

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.477/Bang/2023
Assessment Year: 2016-17

Ranjana Kotaria No.49, 50, 10 th Cross, Pai Layout Old Madras Road Bangalore PAN NO : AFNPK8811M	Vs.	ITO Ward-4(2)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Gururaj Acharya, A.R.
Respondent by	:	Shri Nischal B., D.R.

Date of Hearing	:	13.09.2023
Date of Pronouncement	:	13.09.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 6.6.2023 for the assessment year 2016-17. The assessee has raised following grounds:

- 1. The Assessment order to the extent of the disallowance is bad in law as well as on facts and is liable to be dismissed.*
- 2. The Assessing Officer (Ld. AO or AO) has erred in disallowing Expenses incurred towards improvements/construction done to the new asset whose cost of acquisition is claimed U/s 54F of Income Tax Act.*
- 3. The Ld. AO erred in contending that the value of immovable property shall be the value as per the registered sale deed on which requisite stamp duty and registration charges are paid and that any excess amount spent for improvements/construction done to the house property*

purchased cannot be considered for the purpose of deduction U/s 54F of the Act merely because the documents are not stamped.

4. *The Learned AO has failed to appreciate the fact that such cost of improvements / construction done immediately is incurred to make the house habitable and such costs will be substantiated only by Invoices and vouchers on which there is no requirement for it to be duly stamped.*
5. *The Ld. AO has failed to appreciate that the investment in residential House would not only include the cost of purchase of the house but also the cost incurred by the assessee to make the house habitable where it is obvious that an inhabitable house cannot be equated with the residential house.*

It is a settled principle that expenditure incurred on making the house habitable should be considered as investment in purchase of the house.

The Appellant relies of the following judgements in this regard.

- a) *B.B. Sarkar vs. Commissioner of Income-Tax on 5 May, 1981 – Calcutta High Court – (1981) 132 ITR 661*
- b) *C. Aryama Sundaram Vs. The Commissioner of Income Tax-3 Madras HC*
- c) *Mrs. Gulshanbanoo R Mukhi vs Joint Commissioner of Income Tax 16th January 2002 Mumbai ITAT*
- d) *Mr. Saleem Fazalbhoj vs Deputy Commissioner of Income-tax on 29 June 2006 Mumbai ITAT*
6. *The Learned Commissioner of Income Tax (Appeals), [Ld. CIT(A)]has erred in stating that the documentary evidences were not submitted when the same were not called for at all by the ld. CIT(A), therefore, leading to denial of a reasonable opportunity of being heard.*
7. *The ld. CIT(A) has passed a non-speaking order by not pressing upon the merits of the case and hence, the grounds raised on the question of law has remained unadjudicated.*
8. *The appellant assessee craves leave to add, amend or to delete any of the grounds of appeal on or before hearing of appeal, and to file written submissions and paper book at the time of actual hearing before the Hon'ble Tribunal.*

2. Facts of the issue are that the assessee has claimed deduction u/s 54F of the Income-tax Act, 1961 [the Act for short] at Rs.5,24,89,463/-. The ld. AO restricted the deduction u/s 54F of the Act to the tune of Rs.4,71,35,289/- and rejected the deduction u/s 54F of the Act to the tune of Rs.54,59,040/- on the reason that assessee has not established her claim by producing documentary evidence. Against this assessee carried appeal before ld. CIT(A) who has confirmed the action of ld. AO. Against this assessee is in appeal before us.

2.1 Before us, the assessee has filed additional documents by taking support from Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963.

- a) An estimate of the cost to be incurred to make the house habitable duly certified by an architect.
- b) Invoice Copies from the contractor for the work done towards making the house habitable.
- c) Copies of Bank account statement extracts evidencing the payments made to the Contractor on various dates.

3. Further, the ld. A.R. made a request that these additional evidences are not produced before the lower authorities on the reason that the lower authorities have not given proper opportunity to assessee to produce these documents to suggest the incurring of this expenditure for the purpose of improvement of the residential house after purchasing the same. In our opinion, there is good and sufficient reason for not producing these evidences before the lower authorities on earlier occasion and these documents are very important to consider the deduction u/s 54F of the Act. Hence, in the interest of justice, we admit these additional evidences for adjudication. These are additional evidences produced for the first time before us and the lower authorities have no occasion to examine the same. Accordingly, these are remitted back to the file of ld. AO

to examine the claim of assessee u/s 54F of the Act in the light of above documents produced by the assessee.

3.1 Since we have remitted the issue to the file of the Id. AO, on the basis of additional evidences, at this stage, we refrain from going into the main grounds of appeal raised by the assessee which are kept open.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13th Sept, 2023

Sd/-
(Madhumita Roy)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 13th Sept, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.