the mutual consent of the purchaser and the seller i.e the assessee, the entire registration expenditure, stamp duty etc. was incurred by the assessee, viz. Smt. Kiran Agrawal. For the sake of clarity the relevant extract of the registered sale deed is culled out as under:

यह कि, इस विक्रय विलेख के निष्पादन एवं पंजीयन की कार्यवाही में लगे खर्च यथा स्टाम्प ड्यूटी, पंजीयन शुल्क, विक्रेता एवं क्रेता की आपसी सहमति से विक्रेता के द्वारा वहन किया गया है जिसके बाबत विक्रेता भविष्य में कभी भी क्रेता के विरुद्ध कोई उजर अथवा दावा प्रस्तुत नहीं करेगी इस तथ्य की पुष्टि, पावती एवं अभिस्वीकृति विक्रेता एतद द्वारा क्रेता के पक्ष में करती है।

हस्ताक्षर विक्रेता

Kiran Agrawal
(श्रीमति किरण अग्रवाल
धर्मपत्नि श्री मुरारीलाल अग्रवाल)

हस्ताक्षर क्रेता

M. J. Agrawal
(मनोज अग्रवाल
आत्मज श्री कैलाशचंद्र अग्रवाल)
बहुरियत भागीदार, शकुन्तला
बिल्डर्स एंड डेवेलपर्स के

On the basis of the aforesaid facts we concur with the claim of the Ld. AR that now when it is proved beyond doubt that the expenditure involved towards purchase of stamp duty papers and registration expenses had been incurred by the assessee i.e. the seller, therefore, the lower authorities had grossly erred in declining her aforesaid claim for deduction of the said expenses. We, thus, in terms of our aforesaid observations allow the assessee's claim for deduction of expenditure incurred towards stamp duty expenses of Rs.16,40,530/-. Although we have observed that the assessee's claim for deduction of registration expenses is also to be allowed, however, in the absence of the requisite details before us we restore the issue to the file of the

A.O with a direction to him to allow the same after making necessary verifications.

(B) Cost of Transfer: -

13. Before us it is the claim of the Ld. Authorized Representative (for short 'AR') for the assessee that the lower authorities have erred in not accepting the assessee's claim for deduction of brokerage/commission expenses of Rs.11 lac that was paid through banking channel to four brokers. Elaborating on the aforesaid issue, it was submitted by the Ld. AR that the assessee in order to facilitate the sale of the property in question, viz. land at Village Gondwara had availed the services of four commission agents to whom brokerage aggregating to Rs.11 lac was paid as under :

Sr. No.	Particulars	Amount
1.	Mr. Amritlal Ahuja	Rs.3 lakhs
2.	Mr. Dinesh Kumar Ahuja	Rs. 3 lakhs
3.	Mr. Ajay Kumar Ahuja	Rs.2.50 lakhs
4.	Mr.Manoj Kumar Ahuja	Rs.2.50 lakhs

It is the claim of the Ld. AR that commission/brokerage to the aforementioned brokers was paid through banking channels and their respective confirmations were filed in the course of the assessment proceedings. It was further submitted by the Ld. AR that the CIT(Appeals) had most arbitrarily restricted the assessee's claim for deduction of brokerage expenses to an amount of Rs.3 lac (out of Rs.11 lac). Taking us through the respective confirmations of the aforementioned brokers, it was submitted by the Ld. AR that now when the payment of brokerage made to the respective persons through banking channels had duly been confirmed by them, therefore, there was no justification on the part of the CIT(Appeals) to have restricted her claim for deduction of the said expenses to an amount of Rs. 3 lac.

14. Admittedly, it is a matter of fact borne from record that the respective payments to the aforementioned persons have been made through banking channel. However, as observed by the A.O, and rightly so, we too are unable to comprehend as to why services of four persons would have been required to facilitate

transfer of the property in question by the assessee. Although the confirmations of the aforementioned persons had been made available on record but the same does not inspire much of confidence. As is discernible from the aforesaid stereotype confirmations, it transpires that the same have been prepared by the assessee and had simply been signed by the persons concerned without mentioning a word about the services which were rendered by them as regards the sale transaction under consideration. We though are not oblivious of the fact that the payments to the aforementioned persons have been made through banking channel, however, the said fact on a standalone basis would not irrefutably substantiate the authenticity of the transaction under consideration. Apart from that the fact that the payments have been made to the aforementioned persons on 20.07.2011 i.e. much prior to 6 months from the date of execution of the sale transaction on 31.03.2012 also raises serious doubts as regards the veracity of the aforesaid claim of the assessee. Considering the aforesaid facts a/w the fact that

the department have not carried the aforesaid issue any further in appeal before us, we finding no merit in the claim of the assessee for allowing her claim of deduction of the balance amount of commission/brokerage expenses of Rs.8 lac [Rs. 11 lac (-) Rs. 3 lac] reject the same and uphold the order of the CIT(Appeals) to the said extent.

(C) Cost of improvement: -

15. Adverting to the assessee's claim for deduction of the cost of improvement of the property that was sold, it was submitted by the Ld. AR that he is not pressing his claim with respect to deduction of certain expenses, viz. (i) running expenses: Rs.7,45,000/-; (ii) litigation expenses: Rs.72,500/-; and (iii) murrum filling expenses : Rs.55,000/-. As regards the claim for boundary wall expenses of Rs.1,50,000/- it was submitted by the Ld. AR that the same had already been allowed by the CIT(Appeals).

(D) Claim of deduction u/s.54F :-

16. Apropos the claim of the assessee for deduction u/s.54F of the Act, it was submitted by the Ld. AR that the same comprises of two parts viz. (i) allowability of the assessee's claim for deduction u/s.54F in the backdrop of the fact that the amount of Rs.1,16,12,809/- was utilized towards purchase of the new residential house before the "due date" of furnishing of the return of income u/s.139(4) of the Act i.e. a belated return of income.; and (ii) entitlement of the assessee towards claim of deduction u/s.54F in respect of the expenditure incurred /investment made for rendering the new residential house habitable. As regards the view taken by the A.O that the assessee as per the mandate of Section 54F of the Act was obligated to deposit the amount of net sale consideration of the plot which was not utilized by her towards purchase of the new asset before the "due date" of furnishing of her return of income u/s. 139(1) of the Act in the Capital Gain Account Scheme, 1988 ("CGAS"), we are unable to totally subscribe to the same. On a perusal of sub-section (1) of Sec. 54F of the Act, it transpires that the assessee in order to

claim deduction under the said statutory provision remains under an obligation to appropriate the amount of the net sale consideration towards purchase of the new residential within a period of one year before or two years after the date on which the transfer of the original asset took place; or has within a period of three years after that date constructed a residential house. In a situation where the net sale consideration is not appropriated by the assessee towards purchase or construction of the new residential property within the period contemplated under Sec. 139, then, as per sub-section (4) of Sec. 54F the assessee would though be entitled to claim deduction under the said statutory provision, but the same would be subject to a rider that he had deposited the amount of such unutilized amount of net sale consideration in a CGAS account with a specified bank by the 'due date' contemplated under Sec. 139(1) of the Act. Further, in a case where any part of the net sale consideration had already been utilized by the assessee for the purchase or construction of the new asset, then, the amount of such utilization along with

the amount so deposited in the CGAS account shall be deemed to be the cost of the new asset. We are of the considered view that the outer limit for the purchase or construction of the new asset as per sub-section (4) of Sec. 54F is the date of furnishing of the 'return of income' by the assessee under Sec.139. On a plain and literal interpretation of the aforesaid statutory provision it can safely be gathered that the conscious, purposive and intentional providing by the legislature of the "date of furnishing the return of income under Sec.139" cannot be substituted and narrowed down to Sec.139(1) of the Act. We are of the considered view that the date of furnishing of the return of income under Sec.139 would safely encompass within itself the time limit provided for filing of the 'return of income' by the assessee under sub-section (4) of Sec.139 of the Act. In the backdrop of the aforesaid settled position of law, we are of the considered view that sub-sections (1) and (4) of Sec. 54F contemplates two situations, viz. (a). a case where the assessee had appropriated the amount of the net sale consideration of the property sold towards purchase of the new

residential house within a period of one year before the date on which the transfer of the original asset took place or for the purchase or construction of such new residential house before the date of furnishing the return of income under Sec.139 of the Act; and (b). a case where the assessee had not appropriated the amount of the net sale consideration of the property sold before the date of furnishing the 'return of income' under Sec.139 towards purchase/construction of a new residential house, there he shall be eligible to claim deduction under Sec. 54F towards purchase of the new residential house within a period of two years after the date on which the transfer took place or towards construction of a new asset within a period of three years from the date on which the transfer took place, subject to a rider that he had deposited the amount of the unutilized net sale consideration in a CGAS account with a specified bank by not later than the 'due date' applicable in his case for furnishing the return of income under sub-section (1) of Sec.139. We find that the case before us clearly falls within the sweep of the

aforementioned first limb i.e sub-section (1) of Sec. 54F of the Act. As the assessee in the case before us had appropriated the amount of the net sale consideration of the property sold by her towards purchase of the new residential property, viz. Unit A-405, 4th Floor, V-3, Dharohar i.e before the date contemplated in sub-section (4) of Sec.139, thus, by having utilized the said amount before the date of furnishing the 'return of income' under Sec. 139 her claim of deduction under Sec. 54F is found to be in order. Our aforesaid view stands fortified by a judgment of the Hon'ble High Court of Punjab & Haryana in the case of CIT Vs. Jagriti Aggarwal (2011) 339 ITR 610 (P&H). The High Court in the said case had observed as under:

"Section 54, read with section 139, of the Income-tax Act, 1961 - Capital gains - Profits on sale of property used for residence - Assessment year 2006-07 - Assessee sold her house property on 13-1-2006 while filed her return on 28-3-2007 claiming deduction under section 54 on ground that she had purchased another property jointly on 2-1- 2007 for higher sum - Assessing Officer declined said claim - One of grounds was that assessee had failed to purchase house property before due date of filing return of income under section 139(1), i.e., prior to 31-7-2006 - According to assessee, due date of filing return of income in her case was not as specified in section 139(1) but as specified in section 139(4) i.e., 31-7-2007 - Whether due date for furnishing return of income as per section 139(1) is subject to extended period provided under sub-section ('4) of section 139 and, if a person had not furnished return of previous year within time allowed under sub-section (1), assessee could file return under sub-section (4) before expiry of one year from end of relevant assessment year - Held, yes - Whether, therefore, Section 5, deduction could not be denied to assessee on this count - Held, yes [In favour of assessee]"

Also a similar view had been taken by the coordinate benches of the Tribunal, viz. (i) Kishore H. Galaiya Vs. ITO (2012) 137 ITD 229 (Mum); (ii) ACIT Vs. Asha Ashok Boob (2015) 59 taxman.com 173 (Pune); and (iii) Anil Kumar Omkar Singh Aurora Vs. ITO (2013) 37 CCH 221 (Mum).

17. As in the case of the assessee before us it is an admitted fact that the investment towards improvement/additional work in the new residential house was carried out by her latest by 20.03.2013 i.e. before the date of filing of her return of income as contemplated in sub-section (4) of Sec. 139 of the Act, therefore, we are principally in agreement with the Ld. AR that the claim of the assessee for deduction u/s.54F would not be jeopardized for the aforesaid reason.

(II). We shall now take up the claim of the Ld. AR that the lower authorities had grossly erred in law and facts of the case in declining the assessee's claim for deduction u/s.54F of the Act, to the extent the same was incurred towards re-furnishing of the

new residential house. It is the claim of the Ld. AR that the assessee in the course of the assessment proceedings had placed on record complete details of the various expenses that were incurred by her towards furnishing of the new residential house in order to render the same habitable and fit for occupation by the assessee. Adverting to the details that were claimed to have been furnished before the A.O, it was submitted by the Ld. AR that the complete details of the expenses incurred i.e. name of the party, bill no., date and amount a/w. details of payment and copies of bills/vouchers were filed with the A.O in the course of the assessment proceedings. In order to fortify his claim the Ld. AR took us through a letter dated 07.01.2015 that was filed by the assessee in the course of the assessment proceedings. Complete details of the expenses incurred towards refurnishing of the new residential flat amounting to Rs.1,16,12,809/- were mentioned in the aforesaid letter that was filed with the A.O, Page 35-37 of APB. It was submitted by the Ld. AR that not only the A.O had erred by principally declining the assessee's claim for

deduction of the aforesaid expenses that were incurred by her for rendering the house habitable, but had also wrongly observed that no supporting documents were filed by her in the course of the assessment proceedings to substantiate the incurring of said expenditure. It was further submitted by the ld. AR that the CIT(Appeals) had without any rhyme and reason restricted the said claim of the assessee to an amount of Rs. 15 lac. On a specific query by the Bench that now when the entitlement of the assessee for claiming deduction u/s.54F ends up with the purchase or construction of the residential house, then, on what basis the expenditure that was incurred thereafter towards furnishing of the new residential property i.e. after purchasing the same would be eligible for deduction u/s.54F, it was submitted by the Ld. AR that the assessee after purchasing the new residential house had in order to render the same as habitable carried out the required additions, alterations and improvements which duly qualified for deduction u/s.54F of the Act. In support of his aforesaid contention the Ld. AR had relied

on the judgment of the Hon'ble High Court of Karnataka in the case of M/s. Rahana Siraj Vs. CIT-1, Bangalore, (2015) 58 taxmann.com 333 (Kar.) and the order of the ITAT, Mumbai in the case of Mrs. Sonia Gulati Vs. ITO in ITA No.1300/Mum/1998 dated 03.10.2000. It was submitted by the Ld. AR that as the assessee had claimed deduction of expenditure that was incurred for rendering the new residential house habitable, therefore, the same was duly eligible for deduction u/s.54F of the Act.

18. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the deduction u/s. 54F of the Act is confined to purchase or construction of a new residential property, therefore, the same having been wrongly claimed by the assessee in respect of expenses that were incurred on furnishing of the new residential house i.e expense borne by her after the culmination of the transaction of purchase of the new residential house, therefore, the same had rightly been declined by the lower authorities.

19. After having given a thoughtful consideration to the aforesaid issue in hand, it transpires that though at the first blush the claim of the assessee for deduction u/s. 54F qua the investment made by her towards interior decoration/additional work or alterations to the new residential house was not maintainable, but then the said issue is squarely covered by the judgment of the Hon'ble High Court of Karnataka in the case of M/s. Rahana Siraj (supra). In its aforesaid order it was observed by the Hon'ble High Court that even though the assessee had purchased a new asset which is habitable but requires additions, alterations, modifications and improvements, then, the money spent on those aspects would become the cost of the new residential house and would be entitled to the benefit of deduction while computing the amount of capital gain that would be exigible to tax in its hands. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as under:

"8. Insofar as the second substantial question of law is concerned, it is not in dispute that the property purchased by the assessee was habitable but had lacked certain amenities. The assessee has spent nearly about Rs. 18 lakhs towards removal of mosaic flooring and laying of marble flooring, alteration of the kitchen, putting up

compound wall, protecting the property with grill work and attending to other repairs. Section 54F of the Act provides that if the cost of the new asset, which is to be taken into consideration while determining the capital gain, the words used is "cost of new asset" and not "the consideration for acquisition of the new asset". In law, it is permissible for an assessee to acquire a vacant site and put up a construction thereon and the cost of the new asset would be cost of land plus (+) cost of construction. On the same analogy, even though he purchased a new asset, which is habitable but which requires additions, alterations, modifications and improvements and if money is spent on those aspects, it becomes the cost of the new asset and therefore, he would be entitled to the benefit of deduction in determining the capital gains. The approach of the authorities that once a habitable asset is acquired, any additions or improvements made on that habitable asset is not eligible for deduction, is contrary to the statutory provisions. The said reasoning is unsustainable. To that extent, the impugned order passed by the Tribunal as well as the Lower authorities require to be set-aside and it is to be held that in arriving at cost of the new asset, Rs. 18 lakhs spent by the assessee for modification, alterations and improvements of the asset acquired is to be taken note of. Thus, the second substantial question of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following order:

Appeal is allowed in part.”

Also, we find that a similar view had been taken by the ITAT, Mumbai (SMC) in the case of Mrs. Sonia Gulati Vs. ITO in ITA No.1300/Mum/1998 dated 03.10.2000, wherein the Tribunal had observed that as the concept of habitability was inherent in the word “house”, therefore, where an assessee after purchasing a house makes investment for rendering the same habitable, the amount so spent should be considered as having been spent for

purchase of house and would be eligible for deduction u/s 54F of the Act.

20. Considering the aforesaid facts, we are of the considered view that the assessee's claim for deduction u/s.54F w.r.t investment made towards furnishing/additions/alteration of the new residential house for rendering the same habitable is in order and as per mandate of law. At the same time, we may herein observe that as the aforesaid claim of the assessee was principally rejected by the AO, therefore, he had no occasion to verify the genuineness and authenticity of the claim of expenditure that was incurred by the assessee. We, thus, in terms of our aforesaid observations though principally concur with the claim of the Ld. AR that that the expenditure incurred by her after purchase of the house for rendering it habitable would be considered as having been incurred for purchase of the said house and would be eligible for deduction u/s 54F, but restore the same to the file of the A.O for the limited purpose of verifying the veracity of the aforesaid claim of the assessee and limit her said claim of

deduction to the extent the expenditure in question is incurred for rendering the new residential house habitable. Accordingly, the **Ground of appeal No.2** is partly allowed for statistical purposes in terms of our aforesaid observations.

21. **Ground of appeal No. (s) 1, 3 to 6** being general in nature are dismissed as not pressed.

22. In the result, appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th August, 2022

***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1,Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	03.08.2022	Sr.PS/PS
2	Draft placed before author	03.08.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		