

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ ITA. No. 511/JPR/2023  
निर्धारण वर्ष/ Assessment Years : 2016-17

Indira Giri 1287, Mali Mohalla, outside Chandpole Gate, Jaipur.	बनाम Vs.	Assessing Officer, Ward-2(5), Income Tax Office, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABBPG 7713 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Sandeep Manik (C.A.)  
राजस्व की ओर से/ Revenue by : Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 07/11/2023  
उदघोषणा की तारीख/ Date of Pronouncement : 02/01/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2016-17 dated 12.06.2023, which in turn arises from the order passed by the AO ITO Wd-2(5), Jaipur passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 22.12.2018.

2. The assessee has marched this appeal on the following

grounds:-

“1. On the facts and circumstances of the case, the Ld. CIT (A), NFAC has erred in law in upholding the action of Ld. AO in denying relief u/s. 54 F of the Act, on the ground, that the assessee has failed to deposit the unutilized amount of Rs. 80,22,354/- in the Capital Gain Account out of the total investible/exempted amount u/s 54F Rs.1,08,22,354/-, ignoring the fact that assessee had already issued cheques for the unutilized amount on the date of the agreement before the due date of furnishing ITR, therefore deposit in Capital Gain Account for Compliance u/s 54(2) was impossible on the part of the assessee.

2. That under the facts and circumstances of the case, the Ld. CIT (A) NFAC has erred in law by ignoring the circular No. 471 dt. 15/10/1986 and 672 dt. 16/10/1993 which lays own that payment to the builder in instalments is sufficient compliance for claiming exemption u/s 54F.

3. Under the facts and circumstances of the case the Ld. CIT (A), NFAC has grossly misinterpreted the beneficial provisions of Sec. 54 F of the Act without appreciating the intention of the legislature behind the introduction of these provisions.

4. That the appellant craves leave to reserve to itself the right to add, alter, amend, substitute, and withdraw and/or any ground(s) of appeal at or before the time of the hearing.”

3. The fact as culled out from the records is that the assessee filed her return of income on 14.12.2016 declaring total income of Rs. 14,99,850/- which was processed u/s 143(1) of the Act. The case of the assessee was selected for limited scrutiny under CASS. Notice u/s 143(2) of the Act was issued on 26.09.2017 and served upon the assessee. Subsequently, a notice u/s 142(1) of the Act has been issued along with questionnaire through ITBA/E-

mail on 24.07.2018 fixing the date of hearing on 08.08.2018. The Id. AR of the assessee submitted his reply online through e-filing portal. He has submitted copy of return of income along with computation of income, bank statements, balance sheets, sale and purchase deed of the property sold/purchased etc. for the financial year 2015-16 relevant to assessment year 2016-17. Document submitted has been checked and placed on record. During the year under consideration, the assessee has sold two immovable property for a total sale consideration of Rs. 1,49,00,000/-. In the computation of capital gain, assessee has claimed deduction u/s 54F for an amount of Rs. 1,03,06,141/-. In support of his claim, assessee has submitted copy of agreement to sell of residential property purchased by her for a consideration of Rs. 1,08,22,354/-. However, as per agreement to sale submitted by her, she has paid a sum of Rs. 28,00,000/- only at the time of agreement out of the total sale consideration of Rs. 1,08,22,354/- towards the purchase of flat. As the assessee has not paid full amount the Id. AO called for proof of deposit of unutilized amount in capital gain account. In fact the assessee utilize full amount towards purchase of flat as per computation and in support of the claim the assessee has filed a certificate of builder stating that the assessee has issued the

post dated cheques, but due to unavoidable circumstances the same were not presented to the bank. This reply of the assessee has been considered by the Id. AO but found not acceptable. The reason behind that a certificate from the builder in which he admits to have received the post dated cheque from the assessee but neither in the reply filed by the assessee nor in the certificate issued by the builder contains the details of cheques like cheque no., drawer bank name, date of cheque etc. The Id. AO further noted that in agreement to sale, there is nowhere mentioned any detail of subsequent payment made to builder. In the reply submitted by the assessee, she says that she has given cheque and discharged the full payment liability whereas builder is saying that he has received post dated cheque from assessee. Issuing post dated cheque does not discharge liability of payment. Thus, Id. AO contended that proof of payment toward investment in house property before the date of filling the return of income is not conclusive. The assessee also not deposited the money in the capital gain account scheme the claim of investment in house property u/s. 54F is restricted to Rs. 28,00,000/- only as against the claim made of Rs. 1,08,22,354/- accordingly claim to the extent of Rs. 66,41,252/- was not considered as allowable.

4. Aggrieved from the above order of the Assessing Officer, an appeal before the Id. CIT(A) was preferred by the assessee. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:-

“4.1 The contention of the appellant, the case laws relied upon in the statement of facts and the grounds of appeal have been considered. The order u/s 143(3) of the Act passed by the AO, ITO, Ward-2(5), Jaipur has also been perused.

5. Ground No.1: In ground No. 1, the appellant has challenged that the AO has erred by denying the exemption u/s 54F. In the modified ground No. 1, the appellant has stated the unutilized amount was Rs. 80,22,354/- in the capital gain account out of total investible/exempted amount u/s 54F Rs. 1,08,22,354/-. In the original ground No.1 the unutilized amount was mentioned as Rs. 75,06,141/- in the Capital Gain Account out of total investible/exempted amount u/s 54F Rs. 1,03,06,141/-.

5.1. The appellant filed her return of income for the A.Y. 2016-17 on 14.12.2016 declaring total income of Rs. 14,99,850/-, which was processed u/s 143(1). During the year under consideration, the appellant has sold two immovable property for a total sale consideration of Rs.1,49,00,000. In the computation of capital gain, appellant has claimed deduction u/s 54F for an amount of Rs. 1,03,06,141/-. The appellant submitted copy of agreement to sell of residential property purchased by her for a consideration of Rs.1,08,22,354/- before the AO. The AO noted that as per agreement to sale submitted by her, she had paid a sum of Rs.28,00,000/- only at the time of agreement. The AO asked her to furnish proof of deposit of unutilized amount in Capital Gain account. That appellant stated that she had utilized full amount towards purchase of flat as per computation. Hence there was no need to deposit in capital gain account. The appellant explained that she had given cheques of Rs.21 Lakh, Rs 21 Lakh, Rs 21 Lakh & Rs 21,27,660 total Rs. 1,13,67,660/- (1,08,22,354 + 4,73,206 service tax +71,500/- VAT) at the time of agreement and discharged full payment liability. The appellant submitted before the AO, a certificate from the builder from whom flat was purchased, wherein the builder certified that he had received full

payment against flat booking no. 701 through Post dated cheques from Dr. Indira Giri on dt. 1-3-16, but admitted that the cheques were not presented to the bank.

The AO did not accept the explanation of the appellant. The AO observed that the builder did not mention detail of the cheques like cheque no., drawer bank name, date of cheque etc., the agreement to sale did not mention any detail of subsequent payment made to builder; in the reply before the AO, the appellant stated that she had given cheque and discharged full payment liability, the builder stated that he had received post-dated cheques, and post-dated cheque cannot be encashed before the dates on the respective cheque. The AO concluded that the proof of payment toward investment in house property before the date of filing the return of income was not conclusive and the appellant had not given any proof of deposit in capital gain account scheme. The AO restricted the claim of investment in house property u/s 54F to Rs 28,00,000 only, as against claim made of Rs. 1,08,22,354/- and the deduction u/s 54F was recomputed proportionally as per provision of section 54F (1)b of the Income Tax Act.

5.1.1. In the computation of income, the appellant had claimed Rs.1,20,380/- as cost of acquisition, which was supported by a purchase deed of both the property. The AO noted that that the total cost of both the property amounted to Rs.1,02,225/- (Rs. 87,725/- Rs.14,500/-) and stamp duty expense amounted to Rs. 11,385/- (Rs. 10,155/- Rs 1230/-). Hence, total cost of acquisition amounted to Rs 1,13,610 (Rs. 1,02,225/- Rs.11,385/-) as against claim of Rs 1,20,780/- . The AO restricted the cost of acquisition to Rs. 1,13,610/- and a sum of Rs. 6770/- (Rs 1,20,780/-less Rs 1,13,610/-) was disallowed and the AO recomputed the indexed cost of acquisition accordingly.

5.1.2. The AO found that the appellant had invested a sum of Rs.50,00,000 in specified bonds of NHAI to claim deduction u/s 54EC and in the return of income, she had claimed Rs. 39,68,855/- only as against admissible claim of whole amount of Rs 50 Lakh. The AO observed that in view of the disallowance made u/s 54F, the appellant was given full deduction of Rs 50 Lakh admissible u/s 54EC of the Income Tax Act. Order u/s 143(3) was passed on 22.12.2018, determining the income at Rs.81,41,102/-.

5.2. The appellant has stated that she had earned capital gains of Rs.1,42,74,996/- arising due to sale of agricultural land located at village Mahurana Patwar, Halka Sinta, Tehsil Taleda, Distt. Bundi

through two sale deeds (Khasra No. 1203 Rakba 6 Bigha 1 Biswa and 1/4 of Khasra No.752, Rakhba 4 Bigha 19 Biswa) for a total consideration of Rs.1,49,90,000/- on 16/10/2015. The appellant invested Rs. 50,00,000/- in eligible bonds of National Highway Authority of India (NHAI) and claimed the exemption u/s 54EC of the Income Tax Act, 1961. The appellant also booked a new residential house i.e. Flat No.701 situated at Plot No. 92, Shakti Nagar, Dushara Scheme, Kota with Parth Infraworks Private Limited, Kota for a total consideration of Rs.1,08,22,354/- and claimed exemption u/s 54F. Part Payment of purchased consideration was made through A/c Payee Cheque No.032005 for Rs.28,00,000/- and Cheque No. 032007 for Rs. 1,40,000 drawn on Central Bank of India, Dadabari Branch, Kota SB Account No. 00000001703080072 which were encashed by the builder on 02/03/2016 and on 29/03/2016 respectively. The appellant has submitted that the balance purchase consideration was paid by the appellant through Post-dated/Undated Cheques in favour of the builder, however, the builder did not encash the cheques for balance consideration till 31/07/2016 ie, due date for filing of ITR for AY 2016-17.

The appellant's main argument is that she had issued cheques on the date of agreement itself i.e. 01/03/2016, however those cheques have been encashed by the builder belatedly on 01/03/2019 and the appellant should not be penalized for the inaction of the builder and once cheques have been issued, appellant's liability gets fulfilled.

The appellant has relied upon the following case laws:

- K Saraswathy alias K Kalpana (Dead) By Legal Heirs vis PSS Somasundaram Chettiar (supreme Court)
- ITO (IT) 3(3)(1) Vs. Akansha Ranju Pilani vide I.T.A. No. 4769/Mum/2015 (Assessment Year 2012-13)

5.3. The contention of the Appellant, Grounds of appeal, the statement of facts. online submissions of the appellant and the case laws relied upon and the assessment order have been considered. In the modified ground no. 1, the appellant has stated the unutilized amount was Rs.80,22,354/- in the Capital Gain Account out of total investible/exempted amount u/s 54F Rs. 1,08,22,354/-which figure tallies with the figure mentioned by the AO in the assessment order. During the year under consideration, the appellant had sold two immovable property for a total sale consideration of Rs. 1,49,00,000/-. In the Computation of capital, appellant had claimed deduction u/s 54 F

for an amount of Rs. 1,03,06,141/-. In support of her claim, appellant had submitted copy of agreement to sell of residential property purchased by her for a consideration of Rs. 1,08,22,534/-. However, as per agreement to sale submitted, she had paid a sum of Rs. 28,00,000/- only at the time of agreement. The AO did not allow the part of the claim of exemption u/s 54F for failure to deposit the balance consideration in Capital Gains Account and restricted the deduction u/s 54F to Rs. 28,00,000/- and disallowed the balance claim of Rs. 80,22,354/- (Difference of total consideration of Rs. 1,08,22,354/- minus en-cashed amount of Rs. 28,00,000/-). The appellant's main argument is that she had issued cheques on the date of agreement itself i.e. 01/03/2016; the builder mentions that he was given post-dated cheques. The cheques were encashed as late as 01/03/2019. This explanation of the appellant is hard to accept and confusing. The deposit in the Capital Gains Account Scheme is mandatory requirement and the appellant has failed to fulfill the said requirement. I find no reason to interfere with the AO's order on this issue. Appeal on Ground no. 1 is dismissed. 6. Ground No. 2 is general in nature and therefore not adjudicated.

7. In the result, the appeal is dismissed.”

5. Feeling dissatisfied with the above order of the Id. CIT(A) the assessee has preferred the present appeal before the Tribunal on the grounds as stated in para 2 above. In support of the various grounds so raised by the Id. AR of the assessee reiterated the written submission which is reproduced hereinbelow:-

1. Assessee sold urban agricultural land for a consideration of Rs. 1,49,90,000/- on 16/10/2015. Besides investing Rs. 50 Lacs in the NHA Capital Gain Bonds on 16/02/2016, assessee booked a residential Flat No. 701, Sundeck, Shakti Nagar, Kota for a total cost of Rs. 1,13,67,660/- (Cost Rs. 10822354/- + Service Tax Rs 545306/-) on 01/03/2016. Assessee made the following payments, at the time of booking, to the builder (Paarth Infracore Pvt. Ltd.) :

S. No.	Cheque No.	Drawee Bank	Debited in the Bank on	Amount	Remarks

1.	032005	Central Bank of India, Dadabari Branch, Kota	02/03/2016	2800000/-	Booking Amount
2.	032007	-do-	29/03/2016	140000/-	Service Tax/VAT
3.	-	TDS deposited u/s 194IA	31/03/2016	28000/-	@ 1%

Builder assured the possession of the flat within 18 months and collected the balance amount of Rs. 8022354/- by way of post-dated/undated cheques, while executing the agreement.

2. Assessee e-filed ITR-2 on 14/12/2016 declaring the Gross Total Income of Rs. 14,99,850/-. In the ITR, the assessee disclosed the 'Capital Gains' as under:

S. NO.	PARTICULARS	AMOUNT	AMOUNT
A	Total Consideration of Capital asset		1,49,90,000/-
B	Less: Indexed Cost		715004/-
C	Capital Gain (A-B)		14274996/-
D	Less: Deduction u/s 54EC	39,68,855/-	
E	Less: Deduction u/s 54F(1)	103,06,141/-	14274996/-
F	Capital Gain liable for Tax		NIL

3. Construction of the flat was delayed by builder and finally the registration and possession of the flat was completed on 08/07/2021. Encashment of the cheques by builder was also delayed accordingly. *(Please see the registered deed at the PB No. 45 - 72)*
4. ITR was picked up for 'Limited Scrutiny' vide Notice u/s 143(2) dated 26/09/2017 for the following reasons:
- Whether Deduction from capital gains has been claimed correctly?
  - Whether Investment and Income relating to properties duly disclosed?
5. Vide the assessment order dated 22/12/2018, the Ld. AO granted the part exemption of Rs. 2800000/- out of the claimed amount of Rs.

103,06,141/- u/s54F(1), and rejected the balance claim on the ground that:

a) Issuing of post-dated cheque does not discharge the liability of payment on the date of writing the cheque as the drawee cannot encash it before the date of cheque,

and

b) assessee has failed to deposit the balance amount of Rs. 80,22,354/- in the Capital Gain Account Scheme (CGAS) before the due date of filing ITR u/s 139, as stipulated u/s 54F(4) of the Income Tax Act, 1961 and, recomputed the Capital Gain Tax as under:

S. NO.	PARTICULARS	AMOUNT	AMOUNT
A	Total Consideration of Capital asset		1,49,90,000/-
B	Less: Indexed Cost		674793/-
C	Capital Gain (A-B)		1431596/-
D	Less: Deduction u/s 54EC	50,00,000/-	
E	Less: Deduction u/s 54F(1) (on the payment of Rs. 28 Lacs)	26,73,955/-	76,73,955/-
F	Capital Gain liable for Tax		66,41,252/-

6. Ld. CIT(A), NFAC, Delhi upheld the order of the Assessing Officer on the ground that Assessee has failed to deposit the unused amount in the CGAS.

Appellant is making submissions on the various grounds raised before your honors.

#### **GROUND NO. 1:**

**On the facts and circumstances of the case, the Ld. CIT (A), NFAC has erred in law in upholding the action of Ld. AO in denying relief u/s. 54F of the Act, on the ground, that the assessee has failed to deposit the unutilized amount of Rs. 80,22,354/- in the Capital Gain Account out of the total investible/exempted amount u/s 54F Rs.1,08,22,354/-, ignoring**

**the fact that assessee had already issued cheques for the unutilized amount on the date of the agreement before the due date of furnishing ITR, therefore deposit in Capital Gain Account for Compliance u/s 54F(4) was impossible on the part of the assessee.**

### **SUBMISSIONS:**

- 1.1 Ld.CIT(A) did not grant the relief for the claim of exemption u/s 54F on the ground that depositing unused balance in 'Capital Gain Account Scheme'(CGAS) is a mandatory requirement for exemption u/s 54F.
- 1.2 Appellant booked a new residential flat (under Construction) i.e. Flat No. 701, Shakti Nagar, Kota with builder M/s Paarth Infracore Private Limited, Kota in their project "Sundeck" for a total consideration of ` 1,08,22,354/- + Taxes by executing an agreement dated 01/03/2016, with a view to have own residential house and claim exemption u/s 54F.

Part Payment of the purchase consideration was made through Cheque No.032005 for Rs 28,00,000/- and Cheque No. 032007 for 1,40,000/- drawn on Central Bank of India, Dadabari Branch, Kota from her Savings Bank Account No. 1703080072 which were encashed by the builder on 02/03/2016 and on 29/03/2016 respectively. While executing the Agreement on 01/03/2016, the balance amount of 84,27,600/- was also paid through undated/post-dated cheques drawn in favor of the builder on SB A/c at Central Bank of India, Dadabari, Kota.

- 1.3 In spite of continuous reminders by the assessee for encashment of the cheques for balance consideration, the builder did not encash the cheques as the project could not be completed in time due to following main reasons:
- i) The project was started in FY 2013-14 and the builder had applied for permission for 0+9 floors construction from Nagar Nigam, Kota.
  - ii) The builder constructed the building up to the 7<sup>th</sup> floor in anticipation of the permission from Nagar Nigam, Kota.
  - iii) Nagar Nigam, Kota did not give permission for 0+9 floors and stopped the construction activities in FY 2017-18.
  - iv) The site plan of the project was finally approved by the Nagar Nigam, Kota vide their order No NNK/18/23948-51 dated 18/03/2018.
  - v) The Project was also approved by Real Estate Regulatory Authority (RERA), Rajasthan vide its registration No RAJ/P/2019/957 dated 19/04/2019

- vi) Subsequently, the project was completely stalled due to nationwide lockdown to contain the spread of the COVID-19 for almost two years i.e., 2019-20 and 2020-21.
- vii) On getting the approvals from authorities and resuming construction work post-corona, the project was finally completed in the year 2021 and the flat was registered on 08/07/2021 in the favour of assessee (Smt. Indira Giri).  
(Please see the affidavit of the assessee at PB No. 76 -77)

1.4 In order to discharge the liability of Rs. 84,27,600/- towards payment of post-dated cheques, Assessee had the bank balance Rs. 90.22 Lacs (78.67 Lac in FDR and Rs. 11.55 Lacs in SB A/c) as on 01/4/2016. This balance was maintained thorough-out the construction period, and used solely for the payment of post-dated cheques issued to builders. Until the payment of cheques, amount was kept in a FD Account and the money was never used for anypurpose other than the payment to the builder. (Please see the copy of FDR bank account at PB No. ---).

1.5 The actual encashment of cheques by builder are as under:

S.NO	CHEQUE NO	DRAWN ON	NET PAYMENT	TAXES	TOTAL AMOUNT	DATE OF ENCASHMENT
1.	032005	CBI	2772000/-		27,72,000/-	01/03/2016
2.	147749	CBI	1785714/-	214286/-	20,00,000/-	01/03/2019
3	160163	CBI	1785714/-	214286/-	20,00,000/-	16/04/2019
4	160167	CBI	1339285/-	160715/-	15,00,000/-	17/08/2019
5.	160180	CBI	892857/-	107143/-	10,00,000/-	07/07/2020
6.	187861	CBI	2138560/-	266251/-	24,04,811/-	06/07/2021
7.			108224/-		1,08,224/-	TDS DEDUCTED AND DEPOSITED @ 1% U/S 194IA
<b>TOTAL</b>			<b>10822354/-</b>	<b>962681/-</b>	<b>11785035/-</b>	

1.6 Ld. CIT(A) and Assessing Officer ignored the genuine difficulties of the assessee and, held that assessee has failed in depositing the unused amount by 31/07/2016 in 'Capital Gains Account Scheme'

(CGAS) and considered the payment of Rs. 28 Lacs only as eligible for exemption u/s 54F.

'Doctrine of Impossibility' lays down that Law does not compel any one to do anything which is not possible. A law cannot be interpreted in vacuum. It has to be interpreted having regard to the facts and circumstances involved in each case.

Lower authorities ignored the plea that when the assessee had already issued post-dated/undated cheques to builder pursuant to a legally binding contract, it was impossible on assessee's part to arrange separate funds to make deposits under CGAS also.

- 1.7 In order to buttress her point of having issued the post-dated cheques to builders at the time of agreement, Assessee had produced a certificate issued by builder also before the lower authorities. The copy of the certificate is as under:

	<b>PAARTH INFRAWORKS PVT. LTD.</b>	
<b><u>TO WHOM SO EVER IT MAY CONCERN</u></b>		
<p>This is to certify that we have received full payment against flat booking no. 701 through Post dated cheques from Dr. Indira giri on dt:-1-3-16. But due to some unavoidable circumstances we could not present the cheques to bank.</p>		
<p>For Paarth Infra Works Pvt LTD.</p>		
<p> Manager (Accounts)</p>		
<p><b>Reg. Office</b> Plot No. 92, Shakti Nagar, Cad Circle, Nr. Dolphin Park, Kota, Rajasthan, INDIA. Tel.: + 91 744 6063000</p>	<p>E-mail: <a href="mailto:info@paarthgroup.in">info@paarthgroup.in</a></p>	<p>Website: <a href="http://www.paarthgroup.in">www.paarthgroup.in</a></p>

*(Please see Certificate of builder at PB Page No 44).*

- 1.8 Assessee had already issued the cheques on the date of agreement i.e. 01/03/2016, which could be presented any time and dis-honoring those cheques could expose the assessee to serious legal problems. Required amount was kept in a separate FDR account and just because the amount was not deposited in CGAS, she can not be deprived of the exemption. Investment of net sale consideration in new residential property is important rather than keeping the net sale consideration in a separate Capital Gain Scheme Account. Assessee relies upon the following judgements, which held that such technicalities should be ignored and the benefit be granted, even when the money was not kept in CGAS:

ISSUE BEFORE THE HON'BLE TRIBUNALS/COURTS

***A) Whether the failure to deposit in Capital Gain Account Scheme but investing in the Housing sector is only a technical defect and benefit u/s 54F has to be allowed ? :***

**1.9.1 CIT Vs. Shri K Ramachandra Rao, (2015) 56 taxmann.com 163 (Karnataka)**

The question before the Hon'ble Karnataka High Court was:

*"When the assessee invests the entire sale consideration in the construction of a residential house, can he be denied exemption under Section 54F(4) on the ground that he did not deposit the said amount in the Capital Gains Account Scheme before the due date prescribed under Section 139(1) of the IT Act?"*

The said question has been answered by the Hon'ble Court in the following words: -

"As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54 F(i), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words, if he wants to claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54 F(4) is not at all attracted, and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested

the money in construction is also not correct.” (Para 4.1 of the judgement)

**1.9.2 Commissioner of Income-Tax vs. Venkata Dilip Kumar [2019] 111 taxmann.com 180 (Madras)**

Held that any amount utilized towards the purchase or construction of a new asset would be eligible for exemption even if it has not been deposited into any account as per the Capital Gains Account scheme. In this case however, it must be noted that the petitioners therein did create an account but the expenses incurred were more than what was estimated and deposited into the account and thus it was held that the expenses incurred over and above the amount deposited would also be eligible for exemption.

**1.9.3 Kishore H. Galaiya v/s ITO [2012] 24 taxmann.com 11 (Mumbai)**

Headnote of the case law reads as under:

“Section 54, read with section 139, of the Income-tax Act, 1961 - Capital gains - Exemption of, on profit from sale of property used for residence - Assessment year 2006-07 - Assessee sold share of his residential flat on 7-3-2006 and earned capital gain of Rs. 9.98 lakh - It booked a new flat with a builder and claimed exemption under section 54 - Assessing Officer denied exemption on ground that assessee could neither prove possession of residential flat within a period of two years from date of transfer of old flat nor had deposited unutilized capital gain in capital gain account scheme before due date of filing of return under section 139(1) - Whether booking of flat with a builder was a case of construction and not purchase of residential flat and, therefore, time period applicable would be 3 years, which would expire on 6-3-2009 - Held, yes - Whether, since assessee had made investment within period of three years, exemption under section 54 could not be denied - Held, yes - Whether further, taking of possession may be delayed because of many factors not under control of assessee; merely because possession had not been taken within three years, exemption could not be denied - Held, yes - [In favour of assessee]”

1.9.4 Assessee also places her reliance on the following case laws having similar facts:

1.	CIT v. Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74/233 Taxman 347 (Kar.)
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2.	CIT v. Sambandam UdayKumar [2012] 19 taxmann.com 17/206 Taxman 150/345 ITR 389 (Kar.)
3.	Goverdhan Singh Shekhawat v. ITO [2019] 102 taxmann.com 50/175 ITD 272 (JP-Trib)
4.	Ms. Moturi Lakshmi v. ITO [2020] 119 taxmann.com 488/274 Taxman 286 (mad.)
5.	Smt. Babitha Kemparajee Urs. v. CIT [2017] 86 taxmann.com 43/167 ITD 125 (Bang - Trib)
6.	Kannan Chandrasekar v. ITO [2017] 82 taxmann.com 284/165 ITD 223 (Chennai - Trib)

- B) When the cheques for entire housing investment have been issued at the time of agreement with builder before due date of ITR and cheques are encashed belatedly by builder, then deposit in Capital Gain Account Scheme is mandatory ?**

1.10 **ITO (IT) 3(3)(1) Vs. Akansha Ranju Pilani vide I.T.A. No. 4769/Mum/2015 (AY 2012-13) (Please see copy of the judgement at PB No 78 - 81)**

Hon'ble Mumbai tribunal (Coram: Hon'ble Shri Sandeep Gosain (JM) and Hon'ble S/Shri B.R. Baskaran (AM))held at para No. 8 of the order:

*“The Id. D.R.’s contention is that the assessee has violated the provisions of sec. 54(2) of the Act. However, the contention of the assessee is that he had issued cheques on the date of the agreement itself i.e., 26.7.2012, which is before the date of furnishing of return of income. However, those cheques have been encashed by the builder belatedly and hence the assessee should not be penalized for that. The contention of the Ld A.R was that once cheques have been issued, the assessee’s liability gets fulfilled and the same constitutes utilization of sale proceeds of the old house. We find merit in the submissions of the assessee. **There is no dispute that the assessee has issued cheques to the seller of the house property on 26.7.2012, which is prior to the date of furnishing of the return of income of the instant year. Accordingly, we are of the view that there is no requirement to comply with the provisions of section 54(2) of the Act in the facts and circumstances of the case.**”*

- 1.11 Ld. AO has rejected the claim of exemption of appellant on the following basis in the assessment order( Para No. 4.3 on page No. 3) :

“...A post dated cheque cannot be encashed before the date of cheque. Issuing of post-dated cheque does not discharge liability of payment on the date of writing the cheque as the drawee cannot encash it before the date of cheque. For example, if assessee has issued a post dated cheque on 01/03/2016 in which the date of cheque is mentioned 01/08/2016, so builder cannot encash it before 01/08/2016”

“Hence, proof of payment towards investment in house property before the date of filing the return of income is not conclusive.”

Appellant wishes to mention that post-dated cheques issued for arising from an agreement attract Section 138 of the Negotiable Instrument Act, 1881, as the balance amount of Rs. 84,27,600/-, paid by issuing post-dated cheques, had become legally payable by the appellant pursuant to the agreement entered on 01/03/2016. Appellant also pleads that the payment of post-dated cheques relates to the date of issue of cheques and not to the date of realization of cheques.

It is submitted that under the Negotiable Instruments Act, 1881, a cheque is an instrument that is negotiated by delivery. The drawer is discharged when payment is made in due course. In simple terms, this means that when the cheque is tendered, there is a presumption that payment would be realised in due course, and hence the date of payment is considered to be the date on which the cheque is delivered, regardless of when the cheque is actually presented for payment. Hon'ble Apex court has set a tenet that that even if cheques are taken conditionally when the cheques are not dishonored but cashed, the payment relates back to the dates of the receipt of the cheques and in law, the dates of payments were the dates of the delivery of the cheques.

*Assessee relies upon following case laws for supporting her point:*

- C) ***Whether the post-dated/undated cheque relates back to the date of issue after the encashment of such cheques ?:***

\_\_\_\_\_Foll  
owing case laws reply the aforesaid question:

1.11.1 **Commissioner of Income-tax v. Ogale Glass Works Ltd. 1954] 25 ITR 529 (SC)**

Hon'ble Apex Court laid down the law on this issue in following words:

*“The position, therefore, was that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another*

*view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payment were the dates of the delivery of the cheques.*”

1.11.2 **K Saraswathy alias K Kalpana (Dead) By Legal Heirs v/s PSS Somasundaram Chettiar, 1989 AIR 1553 (SC)**

Hon’ble Apex court held:

*“It is contended before us on behalf of the appellant that the cheque for Rs.6,02,000 was tendered in Court on 29 May, 1980 and that it was duly honoured by the Bank and money was realised under the cheque, and therefore it must be taken that payment had been effected by the appellant on 29 May, 1980 within the time stipulated by this Court in its order dated 29 November, 1979. In Commissioner of Income Tax, Bombay South, Bombay v. Messrs Ogale Glass Works Ltd. Ogale Wadi, A.I.R. 1954 S.C. 429 it was laid down by this Court that payment by cheque realized subsequently on the cheque being honoured and encashed relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque. Payment by cheque is an ordinary incident of present-day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course.....”*

1.11.3 **Kumarpal Amrutlal Doshi v. Deputy Commissioner of Income-tax \* (Appeal)-33, Vashi, Navi Mumbai [2011] 10 taxmann.com 57 (Mumbai)[09-02-2011]**

Hon’ble Tribunal held:

*“In the instant case, admittedly the period of 6 months for making investment in long term specified asset was 9-2-2006. As on that date the said cheque had been delivered to NABARD. Therefore, the date of payment of the cheque would be the date of delivery of the cheque. The date on which subsequently the cheque was encashed in the ordinary course by NABARD on 15-2-2006 could not be said to be the date of investment. The assessee had substantially complied with the provisions of section 54EC and was, therefore, entitled to exemption under section 54EC of the Act. It was held therefore, held that the exemption under section 54EC should be allowed to the assessee. [Para 16 of the judgement]”*

1.12 Facts of the appellant and case laws, clearly show that a substantive compliance of the law was made by the appellant. Section 54F(4) was introduced by Finance Act, 1987 wef AY 1988-89. Memorandum explaining the provision of the act read as under:

**RATIONALISATION OF PROVISIONS RELATING TO  
CAPITAL GAINS**

*“Under the existing provisions of Section 54, 54B, 54D and 54F, long-term capital gains arising from the transfer of any immovable property used for residence, land used for agricultural purposes, and other capital assets are exempt if such gains reinvested in a new asset corresponding to the old within the time allowed for the purpose. The original assessment needs rectification whenever the taxpayer fails to acquire the corresponding new asset.*

*With a view to dispensing with such rectification of assessment, the bill seeks to provide for new scheme for deposit of amounts meant for reinvestment in the new asset.....”*

The underlying intent of the legislature while introducing the requirement of CGAS was to avoid the situation of passing the rectification orders if the assessee fails to invest in the housing sector.

The amended law further ensured that such amount should be kept deposited in the bank and the appellant be not allowed to use the funds freely for other purposes and legislative intent was duly met, when the entire sale consideration was out of the pocket of the appellant. Moreover, technically speaking there is no much difference between an ordinary Fixed Deposits and a Capital Gain Account Scheme. The facts of assessee also fall in line with the above law. Assessee kept the money in FD Account, without using them for any purpose other than the investment in the house.

- 1.13 The real purpose of the enabling provision is the compliance of the substantial provision of sub-section (1) to section 54F of the Act. Sub-section (4), in fact, regulates the procedure for the substantive rights of the exemption provisions u/s 54F of the Act. This enabling section cannot abridge or modify the substantive rights given vide sub-section (1) of section 54F of the Act, otherwise, the real purpose of substantive provision i.e., sub-section (1) will be defeated. The primary goal of exemption provisions of section 54/54F is to promote housing. The procedural and enabling provisions of sub-section (2) thus cannot be strictly construed to impose strict limitations on the assessee and in default thereof to deny him the benefit of exemption provisions.

While the plain reading and strict application of the provision u/s 54F compel one to think that exemption is not allowable in case of any delay beyond 3 years, higher judicial authorities have rescued taxpayers by giving relief in those cases where they found that the sales consideration has been spent for construction of the house, but the house was not complete or completed after 3 years. The appellate authorities have taken the view that section 54F being a relief provision, should be viewed in a bit of a relaxed manner. The appellant

is submitting a few judgments which provide that exemption can be claimed even if construction is not completed within 3 years.

***The assessee has relied upon the following judgments having identical facts:***

S.NO	CASE LAW	HELD
1.	Abodh Borar Vs ITO I.T.A. No.5114/DEL/2016	As per the agreement the developer was supposed to hand over the possession of plot within 18 months from the date of allotment letter. However, the developer did not deliver the possession. Hence, the assessee could not complete the construction within the prescribed period of 3 years. This delay in construction was not attributable to the assessee. Hon'ble ITAT held that benefit of deduction cannot be denied to the assessee.
2	Sanjeev Sarin, Delhi vs Ito, Ward-39(4), New Delhi ITA No:- 2692/Del/2018	In this case assessee has within stipulated period, made substantial investment towards purchase of new property and just because builder could not complete construction of residential house, claim of exemption under section 54F of Income Tax Act, 1961 cannot be denied
3	Principal CIT Vs Smt. Charumathi Seshadri IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 17.07.2018	When assessee invested a sum in purchase of land, which was invested after date of sale of original asset and before due date of filing of return of income under section 139(1) as per requirement of section 54F, then, deduction under section 54F could not be disallowed merely on the ground that no residential house had been constructed and completed on the land within three years from date of sale of the original asset.

1.14 The handing over of the possession was delayed due to fault on the part of the builder and the assessee has complied with the necessary

condition of payment as required. (Please see the Affidavit of assessee at PB Page No 76 – 77)

## GROUND NO. 2:

**That under the facts and circumstances of the case, the Ld. CIT (A) NFAC has erred in law by ignoring the circular No. 471 dt. 15/10/1986 and 672 dt. 16/10/1993 which lays down that payment to the builder in instalments is sufficient compliance for claiming exemption u/s 54F.**

## SUBMISSIONS:

- 2.1 The assessee had entered into the 'Flat Purchase Agreement' with the builder on 01/03/2016, after selling the land on 16/10/2015.
- 2.2 Circular No. 471 dated 15-10-1986 reads as under:

1. Sections 54 and 54F provide that capital gains arising on transfer of a long-term capital asset shall not be charged to tax to the extent specified therein, where the amount of capital gain is invested in a residential house. In the case of purchase of a house, the benefit is available if the investment is made within a period of one year before or after the date on which the transfer took place and in case of construction of a house, the benefit is available if the investment is made within three years from the date of the transfer.
2. The Board had occasion to examine as to *whether the acquisition of a flat by an allottee under the Self-Financing Scheme (SFS) of the D.D.A. amounts to purchase or is construction by the D.D.A. on behalf of the allottee.* Under the SFS of the D.D.A., the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the D.D.A. to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.
3. The Board have been advised that under the above circumstances, the inference that can be drawn is that the, D.D.A. takes up the construction work on behalf of the allottee and that the transaction involved is not a sale. Under the scheme the tentative cost of construction is already determined and the D.D.A. facilitates the payment of the cost of construction in instalments subject to the condition that the allottee has to bear the increase, if any, in the cost of construction. Therefore, *for the purpose of capital gains tax the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in instalments does not affect the legal*

*position stated above. In view of these facts, it has been decided that cases of allotment of flats under the Self-Financing Scheme of the D.D.A. shall be treated as cases of construction for the purpose of capital gains.*

2.3 Circular No. 672 dated 6/10/1993 reads as under:

**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.

2.4 Contents of both Circulars can be summarized as under:

- a) Date of booking the flat would be treated as 'Date of Construction' and subsequent payments in installments or handing over the possession are of no relevance.
- b) In respect of allotment of flats by builders/co-operative society, a similar view would be taken (as taken in the case of DDA)

2.5 Appellant juxtaposes the facts of appellant and facts of a judgement by Hon'ble ITAT in the case of *ACIT Vs. Sagar Nitin Parikh, Mumbai, I.T.A. No.6399/Mum/2011 AY 2008-09: (Please see the copy of judgement at PB No. 82 - 87)*

PARAMETERS	FACTS OF SAGAR NITIN PARIKH	FACTS OF APPELLANT	REMARKS
Name of	Life Style Property	Paarth Infracore	

Builder	venture	Pvt Ltd.	
Date of executing the agreement	01/12/2004	01/3/2016	
Payment Terms	Assessee paid Rs. 31,98,840/- in November, 2004 and the remaining amount in instalments	Assessee paid Rs. 28,00,000/- on 02/03/2016 and the remaining amount in instalments	
Date of Handing over possession	30/06/2007	08/07/2021	
Date of Sale of old flat/Capital Asset	27/03/2008	16/10/2015	
Claim of the assessee	Flat is a 'Purchase' completed on 30/06/2007 and not 'Construction', therefore, date of purchase of the flat (i.e. on 30/06/2007) is within one year before the sale of house (i.e. on 27/03/2008) and entitled for exemption u/s 54	Flat is a construction completed on 02/03/2016 with signing of agreement.	
Basis of judgement of the Hon'ble ITAT	Rejected the claim of assessee by holding that flat is a 'Construction' not purchase and as per above circulars, the 'Construction' was complete on 01/12/2004 i.e. on the date of executing		Assessee's flat should be treated as construction completed on 02/03/2016.  Further consequences such as payment of installments and

	agreement.		handing over possession are irrelevant as per above circulars.
Final Verdict	Appeal of the assessee rejected		Assessee deserves to succeed

2.2.1 **CIT v. Mrs. Hilla J.B. Wadia [1993] 69 Taxman 114 (Bom.)**

**Held:**

"It was observed that the Board had stated in Circular No. 471, dated 15-10-1986 that when an allotment letter is issued to an allottee under this scheme on payment of the first instalment of the cost of construction, the allotment is final unless it is cancelled. The allottee, thereupon, gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking delivery of possession is only a formality. The Board has directed that such an allotment of flat under this scheme should be treated as cost of construction for the purpose of capital gains.

2.2.2 **Mrs. Seetha Subramanian v. ACIT [1996] 59 ITD 94 (Mad. - Trib.)**

**Held:**

". . . The assessee also relied upon certain circulars issued by the CBDT. One of the circulars was [Circular No. 471, dated 15th October, 1986. This was issued by the CBDT clarifying the position that where an assessee acquires a flat by an allotment under the self-financing scheme of the Delhi Development Authority, the allotment itself is sufficient compliance for getting the benefit under section 54F, even though the assessee has not paid all the instalments due under the said scheme. Later by another Circular No. 672, dated 16th December, 1993, the CBDT has issued clarification extending the same benefits for acquisition of houses or flats on allotment under similar schemes. Therefore it was contended that the intention of the Legislature was to invest in the acquisition of a residential house and completion of construction or occupation is not required. We find force in the argument of the learned counsel for the assessee. The said intention is very clear from the two circulars issued by the CBDT, where it was held that an assessee is entitled to the benefit of sections 54 and 54F, if an assessee gets an allotment under the self-financing scheme and pays the first instalment of the cost of the construction. From that it is clear that in order to get the benefit under section 54F the assessee need not complete the construction of the house and occupy the same. . . ."

2.2.3 **Smt. Shashi Varma v. CIT [1997] 224 ITR 106 (MP)**

In this case the assessee was denied exemption on the investments made with Delhi Development Authority. However, relief was granted by the Hon'ble High Court. It was held that section 54 of the Act of 1961 only says that within two years, the assessee should have constructed the house but that does not mean that the construction of house should necessarily be complete within two years. What it means is that the construction of house should be completed as far as possible within two years. In the modern days, it is not easy to construct a house within the time-limit of two years and under the Government schemes, takes years and years. Therefore, confining to two years' period for construction and handing over possession thereof is impossible and unworkable under section 54 of the Act. (p. 108)

**2.2.3 Assistant Commissioner of Income Tax, Circle 25(3) Smt. Sunder Kaur Sujan Singh Gadh [2005]3 SOT 206 (Mumbai)**

HELD:

“For qualifying investment for construction under section 54F is the crucial date is the date of allotment of the flat by DDA and payment of installments was only a follow-up action and taking possession of the flat is only a formality, of course, installments have to be paid by the allottee as per the schedule fixed by the DDA. The Board after referring to the above-mentioned Circular extended the facility of exemption under sections 54 and 54F in respect of the allotment of flats/house by co-operative societies and other institutions, and the allotment and construction of the flat by co-operative societies and other institutions are to be considered in similar manner for the purpose of allowing exemption under section 54. The above circulars are binding on the revenue authorities under section 119 of the Act. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be taken as a case of construction of the residential flat and not as a purchase of a residential flat.

- 2.3 There cannot be any dispute with the ‘Construction’ of the property for which the agreement was entered by the appellant with M/s Paarth Infrawork Private Limited on 01/03/2016 had already begun and whether the above agreement finally fructified is a different matter altogether. Assessee had for all purposes satisfied the conditions u/s 54F of the IT Act, 1961, and earnestly demonstrated her intention to invest the capital gain in a residential house. Therefore, the assessee ought not to have been denied the claim u/s 54F of the IT Act, 1961.

**GROUND NO. 3:**

**Under the facts and circumstances of the case the Ld. CIT (A), NFAC has grossly misinterpreted the beneficial provisions of Sec. 54F of the Act without appreciating the intention of the legislature behind the introduction of these provisions.**

**SUBMISSIONS:**

- 3.1 The assessee was always a law-abiding citizen and has acted with due discharge of responsibilities and obligations under the law and at the same time was also desirous of availing the benefits conferred upon the assessee.
- 3.2 Section 54F is a beneficial provision and the assessee very honestly and sincerely and desiring to avail the benefits conferred by the said section has acquired a new house and has paid the amount as per the agreement to sell with the builder.
- 3.3 The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are 'purchased' or 'constructed'. The condition precedent for claiming benefit under section 54F is that the capital gain should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. Merely because the sale deed had not been executed or that construction is not complete and it is not in a fit condition to be occupied does not disentitle the assessee to claim section 54F relief. The citation and gist of judicial precedents relied upon by the assessee are as under:

S.NO	CASE LAW	HELD
1.	CIT v.Sardarmal Kothari and another (2008) 302 ITR 286 (Mad.) followed).(A.Y. 2006-07)	Section 54F of Income tax is a beneficial provision for promoting the construction of residential house & requires to be construed liberally for achieving that purpose. The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are 'purchased' or 'constructed'. The condition precedent for claiming benefit u/s 54F is that the capital gain should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. Merely because the sale deed had not been executed or that construction is not complete and it is not in a fit condition to be occupied does not disentitle the assessee to claim s. 54F relief. ... “

2.	Smt. Rajneet Sandhu vs. DCIT (2010) 133 TTJ 0064 (Chandigarh)	In this case the construction of the house was not completed within the prescribed period. It was held that section 54F does not prescribe that the residential house should be completed within the prescribed period and benefit under s. 54F was allowed. It was held that thrust was on investment and not on completion.
3.	Satish Chandra Gupta vs. Assessing Officer, 54 ITD 508 (ITAT, Delhi Bench)	The facts of this case were, the assessee had purchased a site and could not complete the construction of the house within the prescribed period of three years. However, the house was constructed and completed subsequently. Relief was given on the ground that the delay had occurred on account of reasons beyond the control of the assessee.
4.	Narasimha Raju Rudra Rao vs. ACIT (35 taxmann.com 90) (Hyderabad-Tribunal)	<p>1. Provision contained under section 54F being a beneficial provision has to be construed liberally. In various judicial precedents, it has been held that the condition precedent for claiming benefit under section 54F is only that the capital gain realized from the sale of capital asset should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If the assessee has invested the money in construction of residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under section 54F.</p> <p>2. Once the assessee demonstrates that the consideration received on transfer has been invested</p>

		either in purchasing a residential house or in constructing a residential house, even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from availing benefit under section 54F.
5.	Pradeep Kumar Chowdhry vs. DCIT (ITAT Hyderabad) in ITA No.1520/Hyd/2013 dt.31.12.2014	The aggrieved assessee submitted that the flat was not in a completely habitable state, though structures etc., were completed. This delay was entirely due to the reasons beyond the control of the assessee. The assessee submitted that he very honestly and sincerely desiring to avail the benefits conferred by the said section has acquired a new house and has paid monies as per the agreement with the builder. The time limit available for purchase of flat is three years in the case of assessee as the assessee had not purchased readymade flat but was purchasing a flat which was to be constructed and which is equivalent to constructing a residential house.

In view of the above facts and law, It is most respectfully submitted that section 54F is enacted in order to promote purchase/construction of residential houses. Section 54F(1) is a substantive provision. Section 54F(4) is an enabling provision that provides that assessee should deposit the amount earned from capital gain in a scheme framed in this respect by the Central Government till the amount is invested for purchase of residential house. The substantive provision, on one hand, promotes housing and in a way leads us to assess the intention of the assessee and if the intention of the assessee is to purchase a new property and that is fulfilled by the facts on record, then enabling the provision of keeping the amount in a particular scheme whether that is fulfilled or not should not destroy the ultimate bonafide intention of the assessee as enshrined in section 54F(1). The procedural and enabling provision of sub-section (4) of section 54F cannot be strictly construed to impose strict limitations on the assessee and any default thereof to deny her the benefit of exemption under the provision.”

5.1 The Id. AR of the assessee filed additional written submission which reads as under:-

**GROUND NO. 2:**

***That under the facts and circumstances of the case, the Ld. CIT (A) NFAC has erred in law by ignoring the circular No. 471 dt. 15/10/1986 and 672 dt. 16/10/1993 which lays down that payment to the builder in instalments is sufficient compliance for claiming exemption u/s 54F.***

In support of the above ground of appeal, Appellant submits that her case has similar factual matrix which has been decided by Hon'ble Supreme Court, High Court and Hon'ble ITATs in following case laws. Appellant is placing the copies of these judgements for your kind consideration:

1. **Sanjay Khanna, Gurgaon Vs. DDIT, New Delhi- ITA No. 5852/DEL/2012**

**Pronounced on 14/07/2017 AY: 2009-10(PB No. 6 to 18)**

- |   |                                |            |
|---|--------------------------------|------------|
| a)  | Date of Sale of Capital Asset: | 11/04/2008 |
| b)  | Date of Booking Flat:          | 03/01/2007 |
| c)  | Name of Builder:               | Belaire    |
| Apartments by DLF   |                                |            |
| d)  | Date of Actual Possession      | 26/08/2012 |
| e)  | Held by Hon'ble ITAT:          |            |
| i) In terms of circular No. 471/672, the booking of the flat is a 'construction' and not a 'purchase'   |                                |            |
| ii) 'Other institutions' in circular 672 include the developers and builders also   |                                |            |
| iii) Following the various pronouncement of Hon'ble Supreme Court for a liberal interpretation of the beneficial provision, the benefit granted u/s 54, ignoring the purchase agreement being prior to 1 year from the date of sale of capital asset. |                                |            |

2. **Farida A Dungerpurwala Vs. Income Tax Officer (2014) 52 taxamann.com 527 pronounced on 12/09/2014 by Mumbai Bench AY 2006-07**

**(PB No. 19 to 24)**

- |    |                                |            |
|----|--------------------------------|------------|
| a) | Date of Sale of Capital Asset: | 11/10/2005 |
|----|--------------------------------|------------|

- b) Date of Booking Flat: 04/12/2002
- c) Name of Builder: Private Builder
- d) Date of Actual Possession 04/12/2004
- e) Held by Hon'ble ITAT:
- i) In terms of circular No. 471/672, the booking of the flat is a 'construction' and not a 'purchase'
  - ii) Construction has to be completed within 3 years after the date of sale of capital asset. As the flat was booked prior to sale of capital asset, the assessee is not entitled to the deduction u/s 54.

3. **Kishore HGalaiya Vs. Income Tax Officer, Ward 8 (2012) 24 taxmann.com 11 – ITAT Mumbai Bench A. AY 2006-07 pronounced on 13/06/2012**

***(PB No. 25 to 33)***

- Enterprises
- a) Date of Sale of Capital Asset: 07/03/2006
- b) Date of Booking Flat: 29/12/2007
- c) Name of Builder: Rajyog
- d) Date of Actual Possession 31/08/2009
- e) Held by Hon'ble ITAT:
- i) This is a case of construction, hence the limit of 3 years would apply, not 2 years. Booking agreement has been entered within 3 years, hence the construction is complete.
  - ii) Entire capital gain amount has been kept in savings bank account and had not been utilized for any other purposes. Hence, not depositing under CGAS is only a technical defect as the entire amount has been invested in the new asset.

4. **DCIT Vs. Sita Devi Wadhawa ITA No. 239 of 2019 of Delhi Bench (G) AY 2006-07 pronounced on 03/12/2010 (PB No. 34 to 37)**

- a) Date of Sale of Capital Asset: AY 2006-2007
- b) Date of Booking Flat: 31/07/2006

- c) Name of Builder: Shweta Estates Pvt. Ltd.
- d) Date of Actual Possession: 23/12/2008 Not given till
- e) Held by Hon'ble ITAT:
- i) As per the circulars, allotment of flats shall be treated as construction for the purpose of capital gains.
  - ii) The department has failed to demonstrate how the scheme of Shweta Estates Pvt. Ltd. is different from the SFS of DDA

5. **PCIT Vs.Vembu Vaidyanathan (2019) 108 Taxmann.com 339 (Supreme Court).** Rejected the SLP filed by department in case of

**PCIT Vs.Vembu Vaidyanathan (2019)101 Taxmann.com 436/261 Taxman 376 (Bombay) (PB No. 38 to 42)**

**Key Takeaways from the Hon'ble High court judgement:**

- i) Allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.
- ii) There is nothing on record to suggest that the allotment in the construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by DDA. In that view of the matter, Tribunal correctly held that the assessee had acquired the property in question on 31<sup>st</sup> December, 2004 on which the allotment letter was issued. “

5.2 The Id. AR of the assessee in addition to the written submission vehemently argued that the denial of benefit of exemption claimed against the capital gain offered by the assessee is based on the wrong appreciation of the facts and therefore, the same cannot be denied because the assessee has given post dated cheque for investment and the same is filed along

with paper book which has not been disputed by the Revenue. The assessee has produced the copy of agreement to sale which is also not disputed by the Revenue. In support of the claim of the assessee, the Id. AR of the assessee has relied upon the decision of Hon'ble Karnataka High Court in the case of CIT vs. Smt. B.S. Shanthakumari (2015) 60 taxmann.com 74. As regards the source of fund the assessee has already having deposit in the form of FDR of Rs. 73,00,000/-. The Id. AR of the assessee also relied upon the various judgments as listed in the written submissions and also relied upon the circular no. 471 dated 15.10.1986 and 672 dated 16.10.1993 and prayed that the claim of the assessee be read liberally based on the evidence, circular and decision placed on record.

6. Per contra, the Id. DR submitted that there is a clear violation of provisions of the Income Act and the assessee has violated of provisions of section 54F of the Act for availing the benefit of deduction and therefore, the denial of deduction is justified. The assessee has not explained as to why instead of giving present date cheque, has chosen to give postdated cheque. In the agreement produce in the paper book no details or post dated cheque has been furnished and therefore, there is plausible

reason that the argument of the assessee is nothing but an after thought. Therefore, considering the provisions of Section 54F of the Act the action of denying the benefit to the assessee is justified.

6.1 In the rejoinder of the Id. AR of the assessee submitted that provisions of section 54F of the Act is beneficiary provision and therefore be read accordingly, the assessee has produced all the details related to claim has been placed on record. The affidavit of the assessee has also placed on record. The assessee has also justified the claim by filing the certificate of builders, registered sale deed, fixed deposit statement based on that he prayed for a consequential relief to the assessee.

7. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. The apple of discord in this case is only whether considering the overall facts presented on record the assessee has made in the investment in the residential house and consequently the claim of the assessee u/s. 54F is allowable or not. The assessee in the year under consideration, sold two immovable properties for a total sale consideration of Rs. 1,49,00,000/-. In the computation of capital

gain, the assessee has claimed deduction u/s 54F for an amount of Rs. 1,03,06,141/-. In support of this claim, the assessee has submitted copy of agreement to sell of residential property purchased by her for a consideration of Rs. 1,08,22,354/-. However, as per the agreement to sale submitted by assessee, she has paid a sum of Rs. 28,00,000/- only at the time of agreement out of the total sale consideration of Rs. 1,08,22,354/- towards the purchase of flat. As the assessee has not paid full amount the Id. AO called for proof of deposit of unutilized amount in capital gain account. In fact, the assessee utilize full amount towards purchase of flat as per computation and in support of the claim the assessee has filed a certificate of builder stating that the assessee has issued the post dated cheques, but due to unavoidable circumstances the same were not presented to the bank. This reply of the assessee has been considered by the Id. AO but found not acceptable. The reason behind that a certificate from the builder in which he admits having received the postdated cheque from the assessee but neither in the reply filed by the assessee nor in the certificate issued by the builder contains the details of cheques like cheque no., drawer bank name, date of cheque etc. The Id. AO further noted that in the agreement to sale, there is nowhere

mentioned any detail of subsequent payment made to builder. In the reply submitted by the assessee, she says that she has given cheque and discharged the full payment liability whereas builder is saying that he has received postdated cheque from assessee. Issuing postdated cheque does not discharge liability of payment. Thus, Id. AO contended that proof of payment toward investment in house property before the date of filing the return of income is not conclusive. The assessee also did not deposit the money in the capital gain account scheme. The claim of investment in house property u/s. 54F was thus restricted to Rs. 28,00,000/- only as against the claim made of Rs. 1,08,22,354/- and accordingly the addition of Rs. 66,41,252/- was made to that extent. Thus, undisputed fact as emerges are that the assessee has invested the amount for an amount of Rs. 28,00,000/- and consideration of the property was fixed at Rs. 1,08,22,354/-. The only disputes is that the assessee has given the cheque for the balance amount upon which the Id. AO was of the view that the details of the cheque and its dates were not mentioned in the certificate of the builder and in the agreement to sell submitted by the assessee. The first payment of Rs. 28,00,000/- was made by an account payee cheque on 25.02.2016 i.e. before the end of the financial year concerned there

is no dispute about the consideration to be paid by the assessee. Thus, merely the cheque details not mentioned in the agreement or in the certificate of the builder will not change the ultimate purpose of making the investment by the assessee and the assessee has placed on record the relevant evidence that the payment has been made and there is a requirement to make the payment in installments. The bench noted that the intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are 'purchased' or 'constructed'. Here in this case, there is no doubt that the assessee has fulfilled the condition precedent for claiming benefit under section 54F is that the capital gain should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. Merely because the sale deed had not been executed or that construction is not complete, and it is not such a watertight condition to be fulfilled and does not disentitle the assessee to claim section 54F relief. To reach this conclusion the bench has considered the circular no. 471 dated 15.10.1986 and circular no. 672 dated 06.10.1993. The bench also considered the various judicial precedents cited by the assessee in

the written submission. So, conspectus of the facts suggest that the assessee is entitled for deduction u/s. 54F of the Act as claimed, merely the postdated cheque was not cleared or the details thereof for an amount not mentioned in the agreement will not disentitle the assessee to claim the investment amount. Not only that, the bench noted that the assessee has paid 28,00,000/- and the balance amount was sufficiently available to be invested by the assessee therefore the reasons to denied the benefit was not in accordance with the provision and intention of the law. Based on these observations the ground no. 1 to 3 raised by the assessee is allowed and ground no. 4 being general in nature does not require our adjudication.

Considering these observations, the appeal of the assessee is allowed.

Order pronounced in the open Court on 02/01/2024.

Sd/-

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

( राठौड़ कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/01/2024

\*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Indira Giri, Jaipur.
2. प्रत्यर्थी / The Respondent- Assessing Officer, Ward-2(5), Income Tax Office Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 511/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar