

**IN THE INCOME TAX APPELLATE TRIBUNAL “VARANASI” BENCH,  
VARANASI**

**BEFORESHRI B R BASKARAN, ACCOUNTANT MEMBER  
&  
SHRI AMIT SHUKLA, JUDICIAL MEMBER  
ITA No. 102/VNS/2019  
(A.Y. 2013-14)**

Shamimul Fatima Zohra Complex, College Road, Bahralganj, Gorakhpur- 273402 Uttar Pradesh.	Vs.	ACIT, Range-2, Gorakhpur AayakarBhawan, Civil Lines, Gorakhpur-211003
<b>स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AACPF3087E</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Shri. Ashish Bansal
Respondent by :	Shri. A. K. Singh

Date of Hearing	29.09.2023
Date of Pronouncement	22.11.2023

**आदेश / O R D E R**

**PER AMIT SHUKLA[JM] :-**

Aforesaid appeal has been filed by the assessee against the order dated 13.12.2018 passed by the Learned Commissioner of Income Tax, Gorakhpur [hereinafter “the Ld. CIT(A)”] for the quantum of assessment for the A.Y. 2013-14.

2. In various grounds of appeal the assessee has challenged disallowance of benefit of exemption u/s 54F of ₹ 93,94,816/-.

3. The brief facts are that the assessee is an individual and had declared net long term capital gain at ₹1,40,30,177/-. Which was claimed as exemption u/s 54B of ₹ 53,50,300/- and ₹ 93,94,781/- u/s 54F respectively. The Ld. AO noted that flat in which investment was claimed was actually booked prior to two years from the date on which capital gain actually arose to the assessee. It was further noted by him that earlier amount advanced to M/s Arslan developers was refunded and same was deposited in the saving bank account and it was immediately deposited with M/s Ansal Properties and Infra Ltd. Lucknow (API) for the purchase of flat which was earlier booked in year 2012. The details of the investment made in the purchase of flat with API were as under;

- a. FY 2011-12 – 14,00,000/-
- b. FY 2012-13 – 21,00,000/-
- c. FY 2013-14 – 58,94,781/-

4. According to the AO, the assessee should have purchased the new asset before one year of date of transaction or should have invested within two years from the date of transaction of sale when the capital gain has arisen. The assessee has claimed Rs. 37 lacs invested in flat purchase from API in the year 2011-12 and 2012-13. Thus, the flat has been booked by the assessee prior to year 2013, for which it has produced copy of challan which was paid on 27.04.2011, whereas,

the capital gain has arisen in March 2013. Therefore, he held that assessee should have invested in the property within one year from the date of transaction or should have deposited in the bank under the capital gain scheme. Accordingly, he denied the exemption u/s 54F.

5. The Ld. CIT(A) has confirmed said order of the ld. AO after making the following observations.

*“A perusal of the assessment order reveals that the appellant had invested Rs. 37,00,000/- lacs in the flat purchased from M/s Ansal properties Infra Ltd. (APIL). The investment was made in the year 2011-12 and 2012-13 respectively. The AO noted that this flat had been booked by the appellant prior to year 2011 and refers to a copy of challan in this regard which was paid on 27.04.2011. Section 54F of the Act was introduced with a view to support the house building activities and give a boost to a residential property ownership. Section 54F requires the assessee to purchase one residential house in India within a period of one year before or two years after the date on which the transfer took place or construct the residential house within a period of three years after the date of transfer. The AO has mainly objected to the fact that the investment made by the appellant is in a flat which was booked prior to year 2011 and as per the provisions of the Act the appellant should have purchased a new property within one year from the date of transaction. The AO has further held that the amount advanced to M/s Arslan Developers was not a utilization as per sec. 54F of the Act and the amount returned by the builder was kept in saving account of the appellant before being paid to M/s APIL. A copy of the agreement made with the developer was submitted during the appellate proceeding. A perusal of which reveals that the appellant had made payment of Rs. 55 lacs to the developer for purchase of residential land and building. The*

*payments were made in the month of march and April, 2013. The agreement made with the developer could not be materialized and the developer returned the amount in march 2014 which was subsequently paid to M/s APIL for the purchase of flat. The requirement in sec. 54(2) of the Act that the capital gains should be deposited in the CGAS scheme is merely an enabling provision. If the assessee shows during assessment proceedings that the capital gains have been reinvested in the new residential house, exemption cannot be denied merely the amount was not deposited in the CGAS.*

*In this case it is a fact that the appellant had invested the amount of capital gain in a flat which was purchased by her in the year 2011 whereas the capital gain arose in the month of march 2013, thus it is clear that the investment made by the appellant is beyond the permissible time frame, as envisaged in the scheme of things, of the provisions of section 54F of the Act. The submission made by the appellant in this regard that the agreement made with the developer could not materialize hence she had to keep the amount in her saving account, is of no material value as the investment made by her was not as per the provisions of section 54F of the Act. Since the primary condition was not fulfilled in this case, the question that whether the said amount was kept in CGAS or not, is of no consequence.”*

6. After hearing both the parties and on perusal of the material placed on record, it is seen that the assessee had sold agricultural land in March 2013 for Rs. 1,81,31,000/- and Long capital gain was worked out after indexation and index cost of improvement at Rs. 1,40,30,177/-. In so far as the claim of exemption u/s 54B is concerned of Rs. 53,50,300/- same is not dispute. In so far as claim is concerned, the assessee has claimed exemption on account of

investment made in purchase of flat from Ansals Properties and Infra Ltd. Lucknow. As brought on record the assessee entered into agreement of purchase flat initially with M/s Arshlan Developers on 18.07.2013 and has paid following amounts towards purchase of said property.

<b>Date of Advance</b>	<b>Amount of Advance</b>
30/03/2013	12,50,000
12/04/2013	10,00,000
25/04/2013	16,00,000
25/04/2013	16,50,000
<b>Total (Rs.)</b>	<b>55,00,000</b>

7. Thus, this advance purchase of residential property was before the due date of filing of return of income for AY 2013-14. However, the agreement could not be materialised and the developers refunded the entire amount in month of March 2014. Immediately after receiving the fund, the assessee invested in the residential property with API. The contention of the assessee is that, even though residential property with API was booked earlier, however, after the capital gain has arisen to the assessee, the assessee had made the entire investment out of capital gains with the API within time allowed under provision of the Act. The case of the AO on the other hand is that the investment made for purchase of flat with M/s Arshalan Developers, was cancelled and the amount was refunded by the said developers and refund amount was invested in savings bank account

before the said amount was invested with API. The flat with API was booked one year before the date of transaction. From the payment scheduled made to the API, it is seen that the assessee had made investment in FY 2011-12 at Rs. 14 lacs; Rs. 21 lacs in FY 2012-13 and Rs. 58,94,781/- in FY 2013-14. Thus, the major amount of almost 80 lacs was made in FY 2012-13 and 2013-14 which is within time limit prescribed u/s 54F. If the assessee has entered into agreement for acquisition of flat wherein builder gets construction done in a phase manner and the payments are linked to construction stage, then it has to be treated as case of purchase and not construction of new asset. Even if the assessee has not deposited unutilised net consideration in specified capital account as required u/s 54F of the Act, instead the assessee has invested net consideration in residential property, then the period of purchase has to be seen from the date when amount was invested for the purpose of section 54F(1) of the Act and assessee cannot be denied deduction u/s 54F of the Act. This proposition is duly supported by the decision of the **Hon'ble Karnataka High court** in the case of **CIT Bangalore Vs K. Ramchandra Rao 2015 56 taxmann.com 163 Karnataka** and the Judgment of the **Hon'ble Madras High Court in the case of CIT v/s Sardarmal Kothari 302 ITR 386**. Thus, it would be sufficient if the assessee establishes that he has invested the entire net consideration

within stipulated period of one year or two years as provided in section 54F and not necessary when the flat was booked or construction was completed.

8. The case of the department is that the assessee had paid to Ansal Developers but this cannot be considered as purchase of flat within time provided u/s 54F; and secondly, once the money was refunded the same should have been deposited CGS scheme instead the assessee has paid the amount to M/s APL for purchase of flat which was booked in FY 2011-12. There is no denying fact that the assessee did made the entire investment for the purchase of flat, even though it was booked in 2011, but major payment has been made in time permitted u/s 54F. Thus, investment for purchase of property has to be allowed exemption u/s 54F, as the condition provided in the said section has been met because the assessee had invested entire net consideration within stipulated period of u/s 54F. Accordingly, the claim of the assessee is allowed.

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

Order Pronounced in Open Court on 22.11.2023

Sd/-

(B R BASKARAN)  
ACCOUNTANT MEMBER

Place: Mumbai

Date 22.11.2023

ANIKET SINGH RAJPUT/STENO

Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**