IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'H' NEW DELHI

BEFORE SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 607/DEL/2020 (A.Y 2016-17)

Income Tax Officer, Ward : 30 (1), New Delhi. **(APPELLANT)**	Vs.	Vinod Gugnani, W-1, Greater Kailash-2, New Delhi – 110 048. **PAN No. ACTPG6934C** **(RESPONDENT)**

Appellant by	**Shri Raj Kumar, C. A.; & Shri Satish Aggarwal, C. A.**
Respondent by	**Shri Vivek Vardhan, JCIT;**

Date of Hearing	**12.10.2022**
Date of Pronouncement	**02.11.2022**

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue for assessment year 2016-17 against the order of the ld. Commissioner of Income Tax (Appeals)-10, New Delhi [hereinafter referred to as CIT (Appeals)] dated 11.11.2019.

2. The Revenue has raised the following grounds of appeal:-

> *"1. The Ld. CIT (A) has erred in deleting the addition of Rs.5,70,95,075/- u/s 54 of the Income-tax Act, 1961.*
>
> *2. The Ld. CIT (A) has ignored the fact that assessee has not fulfilled the conditions laid down as per provisions of sub section (2) of section 54 of the Income-tax Act, 1961."*

3. Brief facts of the case are that, the assessee filed return for assessment year 2016-17 declaring business loss of Rs. 4,90,125/- and claimed a refund of Rs. 8,94,050/-. The case of the assessee was selected for complete scrutiny and statutory notices were issued. The assessment order came to be passed on 22.12.2018 by making a disallowance of Rs. 5,70,95,075/-. The Ld. AO was of the opinion that the assessee has failed to deposit the sale consideration in CGAS before the due date of filing of income under section 139 (1) of the Act and added back the same to assessee's total income as Long Term Capital Gain. Aggrieved by the assessment order dated 22.12.2018, the assessee has preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 19.01.2019 allowed the appeal of the assessee.

4. Aggrieved by the order dated 19.01.2019, passed by the CIT (A) the revenue has preferred the present appeal on the grounds mentioned above.

5. The Ld. DR vehemently submitted that the assessee has not fulfilled the conditions laid down under section 54(2) of the Income Tax Act and there was a delay of 31 days in depositing the amount in the capital gain account but the Ld. CIT(A) has committed an error in deleting the addition of Rs. 5,07,95,075/- under section 54(1) of the Income Tax Act.

6. Per contra Ld. Counsel for the assessee contended that section 54(1) is mandatory a provision and the Section 54(2) is only procedural section. The assessee had complied with the conditions of Section 54(1) by investing the residential house within the prescribed period of three years. Therefore, by relying on the various judicial pronouncement, submitted that the order of the Ld. CIT(A) is well reasoned and which requires no interference.

7. We have heard the parties, perused the material on record and gave our thoughtful consideration.

8. To decide the *Lis* between the revenue and the assessee, the following facts are required to be brought on record. The assessee sold 1/4th share in residential house in New Delhi on 31.03.2016 for Rs. 8,75,00,000/-. The assessee has earned Long Term Capital Gain of Rs. 6,20,94,441/- as calculated in the assessment order. The assessee claimed deduction under section 54 of the Act for Rs. 5,70,94,441/- for construction of new house. Ld. AO denied the claim under section 54(1) of the Act made by the assessee on the ground that the amount remained uninvested till 05.08.2016 which was due date of filing the ITR under section 139(1) of the Act. The capital gain account deposit was delayed by 31 days. Therefore not eligible for deduction under Section 54(1) of the Act.

9. It is not in dispute that there was 31 days delay in depositing the amount in the capital gain account i.e. the due date for filing return under section 139(1) of the Act for assessment year 2016-17 i.e. 05.08.2016. But the deposit of Rs. One crore each were made by the assessee on 26.09.2016 and 27.09.2016 in the capital gain account. Further it is also not in dispute that the assessee had paid the entire capital gain deposits along with interest accrued thereon directly from the capital gain deposit to the parties for expenses relating to construction for new house between 02.11.2017 to 03.02.2018 within three years, in compliance with Section 54(1) of the Act.

10. In other words the assessee has spent Rs. 5,70,95,075/- towards construction of new house on or before 03.02.2018 i.e. well within the due date of filing return under section 139(4) of the Act, that was 31.03.2018. Now the moot question is that, when there is delay of 31 days in depositing Rs. 2 crore out of Rs. 5,70,95,075/- being a Long Term Capital Gain and when the assessee has invested the entire amount towards purchase of plots for construction of house, can the department deny the benefit to the assessee under section 54 of the Act or not? The intention of the legislature in section 54 of the Act is very much clear that an assessee who receives the sale consideration has to invest in the new house within specified time framed. Merely because the assesssee has not able to deposit or deposited with a delay of 31 days in the capital gain account he cannot be denied with the benefit of section 54(1) of the Act.

11. The above view has been fortified by the judgment of Hon'ble High Court of Karnataka in the case of CIT Vs. Ramachandra Rao 56 taxmann.com 163 (Karnataka), wherein the very same substantial question of law has been decided in favour of the assessee. The relevant portion are as under:-

> *"3. The two substantial questions of law which arise for consideration in these batch of appeals are as under :-*
>
> *1) Whether the assessee is entitled to the benefit conferred under Section 54F when the sale consideration is utilized for construction of a residential house on a site which is owned by him within one year from the date of transfer?*
>
> *2) When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under Section 139(1) of the IT Act?*
>
> *4. Re.Point No.1 Section 54(F) deals with capital gains on transfer of certain capital assets not to be charged in case of investment on house. It reads as under.*

54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,--

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub- section shall apply where--

(a) the assessee,--

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii)constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".] Explanation.--For the purposes of this section,--

[***] [***] "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing

as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of [two years] after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.] [(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub- section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub- section (1), then,--

(i) the amount by which--

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b)the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

Section 54F(1) provides, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee within a period of one year before or two years after the date on which the transfer took place, purchased or has within a period of three years after that date constructed a residential house, the capital gain shall be dealt with in accordance with the said provision. This is subject to the provisions of Sub Section (4).

Sub Section (4) stipulates if the amount of net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which transfer of the original asset took place or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139 of the Act shall be deposited by him before furnishing such return in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under Section 139(1) of the Act in an account in any such bank or institution as specified and utilized in accordance with any scheme which the Central Government may, by notification in the official gazette framed in this behalf.

Sub Section (4) is attracted only to a case where the sale consideration is not utilized either for purchase or for construction of a residential house. It has no application to a case where the assessee invests the sale consideration derived from the transfer either in purchasing the property or constructing the

residential house within the period stipulated in Section 54F(1). The proviso to Section 54F puts an embargo on the application of Section 54F to cases which are mentioned in the said proviso. That is to be eligible for the benefit under Section 54F(1) the assessee should not be owning more than one residential house other than the new asset acquired or he should not purchase any residential house other than the new asset within a period of one year after the date of transfer of residential asset or constructs any residential house other than the new asset within a period of three years after the date of transfer of the residential asset. In the entire scheme there is no prohibition for the assessee putting up construction out of sale construction received by such transfer of a site which is owned by

him as is clear from the language used. It is open for the assessee to put up a residential construction or to purchase a residential house. It is not the requirement of law that he should purchase a residential site and then put-up construction. Therefore, in the instant case admittedly the assessee has purchased a vacant site on 31.3.2001. He sold the original asset on 27.8.2003 on which date he was already owning a site. In fact even before sale of the original asset he had started construction on such site by availing loan from the Bank. In terms of Section 54F(1) all investments made in the construction of the residential house of the said site within a period of one year prior to 27.8.2003 would be eligible for exemption under Section 54F(1). Similarly all investments in the said construction after 27.8.2003 within a period of three years there from is also eligible for exemption. Therefore, the argument that such investment in putting up a residential construction cannot be made on a site owned by him to be eligible for exemption is without any substance. Both the Appellate Authorities have rightly extended the benefit to the assessee and there is no error committed by them which calls for interference.

4. Re. Question No.2 :

As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the

period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.

5. For the aforesaid reasons both the substantial questions of law are answered in favour of the assessee and against the Revenue. Therefore, we do not see merit in any of the appeals. Accordingly, all the four appeals are dismissed.

12. Further, Hon'ble Judicature at Madras in writ Petition No. 16249 of 2018 in the case of Venkata Dilip Kumar Vs. cit 111 Taxmann.com 180 (Mad.) relying on the judgment of Hon'ble High Court of Karnataka in ITA No. 47/2014 (CIT Vs. Ramachandra Rao 56 taxmann.com 163 (Karnataka), held as under:-

"14. In my considered view, the contention of the Revenue to deny the benefit of deduction to the petitioner/assessee cannot be justified for the following reasons: Section 54(2) cannot be read in isolation and on the other hand, application of Section 54(2) should take place only when the assessee failed to satisfy the requirement under Section 54(1). While the compliance of requirement under Section 54(1) is mandatory and if complied, has to be construed as substantial compliance to grant the benefit of deduction, the compliance of requirement under Section http://www.judis.nic.in 54(2) could be treated only as directory in nature. If the assessee with the material details and particulars satisfies that the amount for which deduction is sought for under Section 54 is utilised either for purchasing or constructing the residential house in India within the time prescribed under Section 54(1), the deduction is bound to be granted without reference to Section 54(2), which compliance in my considered view, would come into operation only in the event of failure on the part of the assessee to comply with the requirement under Section 54(1). Mere non compliance of a procedural

requirement under Section 54(2) itself cannot stand in the way of the assessee in getting the benefit under Section 54, if he is, otherwise, in a position to satisfy that the mandatory requirement under Section 54 (1) is fully complied with within the time limit prescribed therein."

13. In view of the above discussions and relying on the above judicial pronouncements we are of the opinion that the Ld. CIT(A) has rightly deleted the addition of Rs. 5,70,95,074/- made u/s 54 of Income Tax Act and the order of the Ld. CIT(A) requires no interference. Accordingly, we do not find merit in the Grounds of Appeal of the Revenue.

14. In the result, grounds of Appeal of the Revenue fails, consequently the Appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 02nd November, 2022

Sd/-	**Sd/-**
(B. R. R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 02/11/2022

Veena/R.N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI