

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'G' NEW DELHI]**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1571/DEL/2019 (A.Y. 2015-16)

<p>Ms. Sandhya Gaur, House No. SV-34, Sportsperson Villa, Jaypee Greens Gold Course Greater Noida – 201 308.</p> <p>PAN No. AHBPG8161A (APPELLANT)</p>	Vs.	<p>ACIT, Circle : 3, Noida.</p> <p>(RESPONDENT)</p>
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Assessee by : Shri Jai Bhagwan Sharma,
Advocate;

Department by : Shri Ram Dhan Meena,
Sr. D. R.;

Date of Hearing	22.02.2023
Date of Pronouncement	03.03.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 28.09.2018 of the Id. Commissioner of Income Tax (Appeals)-1 (hereinafter referred to CIT (Appeals) Noida, for assessment year 2015-16.

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

"1. That the Ld. CIT(A) has erred in not deciding the one and the only ground in appeal before him.

2. Only ground in appeal was whether (for the purposes of exemption of capital gain under s. 54F of the Act) the assessing officer was right in excluding from the cost of the new house the expenditure on account of stamp duty & registration fee.

The assessing officer made the above exclusion for the sole reason that even though the assessee had deposited stamp duty & registration fee with the builder but the latter had actually incurred the said expenditure in the next financial year.

3. The Ld. CIT(A) instead of deciding the above issue has instead decided that the assessing officer was right in "disallowing" the exemption in respect of the new house because the same had not been registered (to the assessee's name) during the relevant financial year."

3. Brief facts of the case are that, the assessee filed its return of income declaring income of Rs. 60,94,380/- the assessment proceedings have been initiated against the assessee and assessment order came to be passed determining the total income of the assessee at Rs. 87,25,287/- by withdrawing the benefit of exemption u/s 54F of the Act against investment in

purchase of residential property on the ground that the registration of the said property was not completed within the stipulated time of three years.

4. As against the assessment order, the assessee has preferred the appeal before the CIT(A), the Ld.CIT(A) has dismissed the appeal filed by the assessee on 04/09/2018.

5. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal on the grounds mentioned above. The Ld. Counsel for the assessee vehemently submitted that the Lower Authorities have excluded expenditure on account of stamp duty and registration fees for the purpose of exemption of capital gain u/s 54F of the Act. Therefore submitted that the order of the Lower Authorities bad in law and reason for rejecting the claim of the assessee is perverse and against settled position of law.

6. Per contra, the Ld. DR submitted that though the assessee has deposited the stamp duty and registration fees with the builder, but the latter had actually incurred the said expenditure in the next Financial Year. Though the assessee has deposited the amount with the builder, the registration has not been done in the name of the assessee during the relevant Financial Year. Therefore, submitted that the order of the Lower Authorities requires no interference by the Tribunal.

7. We have heard the parties and perused the material available on record and gave our thoughtful consideration. During the year under consideration, the assessee has transferred 78000/- shares of Jaypee Infra Venture for a consideration of Rs. 2,53,50,000/- in April, 2014 and has shown this amount as long term capital gain, as the shares were acquired by the assessee in Financial Year 2008-09 as bonus and as such cost of the acquisition has been taken at NIL. The assessee has invested Rs. 2,39,54,504/- with Jaiprakash Associates for construction of villa and claimed this amount as exempt u/s 54F of the Act. The A.O. after verifying the details filed by the assessee, found that amount of Rs. 2,39,54,504/- consisting cost of the house Rs. 2,13,23,599/-, stamp duty of Rs. 26,00,905/-, and the registration fees of Rs. 30,000/- has been paid by the assessee but only reason for rejecting the exemption claimed u/s 54F of the Act to the extent of Rs. 26,30,905/- (Stamp duty Rs. 26,00,905/- and Registration Fees Rs. 30,000/-) on the ground that no sale deed has been registered till the date of assessment proceedings.

8. It is not in dispute that the assessee has paid the entire amount comprising of cost of house, registration fees and stamp duty on 04/04/2014 itself to the builder. The assessee has not produced the proof of payment of stamp duty and registration fees before the Lower Authorities. Even before us the assessee has not produced any document to show that the registration fees and the stamp fees paid by the assessee to the builder has been actually

paid to the concerned authorities while registering the sale deed. Considering the above facts and circumstances, we deem it fit to remand the matter to the file of A.O. with a direction to the assessee to submit the proof of payment of stamp duty and registration fees to the concerned authorities while registering the sale deed in favour of the assessee. If such evidence is produced before the A.O, the A.O. shall extend the benefit of exemption u/s 54F of the Act to the assessee in respect of stamp duty and registration fees.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on : **03/03/2023.**

Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 03/03/2023

MEHTA/R.N, Sr. PS

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

