

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

**Before Shri Saktijit Dey, Hon'ble Vice President
&
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 516/Del/2023 : Asstt. Year: 2015-16

Ashok Jang Bahadur Mathur F-2101, Grand Arch, Sector 58, Gurugram 122011, Haryana	Vs	The ACIT, Circle International Taxation 2(2)(1), Delhi 110002
(APPELLANT)		(RESPONDENT)
PAN No. AONPM 8539 F		

**Assessee by : Ms. Renu Suri, CA
Sh. Tarun Khandari, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 10.10.2023	Date of Pronouncement: 21.12.2023
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ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the assessee against the order of Assessing Officer dated 27.01.2023 for the AY 2015-16.

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

- 1. That the order is bad in law and against the fact of the case.*
- 2. That the Ld. Assessing Officer has ignored the observations made in the DRP order.*
- 3. That the Ld. Assessing officer has erred by stating that the appellant has not submitted any registry and/or any builder buyer agreement of the Gurgaon property, which could prove assessee's eligibility of Section 54 exemption related to construction of house within three years as given under the provisions of the Act.*

Even though, appellant has submitted the copies of Conveyance Deed and possession letter.

4. That the Ld. Assessing Officer has erred by stating that payment of Rs.1,29,00,000/- made through bank doesn't mention the name of the seller and conveyance deed is also silent about the said receipt. Though conveyance deed highlights the payment in totality and possession of the property has already been received by the appellant.

5. That the Ld. Assessing Officer has erred by not raising the point related to the Rs.1,29,00,000/- before/during the assessment proceedings.

6. On the facts and circumstances of the case and in law the Ld. Assessing Officer has erred by initiating the penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961.

3. During the course of assessment proceedings the assessee, vide statutory notice u/s 142(1) of the Income Tax Act, 1961 was issued asking him to submit the details of property bought during the FY 2014-15. The assessee has submitted details against the notice issued. On perusal the documents submitted by the assessee, the Assessing Officer found that he has sold an immovable property, Flat No. 261, Pkt -1, Dwarka, New Delhi at the sale consideration of Rs. 70,00,000/- on 17.04.2014. The assessee has received Long Term Capital Gain of Rs. 53,73,285/- which assessee claimed exemption u/s 54 against the purchase of property Apartment No. F 2101, The Grand Arch, Gurgaon - 122011 acquired vide Possession letter dated 04.07.2016 and conveyance deed dated 29.04.2016. In this case, the original asset was transferred on 17.04.2014. Assessee has computed Capital Gain of Rs. 53,73,285/-. The AO held that the Assessee must purchased new asset within 02 years of transfer i.e. before 17.04.2016. The possession of new asset was taken 04.07.2016 and conveyance deed was executed

on 29.04.2016. Hence the AO held that new asset cannot be considered as acquired within 02 years of transfer of original asset.

4. Heard the arguments of both the parties and perused the material available on record.

5. The facts on record are totally different. The assessee sold residential property on 17.04.2014 for Rs. 70,00,000/- and the entire sale proceeds were invested from 01.05.2014 to 08.07.2014 in purchase of property named " The Grands Arch" from the builder "Ireo".

6. CBDT Circular No. 672 dated 16.12.1993 reads as under:-

429. Whether allotment of flats/houses by co-operative societies and other institutions, whose schemes of allotment and construction are similar to those of DDA, should be treated as cases of construction for purposes of sections 54 and 54F

1. Attention is invited to Board's Circular No. 471, dated 15-10-1986. It was clarified therein that cases of allotment of flats under the Self-Financing Scheme of the Delhi Development Authority (DDA) should be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act. The Board has since received representations that even in respect of allotment of flats/houses by co-operative societies and other institutions, whose schemes of allotment and construction are similar to those of Delhi Development Authority, a similar view should be taken.

2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No. 471, dated 15-10-1986 (Sl. No. 428), such

cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act.

7. Since the assessee has invested the entire sale proceeds for the purchase of new house within three months of sale of the old house, the assessee is eligible for claim of exemption of u/s. 54F.

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

Order Pronounced in the Open Court on 21/12/2023.

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 21/12/2023

NV, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, DELHI