

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 198/Jodh/2023  
(ASSESSMENT YEAR- 2013-14)**

Sunil Pagaria 111 Bhupalpura, Udaipur-313001.	Vs	Income Tax Officer, Ward-2(1), Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. ABEP 9645 H</b>		

(Virtual Hearing)

<b>Assessee By</b>	Shri Shyam S. Singhvi-C.A.
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	11/07/2023
<b>Date of Pronouncement</b>	09/10/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

The assessee has filed an appeal against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 27.04.2023 for the assessment year 2013-14.

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

*“1. The Ld. AO has grossly erred in law and facts to invoke & made addition u/s 154 of the Act & hence bad and void in the eyes of the law.*

2. *The Ld AO has grossly erred in law and facts in making addition of Rs. 20,54,894/- under the head LTCG disallowing exemption u/s 54F of the Income Tax Act.*
3. *The Ld. AO has grossly erred in law & facts in charging interest u/s 234 of the Act.*
4. *The appellant reserves rights to add/alter/amend/withdrawn any/all grounds of the appeal.”*

3. Brief facts of the case that the assessee is engaged in the business of Hotel and Resort as proprietor of M/s Ashwariya Restors. The assessee e-filed its return of income on 31.03.2014 declaring total income of Rs. 8,56,670/-. After processing U/s 143(1) of the Income Tax Act, 1961, the case was selected for scrutiny through CASS accordingly notice u/s 143(2) of the act dated 02.09.2014 was issued and duly served to the assessee. The assessee earned long term capital gain of Rs. 65,06,891/- and claimed exemption u/s 54F of the Act as he invested net consideration towards investment in the purchase/construction two residential houses. The assessee furnished these information in the ITR and furnished supporting documents during the course of assessment proceedings and in due appreciation of flats and law in force, it has been allowed by the Assessing Officer while completing the assessment u/s 143(3) of the Act dated 19.01.2016. The ld. AO has issued notice u/s 154 of the Act dated

25.04.2016 proposing rectification of mistake allegedly apparent from the record with respect to allowability of exemption u/s 54F restricting to Rs. 44,51,997/- on the basis of fact and provisions of section vide completed assessment u/s 143(3) of the Act dated 19.02.2016. It has thus resulted the said notice u/s 154 of the Act as a mistake apparent from the record of difference of Rs. 20,54,894/- liable for taxation under the head capital gain. The ld. AO has not considered the law full submission made by the assessee and rectified the assessment u/s 154 of the Income Tax Act and make addition of Rs. 20,54,894/- vide order dated 13.06.2018.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“In the first reply the appellant has mentioned investment in new house and in the second reply the appellant mentions that he has invested construction/purchase of residential house. He nowhere mentions about investment in different houses in the main reply. Therefore it cannot be said that the applicability of deduction u/s 54F of the Act in the circumstances of the case has been examined by the Assessing Officer and a decision has been taken. This mistake in this case is apparent from record as the appellant had submitted the details of four properties and the deduction in respect of more than house property was not allowable in this case u/s 54F of the Act. Therefore, the case laws cited by the appellant are

not applicable on this ground and further, as discussed in above paras the applicability of section 54F in case of purchase different houses is not a debatable issue, therefore the case laws cited by the appellant holding that rectification cannot be done in the cases where the issue involved is debatable, are also not applicable. In view of these facts, I hold that the Assessing Officer has correctly rectify the Assessment order on the basis of mistake apparent from record and therefore ground No. 1 and 2 of the appeal are dismissed.

4.6 The 3<sup>rd</sup> ground of appeal is regarding charging of interest u/s 234. This ground is consequential in nature and is therefore, dismissed.

In the result, the appeal is dismissed.

5. As the assessee did not receive any favor from the appeal filed before ld. NFAC/ CIT(E). The present appeal is filed against the said order of the ld. NFAC/CIT(A) dated 27.04.2023 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:-

“The appellant is an individual regularly assessed to tax derives income from business as an hotelier. It is evident from the attached computation sheet & ITR of AY 2013-14 that LTCG of Rs. 6506891/ has been claimed exemption u/s 54F as he invested net consideration towards investment in the purchase/construction two residential houses. The appellant explained the allowability of exemption on facts and law in assessment proceedings with supporting documents/papers:

- Claimed exemption in the computation sheet with relevant details. Pg No 3.
- On dated 24/11/2015 in response to questionnaire given on 16/11/2015 in personal hearing. Pg No. 6 & 8 to 45.
- On 11/01/2016 vide page no 46 to 50.

In appreciation of facts and due application of mind, exemption claimed u/s 54F has been allowed while completing the assessment u/s 143 (3) of the Act vide order dated 15.01.2016 at Pg No 51-53.

Subsequently, the then Ld. AO issued notice u/s 154 dated 25/04/2018 proposing rectification of mistake to be apparent from the record with respect to allowability of exemption u/s 54F restricting to Rs. 4451997/ instead of exemption claimed of Rs. 6506891/-.

In 154 proceedings, it has been categorically contended:

- (1) Per law in force upto AY 2014-15, the claim of exemption u/s 54F cannot be denied when investment is made in two residential houses, subject to compliance of other conditions.
- (2) Yet, on the premise of ill interpretation of section 54F and the case laws furnished, the exemption claimed u/s 54F Rs 2054894/ has been disallowed to the extent, vide rectification u/s 154.
- (3) Alternatively: how assessment completed u/s 143 (3), proceeding u/s 154 is not amenable?

Copy of reply dated 04/05/2018 attached at Pg No 54 to 97. Yet the Ld. AO did not consider without considering case laws furnished.

In first appeal, it has been argued on similar line like:

- Provision of section 54F in force up-to AY 2014-15 permit investment in more than residential house shall apply and i.e. AY 2015-16, investment has been restricted into "one" residential house. Reply & case laws reliance referred at Pg No 99 to 101 with case laws at 64 to 97.
- Provision of 154 cannot be resorted to unless there is glaring mistake of facts or law committed by the AO and not caused by different interpretation on a particular issue. Case law reliance placed be referred at Pg No 101 to 103 with case laws at 112 to 116.

Ld CIT (Appeals) dismissed the appeal on observations like:

1. None of the case law relied shows that it has been held that the word "a" used in the section 54F means multiple houses. Since the appellant has purchased three lands at different places and one of them is agriculture land also. And therefore the appellant was entitled for claim of exemption u/s 54F in respect of purchase of one flat at Rs 42 lac only. (Para 4.3 of the appellate order).
2. Provision of section 154 is amenable because- "the appellant nowhere mention about investment in different houses in the main reply. Therefore it cannot be said that the applicability of deduction u/s 54F in the circumstances of the case has been examined by the AO". (Last Para at Pg No 15 of the appeal order)

It is now pleaded before the Hon'ble Bench:

1. Claim of exemption relates to two residential houses & not three i.e. at Shobhagpura at Rs 42 lac and at Bhuvana Rs 2345406/ & not commercial. (Pg No 3, 33 & 34 with break-up, 46-51)

2. Provision of section 54F in force up-to AY 14-15 entitle the assessee to claim exemption, if the assessee 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 construct, "a" residential house.

The term "constructed, a residential house" means one house or as many houses for and up to AY 2014-15 thus has been dealt by the apex court in several cases about the term "a residential house" does not construe as meaning singular but being an indefinite article, the said expression should be read in consonance with the other words "buildings and lands" and therefore "a residential house" permits use of plural by virtue of section 13 (2) of general clauses act. The appellant has thus rightly claimed exemption u/s 54F for the investment in two residential houses within frame of section 54F.

Case laws relied by the appellant has been wrongly interpreted. These are reiterated with prayer for the reference.

3. Once exemption u/s 54F has been allowed in assessment u/s 143 (3) in due appreciation of facts and there does neither exist any mistake on record nor ambiguity in the application of the law. A change of opinion or debatable issue is not covered for the initiation of proceedings u/s 154 of the act. The Ld. CIT (Appeals) has misinterpreted the case laws relied upon before him.

Case laws relied by the appellant has been wrongly interpreted. These are reiterated with prayer for the reference.

4. The appellant prays leave from the Hon'ble Bench for admission of this additional ground i.e. The Ld. CIT (Appeals) did not provide opportunity of personal hearing through video conferencing despite specifically demanded by the appellant. Reliance is placed on following case laws:

[ 2022] 140 Taxmann.com 41 (Mum-Trib); Bank of India v/s ACIT

Held: As per rule 12 of National Faceless Assessment Scheme, 2021 (NFAS, 2021) which came into effect from 28-12-2021, personal hearing is to be granted invariably through video conferencing (VC) in all cases where request for personal hearing is made. The said amendment is curative amendment and has to be treated as retrospective in nature.

[2021] 130 taxmann.com 445 (Bom); Chander Manwani v/s NFAC

[2021] 129 taxmann.com 18 (Bom); Piramal Enterprises Ltd .v/s NFAC

[2021] 132 taxmann.com 30 (Delhi); Naina lal Kidwai v/s NFAC etc.”

5.1 The Id. AR of the assessee in addition to the above written submission submitted that the assessment in this case u/s 143(3) has already been completed. The Id. AR of the assessee submitted that the details related to deduction of section 54F of the Act have already been examined in the original assessment proceedings. For that of the matter the Id. AR drawn our attention to the order sheet entry at page 6 of his paper book filed and submission on the issue at page 7 and 8 wherein the claim of deduction claimed made has already examined. In the light of this fact that the issue has already been examined and the law does not permit to amend the order under the guise of section 154 of the Act. Therefore, prayed to quash being bad in law.

5.2 On the contentions so raised the Id. AR of the assessee also filed the gist of the decision relied upon as reiterated here in below :-

2. CIT v/s Geeta Duggal; (2013) 257 CTR (Del) 208			
Interpreted by Ld. CIT(Appeal)		Gist of judgment	Remarks
Para 4.2.2 at pg 11 of the order	"We do not think that the fact that the of residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly prohibited."	Para 8 of the order at pg No. 68-69 of PB	With due regards, it has been wrongly distinguished by Ld. CIT(A)
2. Smt. Hansabaisanghvi v/s ITO ; (2004) 89 ITD (Hyd) 239			
Para 4.2.3 at pg 12 of the order	he assessee utilized the sale proceeds on of the sale of plot of land, for the purchase of a house bearing municipal No. 19-5-9/97(54B MIGH), Bahadurpura Colony, Hyderabad on 1- 7-1998 for a consideration of Rs.	Para 8,9, & 11 of the order at pg No. 76-77 of PB	No adverse inference drawn by Ld. CIT(A)

	<p>3,95,000. The vendor of this house purchased it from the A.P. Housing Board, vide sale deed dated 2-3-1988. When it was bought from the A.P. Housing Board, it consisted of only ground floor. Subsequently, first floor was put up thereon. The assessee purchased this first floor of the building on 15-7-1998. Thus, the ground floor of the building, with built up area of 1750 sq.ft. alongwith 50% undivided share in the land (viz. 171 sq.yds.) was bought by the assessee under the first sale deed dated 1-7-1998 for a consideration of Rs. 3,95,000, and the first floor of the building with a built up area of 1600 sq.ft. alongwith 50% undivided share in land (viz. 171 sq.yards) was bought by the assessee under the second sale deed dated 15-7-1998 for a consideration of Rs.2,85,000.. Both the ground and first floors purchased under two separate sale deeds as noted above, bear the same municipal No. 19-5-9/97(54B MIGH). Thus, the matter in this case pertains to construction of another floor of the same building."</p>		
3. George Britto Jesudas v/s ITO; ITA No. 298/Mum/2016 AY 2012-13			
Para 4.2.4 at pg 12 of the order	“against the said long term capital gains, the assessee acquired two residential flats namely a) Mayurshrishti for Rs. 38,03,010/- and b) Shanti Gardens for Rs. 37,73,590/- comprising two agreements.”	Para 11 & 12 of the order at page No. 80-81 of PB	No adverse inference drawn by ld. CIT(A)
4. CIT v/s D Ananda Basappa; (2009) 309 ITR (Kar) 329			
Para 4.2.5 at pg 12 of the order	8. On facts, it is shown by the assessee that the apartments are situated side by side. The the order builder has also stated that he has effected modification of the flats to make it as one unit by opening the door in between TWO apartments. The fact that at the time when the inspector inspected the premises, the flats were occupied by two different tenants is not the ground to hold that the apartment is not a one residential unit. The fact that the assessee could have purchased both the flats in one single sale deed or could have narrated the purchase of two premises as one unit in the sale deed is not the ground to hold that the assessee had no intention to	Para 5 to 8 of the order at Pg No. 91-92 of PB	No adverse inference drawn by Ld. CIT(A) if para 5 to 8 is read together.

	purchase the two flats as one unit."		
5. CIT v/s Khoob Chand M. Makhija; ITA No. 496/2007 (Karna HC) 2013			
Para 4.3 at pg 13 of the order	However, we make it clear that while interpreting this word, the Court or the Tribunal the order or the authorities have to keep in mind the facts of the particular case. When we have held "a" cannot be read as singular, it also cannot be read as multiples and so as to avoid paying tax under Section 45 of the Act.	Para 4 to 18 of the order at Pg No. 84-87 of PB	No adverse inference is drawn by Ld. CIT(A)

Reliance further placed on the following case laws:

[2020] 114 taxmann.com 508 (A'bad-T); MohdSultanaliPradhan v/s DCIT

Section 54F of the Income-tax Act, 1961- Capital gains Exemption of, in case of investment in residential house (Purchase of two adjoining flats) Assessment year 2015-2016 During relevant year, assessee claimed exemption under section 54F on long-term capital gain invested in two bungalows which were adjacent to each other and used as one residential unit Assessing Officer disallowed same on ground that assessee could have claimed exemption under section 54F with respect to investment in one bungalow only However, under provisions of section 54F. no definition/clarification about area of residential property, has been provided, hence, one assessee can buy huge bungalow/property say thousand square meters and can claim deduction subject to conditions Whether therefore, assessee could not have been deprived of benefit conferred under statute merely on reasoning that there were two different registries of buildings/properties as from point of view of assessee, it was single property- Held, yes- Whether further, in view of fact that both properties purchased by assessee were located in same geographical area, assessee would be entitled for exemption provided under section 54F- Held, yes (Paras 7.1, 7.2 and 7.4) [In favour of assessee].

[2017] 291 CTR 272 (P & H); PCIT v/s Anil Nagpal

Section 54F of the Income-tax Act, 1961 Capital gains Exemption, in case of investment in residential house (Reassessment) Assessment year 2007-08- Where issue as to whether property that was purchased by assessee constituted one flat or two flats for purpose of exemption under section 54F was examined by Assessing Officer in original assessment,

reopening of assessment to disallow exemption under section 54F on same facts was not sustainable [In favour of assessee].

[2022] 138 taxmann.com 445 (Delhi - Trib.); SarojArora v/s ITO

Section 54 of the Income-tax Act, 1961-Capital gains Profit on sale of property used for residence (One Residential house) Assessment year 2013-14 During year, assessee had received long term capital gain (LTCG) on sale of a residential property which was set-off towards purchase of two residential properties - Accordingly, assessee sought exemption under section 54 - Assessing Officer in view of amended provision of section 54 restricted assessee's claim to purchase value of only one property having higher value Whether since amendment to provision of section 54 restricting deduction allowed under section 54 to only one residential property was applicable prospectively from 1-4-2015, exemption claimed by assessee under section 54 during assessment year 2013-14 would not fall within ambit of amended provision Held, yes Whether, therefore, assessee was entitled to benefit of exemption under - section 54 to extent of value of two residential house properties and not just one Held, yes [Para 17] [In favour of assessee]

The case law placed reliance by Ld CIT (Appeals) vide at Pg No 14 of the order by P&H High Court in Pawan Arya v/s CIT 237 ITR 2010 pronounced on 13/12/2010 may not get credence as series of cases by the apex court thereafter has been held in favor of the appellant.”

6. Per contra, the ld. DR relied in para 4 of order of the ld. CIT(A) and prayed that the ld. CIT(A) order be sustained.

7. We have heard rival contentions and perused the materials available on record. The dispute under this appeal is the claim of exemption u/s 54F of the Act claimed by the assessee. The claim is duly reflected in the return of income filed by the assessee (APB 1 to 3). In the original assessment

proceedings, the issue related to the claim made u/s 54F was raised vide order sheet entry dated 16.11.2015 a reply to this order sheet entry filed on 24.11.2015 (APB 7&8). Considering all these evidences placed on record, we are of the view that the claim of the assessee was very well considered in the proceedings u/s 143(3) completed on 15.01.2016. Thereafter invoking the provisions of section 154 of the Act to reconsider the claim of section 54F of the Act vide order passed u/s 154 of the Act dated 13.06.2018 is bad in law. Thus, based on these conspectus of the case we are of the considered view that the action of the Assessing Officer passing an order u/s 154 of the Act is incorrect and bad in law. The provision of section 154 as reproduced here in below does not permit to do so:-

**“Rectification of mistake.**

**154.** (1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in [section 116](#) may,—

- (a) amend any order passed by it under the provisions of this Act ;
- (b) amend any intimation or deemed intimation under sub-section (1) of [section 143](#);
- (c) amend any intimation under sub-section (1) of [section 200A](#);
- (d) amend any intimation under sub-section (1) of [section 206CB](#).

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned—

- (a) may make an amendment under sub-section (1) of its own motion, and
- (b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor or by the collector, and where the authority concerned is <sup>71</sup>[\[the Joint Commissioner \(Appeals\) or\]](#) the Commissioner (Appeals), by the Assessing Officer also.

- (3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.
- (4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.
- (5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or the collector.
- (6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under [section 156](#) and the provisions of this Act shall apply accordingly.
- (7) Save as otherwise provided in [section 155](#) or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.
- (8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—
- (a) making the amendment; or
  - (b) refusing to allow the claim.”

Based on these facts, we are of the view that under the law on one is permitted to review own order, the provision of section 154 of the Act does not permit to revisit the claim that has already been allowed. The Bench also noted that in this case the assessee was already confronted on the claim u/s 54F of the act and the same has been examined on its merit under the guise of section 154 of the Act the claim which has already been considered at length cannot be revised u/s 154 of the Act considering the arguments recorded

hereinabove and discussion considering the various decision cited we quash the order passed u/s. 154 of the Act. Based on these observation ground No. 1 raised by the assessee is allowed. The ground no. 2 being the issue raised on merits, since we have considered the technical ground no. 1 ground no. 2 becomes educative in nature. Ground No. 3 is consequential in nature and ground No. 4 being general in nature and does not require any adjudication.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 09/10/2023

*\*Santosh*

Copy to:

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2. The Respondent
3. The CIT
4. The CIT(A)
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Assistant Registrar  
Jodhpur Bench