

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.1082/Hyd/2019		
Assessment Year: 2015-16		
The Dy. Commissioner of Income Tax, Circle – 3(1), Hyderabad.	Vs.	Malyadri Laxmi Narasimham Mullapati, Kondapur, Hyderabad. PAN : AFSPM0441A.
(Appellant)		(Respondent)
Assessee by:		Sri Mohd. Afzal
Revenue by:		Sri Kumar Aditya
Date of hearing:		06.02.2023
Date of pronouncement:		07.02.2023

ORDER

Per Shri Laliet Kumar, J.M.

The captioned appeal is filed by the Revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad dated 28.12.2018 for the A.Y 2015-16 on the following raised grounds :

- “1. *The Ld.CIT(A) erred both in law and on facts of the case.*
2. *The Ld.CIT(A) erred in allowing the deduction u/s.54F at Rs.2,38,21,292/- ignoring the fact that the assessee sold three assets and claimed deduction whereas the wordings of Section. 54F clearly restricts the exemption to sale proceedings of one asset for investment in one residential house.*

3. *The Ld.CIT(A) erred in law as well as on the facts of the case in allowing the exemption claimed u/s.54F without considering and appreciating the fact that when the nature of two properties are found to be in concrete structure for which assessee cannot claim of exemption u/s.54F of the I.T. Act. 1961.”*

2. The brief facts of the case are that the assessee is an individual who has income from salary, capital gains and income from other sources, filed his e-return of income on 24.12.2015 declaring total income of Rs.11,26,800/-. The case was selected for limited scrutiny and notice u/s. 143(2) dated 19.09.2016 was issued. Subsequently, notices u/s. 142(1) dated 26.10.2016 & 14.07.2017 were also issued and served upon the assessee. In response to the aforesaid notices, assessee furnished the information as called for.

2.1 The assessee submitted that three assets belonging to him were sold by State Bank of Travancore during the year, as these properties were pledged in favour of the said bank by M/s. Ratna Infrastructure Project Pvt Ltd, wherein he is working as Director. The assessee submitted that sale proceeds of those properties were adjusted by the bank towards the loan amount due to M/s. Ratna Infrastructure Project Pvt Ltd. The assessee further submitted that he invested an amount of Rs.3,80,00,000/- out of his own savings and borrowals in property No. 916, Road No. 46, Jubilee Hills, Hyderabad and that the construction of house property was completed and was being self occupied by the assessee and that he does not own any other house and hence, he claimed deduction of Rs.3,22,36,779/- u/s 54 of the Act. On perusal of the entire record and the replies submitted by the assessee, Assessing Officer came to a conclusion that the assessee had not fulfilled the conditions as provided in sub-section (4) of Section 54F in as much as the net consideration

on sale of original asset has not been appropriated by the assessee towards the purchase of new asset and therefore, he completed the assessment by disallowing the deduction claimed u/s.54F of Rs. 3,22,36,779/-.

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who granted part relief to the assessee.

4. Feeling aggrieved by the order passed by the Ld. CIT(A), the Revenue is in appeal before us on the grounds mentioned herein above.

5. Before us, the ld. DR had drawn our attention to Para 5.2 to 5.4 of the ld.CIT(A)'s order by virtue of which the ld.CIT(A) had granted part relief to the assessee.

“5.2 I have considered the assessment order and submissions of the appellant. There is no dispute as to the fact that the appellant has invested Rs.3,80,00,000/- in residential property within the stipulated time. The only objection of the AO is that the consideration received was used elsewhere and not invested in the above residential property. It is seen that there is no requirement in the sec.54F that the consideration only should be invested for purchase of property. This is supported by judicial view taken by various fora including the Hon'ble Kerala High Court relied on by the appellant. Following the ration laid down above, it is held that the appellant is eligible for deduction u/s.54F.

5.3 However, it is seen from the computation of capital gains and deduction claimed u/s.54F by the appellant that, the deduction u/s.54F is made against capital gains on two different properties sold during the year and loss is claimed in sale of one property. The computation of capital gains and the deduction u/s.54F is incorrect. The same is to be calculated w.r.t the total consideration on sale of all 3 properties into account. During the course of appellate proceedings, where this was pointed out, the appellant filed correct working of capital gains/deduction u/s.54F as under:

"In continuation of submissions made on 12.11.2018, the following submissions are made computing the 54F deduction in the case of assessee, which is worked out as under:

Capital gains as per the computation:

Sl.No.	Sale Consideration in Rs.	Indexed cost of acquisition (in Rs.)	Capital gains (in Rs.)
1. Site at Employees Co-operative Housing Society, Guttala Begumpet, Hyderabad	1,30,00,000	20,74,917	1,09,25,083
2. Site at Employees Co-operative Housing Society, Guttala Begumpet, Hyderabad, Plot No.65	70,10,000	72,44,008	-2,34,008
3. Residential Plot at Madhapur Village, Serilingampally Mandal	2,51,30,000	38,18,304	2,13,11,696
<i>Total:</i>	4,51,40,000		3,20,02,771

The assessee made an investment of Rs.3,36,00,000/- in the construction of residential house by making payments to NSL constructions pvt. ltd.

The deduction u/s.54F = capital gains on transfer of original asset X cost of new asset/net consideration.

$$= 3,20,02,771 \times 3,36,00,000 / 4,51,40,000$$

$$= 2,38,21,292$$

The taxable capital gains are at Rs.81,81,479(3,20,02,771-2,38,21,292)

5.4 On consideration of facts and circumstances of the case, it is directed that deduction u/s.54F be allowed to the extent of Rs.2,38,21,292/- and balance capital gains of Rs.81,81,479/- be brought to tax. The grounds are disposed off with above direction."

5.1. It is the contention of the Id. DR that the assessee is not entitled to the relief as granted to the assessee as the properties owned by the assessee are residential properties and he had drawn our attention to the sale certificate issued by the bank which are placed at sl.nos. 2 to 4 of the paper book filed by the Revenue. It was also submitted that for the purposes of availing benefit of section 54F of the Act, the property should not be the

residential property as mentioned therein and for that purposes, he has drawn our attention to section 54 of the Act. Further, the ld. DR had drawn our attention to the decision of Tribunal in the case of Smt. Rajani Reddy Inturi Vs. ACIT, Circle – 14(1), Hyderabad (ITA No.4/Hyd/2019 dt.08.03.2021) wherein the Tribunal has remanded back the matter to the file of the Assessing Officer and in Para 5 of the said order, it was mentioned as under :

“5. Next comes the equally significant aspect of the reinvestment of assessee’s capital gains by utilising her joint family’s funds. Learned counsel at this stage invited our attention to the assessee’s detailed paper book filed on 09-02-2021 placing on record all the relevant details of her house constructed in plot Nos.30 and 31, Magadha Village, Kokapet, Rajendra Nagar Mandal, R.R.District purchased on 21-09-2005 followed by sanction of construction dt.16-06-2007 and completed on 18-05-2012. We hold in this factual backdrop that larger interest of justice would be met in case the Assessing Officer examines the entire issue of re-investment of assessee’s capital gains in the above stated property afresh. We order accordingly. Needful may be done within three effective opportunities of hearing after the assessee or her authorised representative puts in appearance before the Assessing Officer on or before 31st July, 2021 at her own risk and responsibility. “

6. Per contra, ld. AR filed the following written submissions in support of his case.

“.....

6. In this regard it is respectfully submitted that the learned Assessing Officer disallowed the claim stating that the new asset was purchased by the assessee through his own funds, such source is independent and not in anywhere connected to the net consideration received on sale of original asset. To be clear the learned Assessing Officer disallowed the claim u/s 54F with an assumption that the assessee has not utilized the same amount which he has received on account of sale of assets, because the amounts received on sale of assets were appropriated by Bank towards the loans of the company.

7. Considering the facts and circumstances and also the provisions of section 54 and 54F, the learned CIT held that the Assessing Officer is not correct in his assumption that the same money is to be used. The learned CIT(A) considered the provisions of section 54 and 54F, wherein, it was observed that the section permits purchase of new house one year before the sale of the old house makes it clear that such utilization is not possible, according to the CIT(A) the requirement of section is that new house property should be purchased within the time period specified, the source of funds is irrelevant. Now, the Department raised a ground which is not germinated from the assessment order and also not considered by the Appellate Commissioner. According to the Department the assessee sold three properties and purchased one residential house, whereas, the deduction should have

been restricted to sale proceeds of one asset only. As the ground is not germinated from the assessment order and Appellate order, therefore, the same may kindly be rejected.

8. Be that as it may be, as seen from the grounds of appeal the assumption of the Department is any asset mentioned in the section means only one asset. For the sake of convenience the relevant part of the section 54F is reproduced hereunder:

54F subject to the provisions of sub-section(4), wherein the case of an assessee being an individual or a Hindu Undivided Family, the capital gains arises from the transfer of any long term capital asset, not being a residential house (herein after 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 transfer took place purchased, or has within a period of three years after that date constructed, one residential house in india, 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.....

It is submitted that the word any has been defined by P.Ramanatha Iyers, the Law of Lexicon 2nd edition as the word any may have one of several meanings according to the circumstances, it may mean "all", "each", "every", "some", "or one or more out of several". In this regard the appropriate meaning here is one or more out of several assets as held by the judicial pronouncements.

9. The appropriate meaning of any as mentioned above is one or more out of several, therefore, in the case of assessee out of several assets, the assessee has sold three assets and purchased one residential house, to claim the deduction u/s 54F of the IT Act. As the claim is correctly made the Hon'ble Bench is requested to confirm the order of the Appellate Commissioner by rejecting the ground raised by the Department. In identical facts the Hon'ble ITAT, Mumbai Bench, in the case of Sri.Sabir Mazhar Ali in ITA No.5840/Mum/2018 (assessment year 2011-12) held as under:

We find that the issue in dispute herein is when assessee sells two properties and re-invests in one residential house, whether he is entitled for exemption u/ s.54 of the Act or not? We find that the exemption u/ s.54 of the Act is granted to the assessee for re-investment made in residential house. The Section nowhere restricts the claim of the assessee that he should have sold only one property and claimed exemption u/ s.54 of the ITA No.5840/ Mum/ 2018 Shri Sabir Mazhar Ali Act for one property. In fact prior to the amendment made in Section 54 of the Act which came into effect from Finance (No.2) Act, 2014 w.e.f A. Y.2015-16, the very same Section provided for exemption even if assessee had re-invested in more than one residential house. It nowhere prohibited the assessee to sell more than one residential house. In the instant case, the assessee has sold two residential properties and re- invested in one residential property. Hence, in our considered opinion, the entire conditions of Section 54 of the Act, both prior to amendment as well as subsequent to amendment, had been duly satisfied, which had been duly appreciated by the Id. CIT(A) in the instant case. Hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee. Accordingly, the grounds raised by the Revenue are dismissed.

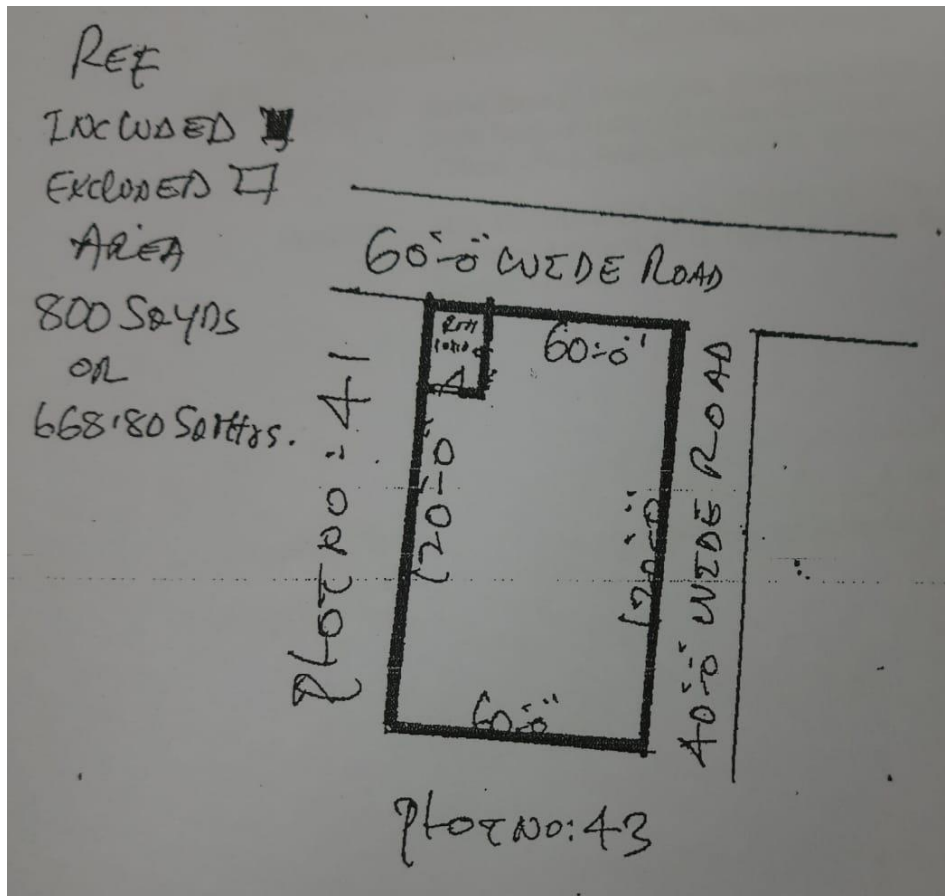
10. The issue is also considered and decided in favour of assessee, where the assessee sold more than one property and acquired one residential house, in the following cases:-

- ITAT 'B' Bench Ahmedabad in the case of DCIT Vs Sri Pankaj Chimanlal Patel (HUF) in ITA No.3179/Ahd/2016, assessment year 2016-17.
- ITAT 'A' Bench, Hyderabad in the case of Venkata Ramana Reddy Vs DCIT (2013) 142 ITD 0016.”

6.1 Ld. AR further submitted that the issue which has been raised by the ld. DR is not emanating from the order passed by the ld.CIT(A). Further, it was submitted that the Assessing Officer had declined to grant section 54F of the Act only on the account of the fact that the assessee had invested an amount of Rs.3.8 crore out of own savings and borrowings for the purpose of purchasing the property at D.No.916, Road No.46, Jubilee Hills, Hyderabad. He had drawn our attention to para 6 of the order passed by the Assessing Officer, which is to the following effect :

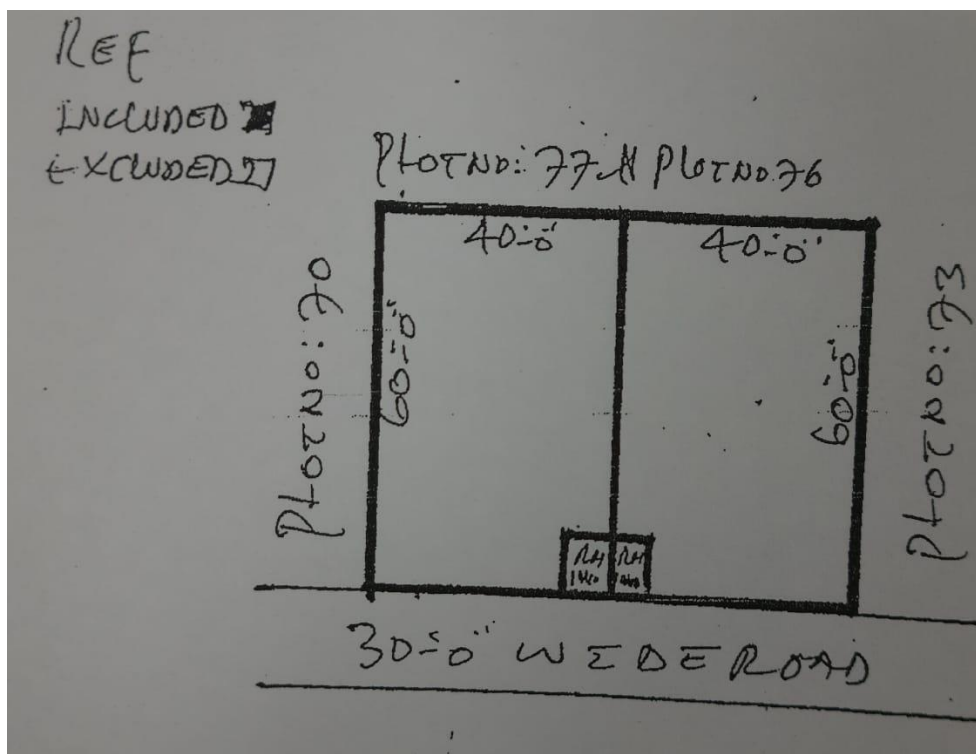
“6. A plain reading of Section 54F(1) and 54F(4) shows that it speaks of the use of net consideration received on the sale of original asset in the purchase of new asset. In the instant case, the original assets were the assessee's house property, which were pledged with bank for obtaining loan by the company. These properties were sold by bank and the sale proceeds were appropriated by bank to square off the loans of the company. The net consideration in this case is the sale amount collected by bank. Thus the net consideration on the sale of the original assets stands utilized by the bank towards loan of the company. It is not a case where the net consideration has been utilized in purchase of new asset as contemplated u/s. 54F. The new asset has been purchased by the assessee through his own funds which is independent and not in any way connected to the net consideration received on sale of original asset. Thus, it is clear that the assessee has not fulfilled the conditions as provided in sub-section (4) of Section 54F in as much as the net consideration on sale of original asset has not been appropriated by the assessee towards the purchase of new asset. It is seen that in the case law cited by the assessee, the Department filed appeal before Hon'ble High Court on 28.08.2012 and the same was disposed on 29.02.2016 as withdrawn in terms of CBDT Circular No. 21/2015 dated 10.12.2015 due to the tax effect being below Rs.20 Lac. Thus, it is clear that the order of Hon'ble ITAT is not acceptable in principle, however, the appeal stands withdrawn due to monetary limits. In view of the above facts, the claim of assessee u/s 54F is disallowed and added to the income of the assessee.”

7. We have heard the rival submissions and perused the material on record. First of all, we will deal with the issue whether the property sold by the State Bank of Travancore during the year were pledged in favour of the said bank and the sale certificate issued thereon was pertaining to the residential property or not ? In this regard, we have looked into Annexure 1-A of the 1st property i.e., H.No.1-98/7/42 (Plot No.42) situated at Madhapur Village, Serilingampally Mandal, which was reproduced hereinbelow :



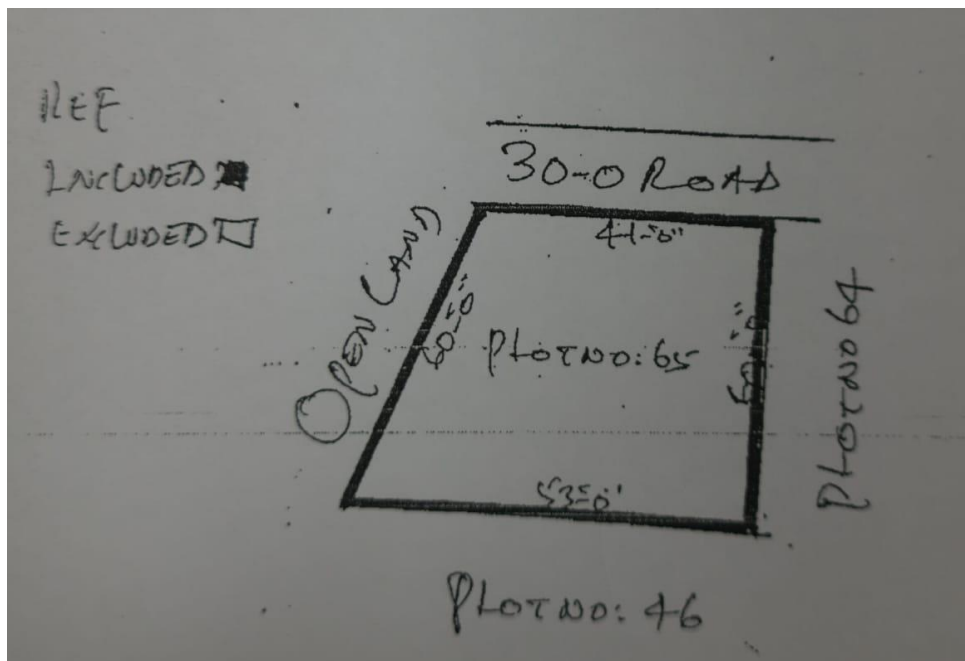
7.1 From the perusal of Annexure 1-A, it is clear that the property is in the nature of a plot having a built up area of only 100 sq.ft. The site plan annexed thereto will not show that the property was residential in nature. Infact, it seems to be a vacant plot and having only 100 sq.ft constructed area. 100 sq.ft constructed area is not capable of using for residential purposes and therefore, the first property cannot be said to be a residential property.

8. Similarly, if we look into the other property, which was H.No.1-67/2/71 (Plot Nos.71 and 72) in Survey Nos.12, 12A and 13, situated at Begumpet Village placed at page 49 of the paper book (reproduced hereinbelow) clearly shows that these two plots which are adjoining plots having only 100 sq.ft each constructed area.



8.1 Again the said 100 sq.ft is not capable of using it for residential purposes. Therefore, we can say that these plots are not in the nature of residential property.

8.2. The last property which was shown at page No.26 of the paper book i.e., plot No.65 (reproduced hereinbelow) is a vacant plot as is clear from the sale certificate and therefore, it cannot be said to be a residential property.



8.3. Thus, all the three properties which were sold by the State Bank of Travancore for the purpose of recovering its dues were nor residential properties. Accordingly, the ground No.2 reproduced hereinabove of the Revenue appeal is dismissed.

9. Now coming to the ground No.1 of the Revenue.

“2. The Ld.CIT(A) erred in allowing the deduction u/s.54F at Rs.2,38,21,292/- ignoring the fact that the assessee sold three assets and claimed deduction whereas the wordings of Section. 54F clearly restricts the exemption to sale proceedings of one asset for investment in one residential house.”

9.1. The sum and substance of the submissions of the ld.DR is that once the assessee sold three long term capital assets and capital gain is earned by him on account of sale of three assets, the assessee is not entitled to the benefit of section 54F of the Act, in respect of sale consideration of all the three plots and is required to be restricted only for one capital asset.

9.2. Further, it was submitted that the assessee had not utilized any sale proceeds from the sale of the capital asset as the entire proceeds of sale of three properties were appropriated by the bank for the outstanding loan of M/s. Ratna Infrastructure Project Pvt Ltd of which the assessee was the Director and had given these three properties as collateral securities. It was submitted that the investment in the residential house is nowhere connected with the sale of long term capital asset made by the bank.

9.3 Per contra, the ld.AR had drawn our attention to the written submissions filed by the assessee reproduced hereinabove and also the decisions cited therein. It was submitted that the word “any” long term capital asset is required to be interpreted benevolently and would include sale of few assets out of many assets owned by the assessee.

10. We have heard the rival contentions of the parties and perused the material available on record. The order of the Id.CIT(A) reproduced hereinabove, have not dealt with the above said issue and had merely granted the relief to the assessee by relying upon the decision of the Hon'ble Kerala High Court, wherein it was held that *the assessee had made investment in purchase of new asset unrelated to the consideration received by the assessee for sale of long term capital asset then the assessee would be eligible for section 54F of the Act.* In our view, the order of Id.CIT(A) is silent on the aspect that whether any long term capital asset would mean the sale of many long term capital asset or sale of one long term capital asset. Though, the Id.AR had drawn our attention to the order passed by the Bombay Tribunal in the case of Sri Sabir Mazhar Ali in ITA No.5840/Mum/2018 and also on the decision in the case of DCIT Vs Sri Pankaj Chimanlal Patel (HUF) in ITA No.3179/Ahd/2016, however, in our view, both the decisions are distinguishable and not applicable to the facts of the present case. We find in para 11 in the case of Pankaj Chimanlal (supra), the Tribunal had held as under :

“the deduction u/s 54F of the Act essentially depends upon the extent of utilization of sale proceeds in the new asset”

11. As mentioned hereinabove, the assessee has not utilized any sale proceeds of the three long term capital assets for acquiring new assets. Therefore, the above said decision in the case of Pankaj Chimanlal Patel (supra) is not applicable to the facts of the present case. Similarly, the Tribunal in the case of Sabir Mazhar Ali (supra), has not dealt with the issue of **“any”** long term capital asset while deciding the issue. In the light of the above, it would be in the interest of justice, the case be remanded back to the file of the Id.CIT(A) to decide the

following issues after affording opportunity of hearing to the assessee and to the Assessing Officer.

1) Whether the assessee would be entitled to the claim of section 54F of the Act, if he had sold three properties and had acquired new property. Having regard to the section 54F, where the legislature has used “any” long term capital asset.

2) Whether the assessee would be entitled to section 54F exemption, even if the sale consideration paid by him in purchasing the new residential house is unrelated and unconnected with the sale consideration received by him from the sale of properties from the bank.

Thus, the ground No.1 of the Revenue is allowed for statistical purposes.

12. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 7th February, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 7th February, 2023

TYNN /sps

Copy to:

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2	DCIT, Circle-3(1) Hyderabad
3	CIT(A)-11, Hyderabad
4	Pr.CIT (Central) Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order