

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

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.5358/Del/2016
(ASSESSMENT YEAR 2012-13)**

Sh. Kunal Dar 221, Ashirwad Complex Green Park Main New Delhi-110 016 PAN-ADZPD 4132A	Vs.	Income Tax Officer Ward-53(3) New Delhi
(Appellant)		(Respondent)

Appellant by	Mr. Vinay Bahl, CA
Respondent by	Mr. Waseem Arshad, CIT-DR

Date of Hearing	12/09/2023
Date of Pronouncement	26/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-18, New Delhi ["Ld. CIT(A)", for short], dated 04/08/2016 for Assessment Year 2012-13.

2. Grounds taken in this appeal are as under:

"1. That the order passed u/s.143(3) of the Act dated 31.03.2015 by the Income Tax Officer, Ward 53(3), New Delhi and the orders passed by the CIT(A) XXVIII, New Delhi dated 04.08.2016, are bad in law and against the facts of the case.

2. That the Assessing Officer was incorrect to make disallowance of deposit/investment made u/s.54F into the Long term Capital Gains account scheme, much before the due date of filing the return, claiming deduction of Rs.52,54,619/- out of the LTCG earned by the appellant. The CIT(A) was incorrect to confirm the said disallowance without proper appreciation of the facts of the case.

3. That the Assessing Officer did not appreciate the material on record and ignored the same to make the disallowance.

4. That a detailed statement of facts and submissions shall be filed before the date of hearing.

5. That the appellant craves to add, amend, alter, withdraw any ground of appeal.”

3. Brief facts of the case are that, the assessee filed return of income at Rs. 7,36,270/-, the return was processed u/s 143(1) of the Act and the case was selected for scrutiny on the basis of CASS. During the assessment proceedings, on perusal of computation of income of the Assessee for Assessment Year 2012-13, it is observed by the A.O. that the assessee had shown LTCG of Rs. 52,54,619/- which was claimed to be invested in acquiring house property, accordingly claimed deduction u/s 54F of the Act amounting to Rs. 52,54,619/-. The A.O. asked to justify the claim of deduction u/s 54F of the Act, the assessee submitted that the assessee had purchased property at Nirvana Courtyard, Nirvana Country, Gurgaon (Commercial) on 24/09/2010. The A.O. observed that the assessee is already in possession of two ‘residential properties’, therefore, in view of Sub Clause (i) of proviso (a) to Section 54F(1) deduction of Rs. 52,54,619/-claimed by the assessee has been disallowed on the ground that the assessee is not entitle for the same and made addition of

Rs. 52,54,619/-. As against the assessment order dated 31/03/2015, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) dismissed the Appeal on 04/08/2016 by observing as under:-

“6.7 Thus viewed and in the light of the judgment of Hon'ble Delhi HC and ITAT Delhi the mere letting out for a commercial purpose would not let an assessee escape the rigours of proviso to sec 54F.

7. Judging the facts of the case on the anvil of the enunciation of law on interpretation of the words 'residential house' used in section 54F, the following relevant factors may be seen.

(1) That the flat at ""Aradhana Enclave" is indisputably a residential flat.

(2) As regards the other flat at Nirvana, even otherwise no evidence has been filed that it is a commercial flat, if at all.

(3) There is no finding nor evidence provided that the flat at Nirvana is not capable of being used as a residence.

(4) Mere letting out of the flat at Nirvana for commercial purpose is not enough to conclude that it is not a residential house.

(5) Thus when both the flats owned by the appellant at the time of transfer of the asset giving rise to capital gains, are residential flats, the onus to prove that one of them is commercial flat has not been discharged by the appellant.

(6) The income from both flats are chargeable to tax under income from house property as has been shown in the return by the appellant.

7.1 Thus the appellant owns more than one residential house on the date of transfer of the original asset and also the income from both the flats has been offered to tax under income from house property. Therefore as stated in para 6.1 of this order, both the conditions in proviso to section 54F (1) conjunctively stand satisfied and the proviso would be operational.

7.2 No man by the proviso, nothing contained in section 541 (would apply to the case which means the exemption 54F (1) would not be available to the appellant and the capital gain should stand fully chargeable to tax in the year it has arisen i.e. the current year.

7.3 When it is so held, the alternative contention of the AR like deposits of amount in the bank or chargeability (if at all) to tax in a different year are not considered relevant or necessary to be gone into.

8. In the result, the appeal fails and stands dismissed.”

4. Aggrieved by the order of the CIT(A) dated 04/08/2016 the assessee preferred the present Appeal on the grounds mentioned above. The Ld. Counsel for the assessee submitted that on 28/11/2011, the assessee had sold 1305 equity shares under buyback offer of M/s Paragon Constructions (P) Ltd. at Rs. 4,421/- per share of value of Rs. 57,69,405/-, the assessee on 21/12/2011 directly deposited the entire sale consideration in LTCG Account Scheme on 21/12/2011. The AR further submitted that the Assessee purchased residential house property Apartment No. 51/1, IXAI-H in Vatika City, Gurgaon, out of LTCG Account Scheme, therefore, the assessee is eligible for deduction u/s 54F of the Act. The Ld. Counsel for the assessee further

submitted that the observation of the A.O. which was confirmed by the CIT(A) that 'the assessee is already in possession of two residential property' is erroneous, where as the assessee is having only one residential property at No. 36 Adarsh Enclave, Sector 13, K. R. Puram, New Delhi, which has been inherited by the Assessee and other property C-409, IVth Floor Nirvana Courtyard, Nirvana Country Sector-50 South City-II, Gurgaon , Haryana, which is a commercial property, therefore, submitted that the Lower Authorities have committed an error in observing that 'the Assessee is already in possession of two residential properties' and rejected the claim of the Assessee u/s 54F(1) of the Act, which requires to be reversed by the Tribunal.

5. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities and submitted that the assessee had falsely claimed deduction u/s 54F of the Act which has been rightly denied.

6. We have heard both the parties and perused the material available on record. The only reason for disallowing the deduction u/s 54F of the Act to the assessee is that the assessee is already in possession of two residential properties, therefore, held that in view of Sub Clause (i) of proviso (a) to Section 54F(1) the deduction of Rs. 52,54,619/- claimed by the assessee cannot be allowed. It is the specific case of the assessee that the assessee was owing two properties, one is C-409 IVth Floor Nirvana Courtyard, Sector-50, South City-II, Gurgaon, Haryana, which is 'commercial property' and another Property No. 36, Aradhna Enclave, Sector-13, K. R. Puram, New Delhi which is a 'residential

property'. The assessee had produced conveyance deed dated 24/09/2010, wherein it is depicted that the assessee had purchased "shops/Office premises bearing No. 409 Block-C 4th floor, admeasuring super area 1262 .51 square feet (117.29 square metre) situated at Nirvana Courtyard, South City-II, Gurgaon , Haryana. But the Ld. A.O. without looking into the conveyance deed, formed an opinion that the assessee is already in possession of 'two residential properties'. Thus, we are of the opinion, that the A.O. committed error in observing the 'commercial property' as 'residential property' and also committed error in denying the claim of deduction u/s 54F of the Act to the assessee. The A.O. ought to have appreciated the fact that the Assessee owns a single residential property and should have allowed the deduction claimed u/s 54F of the Act. In view of the above discussion, we find merit in Grounds of Appeal of the assessee and deduction of Rs. 52,54,619/- claimed by the assessee is hereby allowed.

7. In the result, Appeal filed by the assessee is allowed.

Order pronounced in open Court on 26th September, 2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

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

Dated: 26/09/2023
Pk/R.N, Sr ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI