आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 894/JPR/2017
निर्धारण वर्ष/Assessment Years : 2013-14

Shri Lalit Kumar Kalwar 1, M/s Jay Ambey Tyers Vijay Chowk, Ring Road, Sarwar	बनाम Vs.	Income Tax Officer Ward-2(3), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACJPK 6242 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Devang Gargieya (Adv.)
राजस्व की ओर से/ Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 21/06/2023
उदघोषणा की तारीख/Date of Pronouncement : 28/06/2023

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals), Ajmer [here in after "ld.CIT(A)"] dated 19.09.2017 for the assessment year 2013-14, which in turn arises from the order of the penalty of levy by the ITO, Ward-2(3) on 22.09.2016 u/s 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has marched this appeal on the following

grounds:-

> "1. That on the facts and in the circumstances of the case, the ld. Cit(A) erred in upholding the validity of order of imposition of penalty u/s 271(1)(c) of the Act.
> 2. That on the facts and in the circumstances of the case the ld. CIT(A) erred in sustaining the penalty of Rs. 4,17,900/- u/s 271(1)(c) of the Act.
> 3. That on the facts and in the circumstances of the case the ld. CIT(A) erred in not considering the application for adjournment filed before him.
> That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.
> 5. The petitioner prayers for justice & relief."

3. During the course of hearing, the ld. AR of the assessee submitted that the penalty has been levied in respect of the deduction claimed u/s 54F of the Act was denied to the assessee and consequently thereto the income of long term capital gain was determined at Rs. 20,28,370/-. As the deduction was denied and the same was confirmed by the ld. CIT(A), the ld. AO levied penalty of Rs. 4,17,900/-.

3.1 The assessee preferred an appeal before the ld. CIT(A), Ajmer against the order of the levying the penalty. The said appeal of the assessee dismissed wherein the ld. CIT(A) has recorded following findings :

> "4.2 I have gone through the penalty order, statement of facts and grounds of appeal carefully. The penalty has been levied in respect of the addition of Rs. 20,28,370/- made by the AO under the head "Long Term Capital Gain". The appellant has not furnished any written

submission on this issue. In view of the facts discussed by the AO in the penalty order, I am of the considered view that the AO has rightly levied the penalty of Rs. 4,17,900/- u/s 271(1)(c) in respect of the addition of Rs. 20,28,370/- made by the AQ under the head "Long Term Capital Gain" because the appellant had filed inaccurate particulars of income of Rs. 20,38,370/-. Accordingly, penalty of Rs. 4,17,900/- levied by the AO u/s 271(1)(c) is hereby confirmed."

4. As the assessee did not receive any favour from the appeal filed before ld. CIT(A), the present appeal filed against the said order of the ld. CIT(A) before this tribunal on the grounds as reiterated in para 2 above.

5. A propose to the grounds of appeal, the ld. AR of the assessee filed written submission on merits but at bar the ld. AR of the assessee submitted that in the recent past order of the ITAT in ITA No. 379/JP/2018 dated 30.05.2023 pronounced wherein the impugned addition made u/s 54F of the Act has been deleted by the tribunal. The relevant finding of in the quantum appeal wherein the impugned addition has been deleted by the ITAT is reproduced here in below:-

"6. We have heard rival contentions, perused the material available on record and gone through the orders of the revenue authorities. As per the facts of the present case, assessee has sold shops and received actual sale consideration of Rs. 12,00,000/-, which was less than the value accepted by the DLC of Rs. 20,78,310/-. However, assessee claimed long term capital gain at NIL after seeking exemption

under section 54F of the IT Act. The reason for the assessee to compute long term capital gain as NIL was as according to the assessee the entire actual sale consideration was invested in the purchase and construction of the residential house. The details of investment made by the assessee has been enumerated as under :-

Year	Particulars	Investment	Total investment
31.03.2012	Purchase of plot	2,40,000/-	2,40,000/-
31.03.2013	Investment in Const. of New House	5,00,000/-	7,40,000/-
31.03.2014	Investment in Const. of New House	6,49,100/-	13,89,100/-
31.03.2015	Investment in Const. of New House	19,00,000/-	23,89,100/-

It was submitted that the actual consideration received by the assessee was invested in purchase of plot and construction of residential house before due date of filing of return on 31.03.2014 as per provisions of section 139(4) of the IT Act. It was also submitted that the intention of the assessee was to construct residential house and accordingly the assessee had made investment of Rs. 23,89,100/- whereas he has received actual sale consideration of Rs. 11,60,000/- on transfer of the property.

However, the lower authorities denied the deduction under section 54F for the reason that the assessee has not deposited the sale consideration received on transfer of the property in capital gain account as per provisions of section 54F(4) of the Act. Therefore, in order to deal with the controversy in question, it is necessary to first of all deal with the provisions of section 54F of the Act which is reproduced below :-

“54F. (1) Subject to the provisions of sub-s. (4), where, in the case of an assessee being an individual or an HUF, 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 s.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 s. 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."

After analyzing the provisions of section 54F(1) of the Act, we find that in Explanation to section 54F(1), it is that net consideration means the

full value of 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. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in s. 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-ss. (a) and (b) of s. 54F(1)of the Act. In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset then the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable.

The Hon'ble ITAT, Chandigarh Bench in the case of Seema Sabharwal, ITA No. 272/Chd/2017 dated 05/02/2018 in which the Hon'ble Tribunal after considering decision of various High Courts including decision of Hon'ble Karnataka High Court on the identical facts has allowed the deduction u/s 54Fof the Act. The relevant finding recorded by the Hon'ble Tribunal reads as under: -

> *"11. Though the Hon'ble High Court in relation to the issue of claim of exemption u/s 54F of the Act has held that what matters is the intention of the assessee to purchase/ construct new house. The Hon'ble Karnataka High Court has held that if the intention is not to retain cash but to invest in construction or any purchase in property and if such investment is made within the period stipulated therein, than section 54F(4) is not at all attracted. We may clarify here that provisions of section 54(2) are almost identically worded as in invested the amount for the purchase/ construction of the house within the stipulated period as also observed above while deciding the first issue. The assessee has proved such investment during the assessment proceedings and, thus, the assessee has complied with the requirement of substantive provisions and, thus, is entitled to the claim of exemption u/s 54F of the Act. In view of this, we direct*

the Assessing Officer to grant exemption to the assessee as permissible under the provisions of section 54 of the Act."

The Coordinate Bench of the Tribunal, Jaipur in the case of Income Tax Office vs. Rajkumar Parashar (2018) 195 TTJ (Jp) 212(DPB 10-17) it was held as:

"Where 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 s. 45. What is therefore, relevant is the investment of the net consideration in respect of the original asset which has been transferred and where the net consideration is fully invested in the new asset, the whole of the capital gains shall not be charged under s. 45. The net consideration for the purposes of s. 54F has been defined as 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. Thus, the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset. In the instant case, the consideration which accrued to the assessee as per the sale deed is Rs. 24,60,000 and the whole of the said consideration has been invested in the Capital Gains Accounts Scheme for purchase of the new house property which is again not disputed by the Revenue. The consideration as determined under s. 50C based on the stamp duty authority valuation is not a consideration which has been received by or has accrued to the assessee. Rather, it is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under s. 48. Therefore, the provisions of s. 54F(1)(a) are complied with by the assessee and he is eligible for deduction of the whole of the capital gains so computed under s. 45 r/w s. 48 and s. 50C. Therefore, the provisions of s. 50C(1) are not applicable to s. 54F for the purpose of determining the meaning of full value of consideration.—Gyanchand Batra vs. ITO (2010) 45 DTR (Jp)(Trib) 41 : (2010) 133 TTJ (Jp) 482, Prakash Karnawat vs. ITO (2012) 49 SOT 160 (Jp) and Nand Lal Sharma vs. ITO (2015) 122 DTR (Jp)(Trib) 404 : (2015) 172 TTJ (Jp) 412 followed; Gouli Mahadevappa vs. ITO & Anr. (2013) 259 CTR (Kar) 579: (2013) 88 DTR (Kar) 59 : (2013) 356 ITR 90 (Kar) distinguished."

Thus in our view also the natural meaning of full value of consideration refers to consideration specified in the Sale Deed. In this regard, Hon'ble Delhi High Court in the case CIT vs. Smt. Nilofer I. Singh (2009) 221 CTR (Del) 277: (2008) 14 DTR (Del) 108 (2009) 309 ITR 233 (Del) had held that full value of consideration refers to the consideration specified in the sale deed. For deciding the meaning of words 'full value of consideration', The Hon'ble Delhi High Court has referred to the decision of Hon'ble Apex Court at page 237 as under:

"This controversy has already been settled by the Supreme Court in the case of CIT vs. George Henderson & Co. Ltd. (1967) 66 ITR 622 (SC), the very expression 'full value of consideration' was under consideration of the Supreme Court in the context of the provisions of the Indian IT Act, 1922. The provisions of s. 12B of the 1922 Act pertain to capital gains. Sub-s. (1) was in parimateria to s. 45(1) of the present Act and sub-s. (2) of s. 12B of the 1922 Act was in parimateria to the provisions of s. 48 of the present Act. The Supreme Court was of the view that the expression 'full value of consideration' in the main part of s. 12B(2) of the Act cannot be construed as having a reference to the market value of the asset transferred but the expression only meant, the full value of a consideration received by the transferor in exchange of the capital asset transferred by him. The Supreme Court also observed that in the case of a sale the full value of consideration is the full sale price actually paid. It was further of the view that the expression 'full value' means the whole price without any deduction, whatsoever, and it cannot refer to the adequacy of the price bargained for. Nor did it have any necessary references to the market value of the capital asset which is the subject-matter of the transfer."

That the provision of section 50C of the Act creates a limited fiction to the effect that the full value of consideration shall be substituted for the purpose of s. 48 of the Act by the amount taken by the Registrar for registration purpose. Thus, the fiction under s. 50C of the Act is extended only to the aspect of computation of capital gains and the same does not extend to the charging section or the exemptions to the charging section. The legislature consciously intended to apply the fiction under s. 50C of the Act only to the expression used in s. 48 of the Act and not in any other place. The exemption ss. 54, 54B, 54D, 54EA, 54EB, 54F, 54G and 54H, are self-contained sections which also include the method of computation of the exemption. The manner in which the profits or gains arising out of the transfer of the capital asset

are to be computed as mentioned in s. 48 which goes without saying that the charge is on the profits or gains so computed. While computing the profits or gains as per s. 48, the deeming provision embedded in s. 50C has to be given effect to. The charge is created on the enhanced profits or gains arrived at from the fiction of s. 50C. This aspect was justified by the Hon'ble Finance Minister in his Budget Speech that s. 50C will curb the menace of unaccounted income in the property transactions by presuming the sale consideration to be the value of the guideline value for registration in case it is stated lower than that value of registration.

Thus when the assessee has invested entire actual sales consideration received by him in the purchase and construction of new house accordance with the provision of section 54F(1) thereafter the provision of section 50C has not been applicable in light of following judicial decisions.

a] The Hon'ble ITAT Jaipur Bench in the case of Gyan Chand Batra V/S ITO reported in 133 TTJ 482 held as under:

"Capital gains-Exemption under s. 54F– Full value of consideration vis a-vis value adopted for stamp duty–Legislature in its wisdom has referred to s. 48 in s. 50C for adopting the stamp duty value as fair market value – Hence, the deeming fiction as provided in s. 50C in respect of the words 'full value of consideration' is to be applied only to s. 48-Words 'full value of consideration' as mentioned in other provisions of the Act are not governed by the meaning of these words as mentioned in s. 50C–Hence,for ascertaining the full value of consideration as mentioned in different provisions except s.48, consideration specified in sale deed has to be considered-Thus, meaning of full value of consideration as referred to in Explanation to s. 54F(1) is not governed by the meaning of the words full value of consideration' as mentioned in s. 50C-In the instant case, the cost of new asset is not less than the net consideration-Thus, whole of the capital gain is not chargeable to tax even if the capital gain is computed by taking the value adopted by the stamp registration authority-Hence, theassessee is entitled for exemption under s. 54F"

b] PRAKASH KARNAWAT vs. INCOME TAX OFFICER [ITAT JAIPUR] REPORTED IN 49 SOT 0160

"8. We find similar facts are involved in the present case. Assessee has received sale consideration of Rs. 40,00,000 which has been invested in the Bonds in view of provisions of s. 54EC. Therefore, assessee is entitled for deduction under s. 54F. The provisions of s. 50C are applicable for the purposes of s. 48 and for the purpose of s. 54F as held by the Tribunal in case of Gyan Chand Batra (supra). Findings of Tribunal have been reproduced somewhere above in this order which were taken in ITA No. 9/Jp/2010 for asst. yr. 2006-07. Similar view has been expressed by the Bangalore Bench of the Tribunal in case of Gouli Mahadevappa (supra). Since entire amount of sale consideration has been invested in Bonds, therefore, in our view provisions of s. 50C are not applicable as held by Jaipur Bench and Bangalore Bench. Respectfully following the decisions of the Tribunal, we hold that AO and learned CIT(A) were not justified in invoking provisions of s. 50C and alternatively the capital gain shown by assessee. Accordingly the addition made and sustained by the lower authorities is deleted."

On the other hand, judgments referred to by ld. D/R in the case of Arpit Khairari vs. ITO, (2020) 116 taxmann.com 720 (Jaipur Trib.) and the judgment of Hon'ble Punjab & Haryana High Court in the case of Jagwinder Singh vs. CIT (2014) 50 taxmann.com 145 (P&H) are not applicable as the facts of the present case are altogether different. Therefore, the para materia contained in those judgments are different from the para materia contained in the present case. Therefore, considering the above discussions, we are of the view that assessee is entitled to exemption under section 54F. Thus, the disallowance made is hereby deleted.

7. In the result, appeal of the assessee is allowed."

6. On the other hand, the ld. DR relied upon the orders of the lower authorities. The ld. DR did not controverted the fact that the quantum appeal of the assessee has been allowed by this Tribunal.

7. We have heard both the parties, perused the material available on record and gone through the judicial decision relied upon by both the parties. It is not disputed that the penalty has been levied on account of denial of deduction u/s 54F of the Act. It is also not disputed that there is no other issues or grounds related to the impugned appeal before us. Considering the findings of the Tribunal in ITA No. 397/JP/2018 in assessee own case, we are of the considered view that when the quantum appeal is allowed and the deduction has been granted by this Tribunal consequently the penalty cannot hold its leg and therefore, we vacate the consequential levy of penalty at Rs. 4,17,900/-.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 28/06/2023.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judcial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 28/06/2023
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:
1. अपीलार्थी / The Appellant- Shri Lalit Kumar Kalwar, Sarwar.

2. प्रत्यर्थी/ The Respondent- ITO, Ward-2(3), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 894/JPR/2017}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar