

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'E': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.5649/DEL/2017  
[Assessment Year: 2013-14]**

Smt. Maninder Kartik, M-081, DLF Park Place, Phase-5, Gurgaon-122001	Vs	Deputy Commissioner of Income Tax, Central Circle-2, Gurgaon
<b>PAN-ABBPM5682Q</b>		
Assessee		Revenue

Assessee by	Sh. Madhur Aggarwal, Adv.
Revenue by	Ms. Jyoti Verma, Sr. DR

<b>Date of Hearing</b>	<b>14.09.2023</b>
<b>Date of Pronouncement</b>	<b>20.09.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of the Ld. CIT(A)-1, Gurgaon, dated 08.06.2017 pertaining to Assessment Year 2013-14.

2. The grounds of appeal reads as under:-

*“1. The order of the Learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.*

*2. The learned Commissioner of Income Tax (A) has erred in confirming the addition to the extent of Rs.63,72,800/- without going through the facts of the case, statutory provisions of Income Tax Act and order so passed is bad in law.*

*3. The Learned Commissioner of Income Tax (A) has erred in confirming the action of the Assessing Officer which was not based on correct facts and was against the statutory provisions of Income Tax Act.”*

3. Brief facts of the case are that the assessee is an individual. In the assessment order, the Assessing Officer made addition of Long Term Capital Gain of Rs.90,72,800/- upon sale of house property. The assessee has claimed deduction u/s 54 of the Act, however, the same was denied by the Assessing Officer.

4. Against this order, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) allowed deduction for the amount spent up to the date of filing of return of Rs.27 lakhs only. The assessee has claimed that the assessee has complied with the requirement and has made the rest of the payment in the next week itself was not accepted by the Ld. CIT(A). The order of the Ld. CIT(A) in this regard reads as under:-

*“It is a fact on record that the appellant had filed her return on 31/07/2013. Therefore, the amount utilized by her towards purchase of house or deposited in an account in a specified bank or institution, till that date only can be allowed as deduction Ws 54 of the IT Act. It is also a fact on record that the appellant had utilized only an amount of Rs. 27 lakhs towards purchase of house by that date and no amount was deposited in an account in a specified bank or institution till the date of actually filing the return of income. The excess deduction claimed by the appellant on account of amount spent on purchase of house after the actual filing of return of income is therefore not allowable.”*

5. Against the above order, the assessee is in appeal before us. We have heard both the parties and perused the records.

6. The Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the following case laws:-

- i. CIT vs Venkata Dilip Kumar (277 taxman 463) (Madras)
- ii. ITO vs Rekha Shetty (118 taxmann.com 10)(Chennai ITAT)

- iii. Amit Parekh vs ITO (170 ITD 213) (Kolkata ITAT)
  - iv. Mrs. Seema Sabharwal vs ITO (169 ITD 319) (Chandigarh ITAT)
  - v. Smt. Harminder Kaur vs ITO (188 ITD 922) (Delhi ITAT)
7. Per contra, Ld. DR relied upon the orders of the authorities below.
8. Upon careful consideration, we find that the assessee has claimed deduction u/s 54 of the Act for the Long Term Capital Gain of Rs.90,72,800/- on the ground that the amount was utilized in purchase / construction of new assets as specified in the Act. However, the Ld. CIT(A) allowed only the amount spent upto the date of the filing of return of Rs.27 Lakhs. Hence, the claim for the balance was denied on the ground that the same has not been deposited in the specified bank account as required u/s 54 of the Act. However, the case laws referred by the Id. Counsel for the assessee are in assessee's favour. In these case laws, it has been held that depositing the unutilized amount in a special account is only a procedural matter, and non-compliance thereof cannot result in negating the deduction claimed u/s 54 of the Act if the other requirements are complied with. We may gainfully refer to the order of the Hon'ble Madras High Court in the case of CIT vs Venkata Dilip Kumar reported in 277 taxman 463. In this case, it was held that where assessee is in a position to satisfy the requirements as envisaged in u/s 54(2) or 54(1) of the Act and the assessee could not be denied exemption u/s 54 for mere non-compliance of requirement under section 54(2) of the Act. Examining the present case and touchstone of the case laws, we find that

it is a claim of the assessee that the assessee has made the required payment in the next week itself from the date of filing of return. Hence, the assessee has claimed that he is eligible for deduction. We respectfully follow the decision of the Hon'ble High Court, however the factual veracity as to whether the balance payment has been done within the specified period needs to be checked by the Assessing Officer. Hence, we remit this issue to the file of the Assessing Officer to examine the payment during the specified period and thereafter pass order as per law. Both counsel are fairly agreed with the above proposition.

9. In the result, this appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> September, 2023.

**Sd/-**  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

**Delhi;** 20.09.2023.

*Shekhar,*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi