

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1274/Del/2020, A.Y. 2013-14

ACIT, Circle-69(1). New Delhi	Vs.	Sh. Sanjay Choudhary Rajesh Pilot Chowk, 5, Karwal Nagar, New Delhi-110094 PAN : AIFPK9502L
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Assessee by	Sh. Neelkanth Khandelwal, Adv.
Revenue by	Ms. Sangeeta Yadav, Sr. DR

Date of hearing:	18.01.2023
Date of Pronouncement:	23.01.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Assessee against order dated 29.01.2020 in Appeal No. 60/19-20/1352 assessment year 2013-14 passed by Commissioner of Income Tax (appeals)-28, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 31/12/2018 u/s 143(3) of the Income Tax Act, 1961 passed by the ACIT, Circle 69(1), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The facts in brief are assessee filed return of income declaring total income of Rs. 16,94,792/- and the assessment was completed u/s 143(3) on 28.03.2016 at an income of Rs. 1,40,69,502/- after computing taxable capital gain at Rs. 1,23,01,476/-. The Ld. PCIT was of the view that assessee has made a wrong calculation of the capital gains primarily for reason that he considered property to be not held for 36 months, accordingly, had directed Ld. AO to examine the issue afresh and withdraw the deduction claimed and granted to the assessee u/s 54F of the Act. Ld. AO vide fresh assessment dated 31.12.2018 had concluded that the gain that has arisen was long term capital gain however, disallowed the same for the reason that AO was not satisfied with the three properties which assessee claimed to have purchased out of long term capital gain and Ld. AO held they were not covered for the 'purchase' u/s 54F. The relevant findings of para no. 7 of the Ld. AO are reproduced :-

*“7. The above submissions were considered. The claims of the assessee regarding acquisition of the two plots of land and claim of construction on the two new pieces of agricultural land cannot be accepted due to the following reasons:-*

*(i) As per the assessment records, the Property No. Khasra No. 18, 09, Village Malikpur Kohi Rangpuri, Tehsil Mehrauli, Delhi- Purchased for Rs. 1,50,00,000/- through unregistered Agreement to Sell (on a Non Judicial Stamp Paper of Rs.50/- only) is merely 'Agricultural Land' as per the Agreement to Sell filed by the assessee during the assessment proceedings. The assessee has claimed it to be a 'Farm House'. However, it is pertinent to mention that as per the 'Agreement to Sell' filed by the assessee during the assessment proceedings it is clearly written as 'Agricultural Land' only and there is no mention of any constructed structure on the said agricultural land. The assessee also provided property tax documents to prove that it is a residential property. It may also be noted this property tax document is dated as 19.06.2017.*

*(ii) The assessee claimed after purchasing both the above properties that he has made construction on both properties before the time limit as prescribed under the provision of section*

*54F of the Income Tax Act. However, the documentary evidence in claim of construction available in the assessment record is not satisfactory enough. Also, no documentary evidence whatsoever, in support his claim of construction has been filed by assessee during present proceedings u/s 263 of the Act, before the undersigned.*

*(iii) As per assessment record, the -Land at Jawalpur, Haridwar purchased through General Power of Attorney form Dh. Birender Singh Rawat is also merely 'Agricultural Land' as per the 'Mukhtayarnama Aam' filed by the assessee during the assessment proceedings. It is pertinent to mention that the amount of consideration is not mentioned in the said 'Mukhtayarnama Aam' executed on a non judicial stamp paper of Rs. 100/-. There is no mention of any constructed structure on the said agricultural land.*

*(iv) The claim for purchase of one cottage, double story situated at Rahmatpur Athmal, Tehsil, Roorkee, Distt. Haridwar, Uttarakhand for Rs. 34,00,000/- dated 14<sup>th</sup> March 2013. It can be noted that upon perusal there is no electricity or water connection taken to prove that this said property is residential or not.*

*(v) Regarding the assessee's claim that he had done construction on both properties before the time limit as prescribed under the provision of section 54F of the Income Tax Act. The assessee has not filed any documentary evidence whatsoever, in support of his claim of construction during these proceedings.*

***(Disallowance - Rs.3,14,48,500/-)***

*Since the assessee has furnished inaccurate particulars of the income. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is being initiated separately for furnishing inaccurate particulars of the income."*

3. Ld. CIT(A) however took contrary view and gave benefit of Section 54F of the Act to the assessee so the revenue is in appeal raising following grounds

:-

*(i) On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in not treating the order passed by the AO u/s 143(3) r.w.s. 263 of the Act dated 31.12.2018 as bad in law and thereby not cancelling/annulling*

*the same as the said order was passed against the directions given by the CIT-23, New Delhi in the order u/s 263 dated 05.03.2018 which has not been appealed against by the assessee in ITAT and consequently the same has become final.*

(ii) *On the facts and in the circumstance of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that by not following the directions of the CIT-23, New Delhi as given in order u/s 263 dated 05.03.2018, AO has travelled beyond his jurisdiction, thereby vitiating the whole assessment proceedings. Therefore, the order of the AO and the Ld.CIT(A) requires to be set aside by the Hon'ble ITAT.*

(iii) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the fact that despite clear cut findings and directions given by CIT-23, New Delhi in his order u/s 263 dated 05.03.2018 that the capital gains arising to the assessee on sale of plot of land at village Karawal Nagar, Delhi-94 is a short term capital gain(STCG) and not long term capital gain(LTCG), AO treated the same as long term capital gain in contravention of the findings and directions of the CIT-23, New Delhi and therefore the Ld.CIT(A) thus, has erred in not passing order in consonance with the directions of the CIT-23, New Delhi overruling the decision of the AO particularly when the order u/s 263 dated 05.03.2018 of the CIT-23, New Delhi has not been appealed against in the ITAT by the assessee.*

(iv) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- made by the AO on account of disallowing deduction claimed u/s 54F of the Income Tax Act vide order u/s 143(3) r.w.s. 263 dated 31.12.2018 as assessee was not eligible for deduction u/s 54F.*

(v) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in allowing the assessee's claim under section 54F without appreciating the fact that the Ld.Pr.CIT-23, Delhi in his order u/s 263 dated 05.03.2018 had held that the gain arising to the assessee is short term in nature since the period of holding of the transferred asset was less than 36 months and therefore, the entire amount of gain arisen shall be chargeable as Short term capital gain(STCG) in the hands of the assessee. And consequently, no deduction u/s 54F shall be available on Short term capital gains(STCG) to the assessee.*

(vi) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- despite the fact that the assessee's claim of purchasing three properties for which he has claimed deduction u/s 54F has been found to be untenable as the assessee failed to prove that the three properties purchased were indeed residential properties.*

(vii) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- despite the fact that the assessee has claimed deduction u/s 54F for purchase of three plots of land treating them as residential units while the provisions of section 54F clearly states that the relief under this section can be claimed only in respect of purchase of one residential unit but even this claim has not been proved by the assessee.*

(viii) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- as the Ld. CIT(A) has accepted additional evidence in contravention of Rule 46A which was not available to the AO during assessment proceedings.*

(ix) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- as the Ld. CIT(A) has stated that registered sale deed is not a must to claim the exemption u/s 54F and even 'Agreement to Sell' or registered POA will suffice which is not sufficient to prove the ownership of these residential properties.*

(x) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- as the Ld.CIT(A) has ignored the findings of the AO that in 'Agreement to Sell' the properties in question are mentioned as "Agricultural Land", and further no proof of construction was provided.*

(xi) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,11,23,500/- as the Ld.CIT(A) has wrongly accepted the assessee's claim that the payment of certain amounts to contractor as evidence of construction of so called residential units, that too within limited time period without any tangible evidence when they had no water or electricity connections.*

(xii) *On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in allowing relief the assessee u/s 54F amounting to Rs.3,11,23,500/- by accepting the claim of the assessee that the construction on the agricultural plots of*

*land was completed within stipulated period of time without any proof to this effect provided by the assessee either during the proceedings u/s 263 or during assessment proceedings or appellate proceedings.*

(xiii) *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

4. Heard and perused the record.

5. On behalf of the revenue, Ld. Sr. DR primarily contended that Ld. CIT(A) has fallen in error in considering the nature of transactions for acquiring three properties by the assessee vide agreements and power attorney to be duly purchased. He submitted that the property did not fall in the class of residential properties and Ld. AO has rightly disallowed the exemption.

5.1 On the other hand, Ld. AR submitted that there is no error in the findings of Ld. CIT(A) and based upon correct interpretation of provisions of Section 54/ 54F, the appeal of assessee was partly allowed.

6. At the outset it can be observed that the order u/s 263 dated 05.03.2018 was directory in nature and Ld. AO had complied the same and in this appeal the revenue cannot agitate that there was not substantial compliances of the order u/s 263. Remedy may be some where else. So, the ground no. 1 to 5 are superfluous and also as nothing specific were argued in regard to them they are decided against Revenue.

7. In regard to remaining grounds. Giving thoughtful consideration to the matter on record and the submissions it can be observed that as with regard to the fact that assessee was owner of the two properties sold being plot no. 22 – 23 Khasra No. 13/5/1 and 13/4/2 and village Sahadra Delhi for sale consideration of Rs. 3,88,00,000/- is not disputed. Assessee infact had claimed to have got these properties in family settlement with his brother Rakesh Bansal and there was a GPA in name Smt. Rekha Rani, wife of Sh. Rakesh Kumar

Bansal, who had executed the sale deed, on which the capital gain was claimed by the assessee. Ld. AO even made enquiries in this regard and observed;

*“11. The assessee submitted a copy of GPA executed by Sh. Rakesh Kumar Bansal to Smt. Rekha Rani w/o Sh. Rakesh Kumar Bansal dated 10.06.2009 on a Notarised Non Judicial stamp paper of Rs.50/-*

*In order to ascertain the above claim as to whether the property belonged to Sh. Rakesh Kumar Bansal information u/s 133(6) was sought for from Sh. Rakesh Kumar Bansal to confirm the following:*

- a. *Whether he owned the property if so when he acquired the same along with the documentary for the same.*
- b. *Whether he sold the property if so to whom and when and at what consideration.*
- c. *Whether he filed ITR for the relevant assessment year and also whether he showed his capital gain in the ITR.*

*In reply to the above query, Sh. Rakesh Kumar Bansal replied to having owned and sold the said property as claimed by the assessee. Sh. Rakesh Kumar Bansal also provided copy of original GPA dated 10.06.2009 executed by Sh. Rakesh Kumar Bansal in favour of Smt. Rekha Rani w/o Sh. Rakesh Kumar Bansal thereby granting power of attorney for management and to sell the above mentioned property. He also claimed to have received Rs.9,16,926/- as sale consideration from Sh. Sanjay Choudhary vide receipt dated 18.08.2009. He also declared that LTCG on sale of the above property had been duly declared in his ITR for AY 2010-11.”*

7.1 Thus admittedly there was no document of title in favour of the assessee. Smt. Rekha Rani as GPA holder of her husband Sh. Rakesh Kumar Bansal had executed the sale deed and she had received the sale consideration of Rs. 3,88,00,000/- from Smt. Bhawana Gupta and Smt. Rekha Rani handed the amount came to the assessee. Ld. AO had considered this transaction to be a sale of capital asset by the assessee and calculated long term capital gain.

8. However, Ld. AO blowing hot and cold at the same time discredited the purchase of three properties by way of documents other than sale deeds by the

assessee. **Ld. CIT(A) has rightly corrected this error by following findings in para no. 4.6;**

*“4.6 At the outset, the AO has raised the objection that all these transactions of sale and purchase have been made through Power Of Attorney. It is observed from the records submitted by the appellant that the transactions for sale as well as purchases of land for construction of new residential house/residential house are through registered Power Of Attorney (POA) cum consideration receipts except the property at Mehrauli which is true unregistered POA along with receipts. If the sale consideration has been accepted for the purpose of computing LTCG on the registered POA, then the purchase of land/house on the basis of regd. POA cannot be considered a default for the purpose of exemption u/s 54F.”*

9. Further the order of Ld. CIT(A) shows that after taking into consideration various judicial pronouncements for purposive interpretation of Section 54 and 54F of the Act concluded that acquisition of the three properties by the assessee, otherwise then by the registered sale deeds fall in the ambit of word ‘purchase’ used u/s 54/54F of the Act.

10. The Bench is of considered opinion that execution of the sale deed or any document of Conveyance in favour of vendee, only transfers the ‘ legal title’ for the purpose of civil consequences. The ownership of a property is a bundle of interests and apart from the registered sale deed or any other document of conveyance, vendee can acquire interest in semblance of right of owner by documents like GPA or agreement to sell. The ‘purchase’ of immovable property involves acquiring all those interests in the property. Same may be by some inchoate instruments in favour of the purchaser. Non execution of a registered document of transfer of title may have civil consequences in regard to his title, qua rights between the seller and purchaser but for the

purpose of benefits of Section 54/54F, the assessee shall be deemed to have 'purchased' the properties. As for the purpose of Section 54/54F of the Act, the important question is that money out of LTCG should be paid/spent by the assessee, before the end of statutory period, for claiming exemption. When the Ld. AO had not doubted the payments out of LTCG made by assessee for purchase of three properties with inchoate documents executed in favour of the assessee. Then for not having the sale deed executed in his favour, assessee cannot be said to have not 'Purchased' the properties as a statutory compliance. Thus, the findings of Ld. CIT(A) in this regard require no interference.

11. As with regard to the residential nature of these three properties Ld. CIT(A) has thoroughly examined the issue. The 1<sup>st</sup> property situated lies in Tehsil Mehrauli, New Delhi. It is claimed by the assessee to be farm house and the house tax receipt issued by South Delhi Municipal Corporation mentioning that property is used for 'residential purpose' was rightly relied by Ld. CIT(A) to hold that property purchased was residential property. Ld. CIT(A) has also examine expenditures made in cash and supported with cash withdrawals from the bank for the construction to make the property habitable.

11.1 As with regard to 2<sup>nd</sup> property situated village Atmalpur in Haridwar. Ld. CIT(A) had rightly examined the fact of expenditure of Rs. 2,23,500/- on the construction raised for using it as a residence.

11.2 As with regard to 3<sup>rd</sup> property at Atmal in Haridwar. Ld. CIT(A) has considered the fact that it is admitted to have a construction cottage.

12. The bench is of considered opinion that the nature and extent of construction or nomenclature like house, plot, cottage, farm house or villa are only indicative of the fact that property purchased is not a commercial property

and is not an agricultural property. They all convey residential house property. How it is inhabited should not interest the revenue. Ld. AR has also impressed this by citing a judgment of Jaipur bench in **ACIT V. Om Prakash Gyal [2012] 24 taxmann.com67(JP)** where it has been held that only requirement for claiming exemption under Section 54F is construction of residential house and it does not matter that house constructed is on agricultural land. Thus Ld. CIT(A) has rightly taken into consideration all the aspects of the matter while partly allowing the appeal of assessee and no interference is called for in the same. The remaining grounds no. 6 to 13 are also decided against the revenue on the basis of aforesaid findings. **The appeal of revenue is dismissed.**

**Order pronounced in the open court on 23 January, 2023.**

**Sd**  
**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

*Date:- 23 .01.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI