

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

**Before Sh. Saktijit Dey, Vice President
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1786/Del/2023 : Asstt. Year: 2020-21

Simran Bagga, C/o CA Anshul Kumar/ CA Satish Kumar Lalit Vanjani & Co., CA, 16, Nehru Apartments, Outer Ring Road, Kalkaji, New Delhi-110019 (APPELLANT)	Vs	ACIT, Circle-1(1)(2), International Taxation, New Delhi (RESPONDENT)
PAN No. ALGPC5171K		

**Assessee by : Sh. Anshul Kumar, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 11.10.2023

Date of Pronouncement: 04.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order dated 29.04.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1.1 "That on the facts and in the circumstances of the case and in law, the directional order passed by the Hon'ble Dispute Resolution Panel ('Hon'ble DRP) and the consequential assessment order passed by the Ld. The Assistant Commissioner of Income Tax, Circle Int. Tax 1(1) (2), New Delhi [hereinafter referred to as 'Ld. AO'] is bad and untenable in law.

1.2 That on the facts and in the circumstances of the case and in law, the Ld. AO and Hon'ble DRP has erred in respectively making and upholding an addition of INR 93,46,404 to the total income of the Appellant, denying

the rightful deduction claimed under section 54 of the Income-tax Act, 1961 ('the Act').

1.3 That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in law in proposing to initiate penalty proceeding u/s 270A(9)(a) of the Act for under reporting of income in consequence to misreporting of income for 'misrepresentation or suppression of facts', without assigning any reason or providing reasons for satisfaction as to what facts have been misrepresented or suppressed by the Appellant in the present case."

3. Simran Bagga, is a non-resident individual residing in United Arab Emirates. For A.Y. 2020-21, the Assessee filed a revised return of income on 4 March 2021, wherein the total income of Rs. 2,11,190/- was declared after claiming deduction of Rs. 93,46,404/- u/s 54 of the Act. The assessment u/s 143(2) of the Act was initiated and queries were raised regarding the claim of deduction u/s 54 of the Income Tax Act, 1961.

4. The undisputed facts of regarding the claim of deduction u/s 54 are that the Assessee had sold her property in New Delhi during the relevant assessment year for an amount of Rs.1,30,00,000/- during A.Y. 2020-21. Out of the sale proceeds, an amount of Rs.1,00,00,000/- was invested on 5th November 2019 into a new residential house in Hyderabad. The residential house in Hyderabad, in which the investment was made by the Assessee, was registered in the name of her spouse, Mr. Ajay Suri. As the investment was made by the Assessee in a residential house, she claimed deduction u/s 54 of the Act. During the assessment proceedings, the Assessee furnished all the details of investment made in the residential house situated in Hyderabad, India, including the HDFC bank statement and the payment receipt issued by the builder, i.e., M/s Jayabheri

Properties Private Limited evidencing the investment made by the Assessee. The Assessee also submitted that the deduction should not be restricted merely because the property was not registered in the name of the Assessee.

5. The Assessing Officer disallowed the claim of deduction u/s 54 of the Act amounting to Rs.93,46,404/- alleging that the residential property is registered in the name of the spouse of the Assessee, i.e., Mr. Ajay Suri, and not in the name of the Assessee. The Assessing Officer also held that the payment was made from a joint account.

6. Aggrieved, the assessee filed appeal before the ITAT.

7. Before us, the Id. AR submitted that the Capital Gains have been fully invested in acquisition of the property which is not in dispute. The only dispute is that the property has been registered in the name of the spouse of the assessee as the Assessee was in UAE at the time of registry whereas Mr. Ajay Suri, spouse of the Assessee was in India. The registry of the plot for the new property was completed on 12th January 2021, when strict international travel restrictions were in place due to Covid 19. Therefore, the Assessee could not travel to India and the registry was completed in the name of Mr. Ajay Suri. A construction agreement was also entered simultaneously with Jayabheri Properties Pvt. Ltd. whereby the construction of the house has also been completed.

8. The Id. DR argued that since the property is not registered in the name of the assessee but in the name of her spouse, the deduction from the capital gain is not allowable.

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

10. It is not in dispute that property has been sold and the proceeds have been reinvested. The only issue arises is that when the property has been registered in the name of the spouse of the assessee whether the deduction is allowable or not.

11. On this issue, we find that the proceeds have been the sale proceeds from the Delhi property had been credited to the same bank account prior to the new investment and the same proceeds have been utilized for purchase of new property. The Assessee submitted the documentary evidence in form of HDFC bank statement and the payment receipt issued by the builder to substantiate that the investment has actually been made out of the sale proceeds of the Delhi property sold by the Assessee. It is also a matter of fact that as the Assessee was in UAE at the time of registry whereas Mr. Ajay Suri, spouse of the Assessee was in India. The registry of the plot for the new property was completed on 12 January 2021, when strict international travel restrictions were in place due to Covid 19. Therefore, the Assessee could not travel to India and the registry was completed in the name of Mr. Ajay Suri for the sake of convenience.

12. On this issue, we are guided by the various orders of the Hon'ble High Courts and the Tribunal which are as under:

- a) CIT vs. Natarajan, [2006] 287 ITR 271 (Madras HC) - The deduction under section 54 was allowed where the new

residential property was purchased in the name of the wife of the assessee.

- b) DIT vs. Mrs. Jennifer Bhide [2011] 15 taxmann.com 82 (Kar HC) – The Tribunal has allowed exemption u/s 54 for investment in residential property by the assessee jointly with her husband.
- c) Kamlesh Keswani vs. ACIT W.P.(C) 13713/2022, CM APPL. 41874/2022 & CM APPL. 41875/2022 (Delhi HC) - Followed the judgment of Hon'ble Delhi High Court in the case of CIT vs. Ravinder Kumar Arora, [2011] 15 taxmann.com 307 (Delhi)
- d) CIT vs. Sh. Mahadev Balai, ITA 136/2017 (Raj HC) - The Hon'ble High Court allowed exemption u/s 54B of the Act for investment made by the assessee in the name of his wife.
- e) Shankar Lal Kumawat vs. ITO 125 taxmann.com 347 (Jaipur - Trib.) - The assessee sold a residential house and invested sale consideration in purchase of a plot of land and carried out construction of a residential house thereon. The Hon'ble ITAT held that mere fact that investment in new property was made in name of his wife could not be a reason for disallowance of deduction under section 54 to assessee.
- f) N Ram Kumar vs. ACIT [2012] 25 taxmann.com 337 (Hyd. ITAT) – The assessee purchased a flat in the name of her

minor daughter and claimed deduction u/s 54F. The exemption was allowed by Hon'ble ITAT.

g) Krishnappa Jayaramaiah vs. ITO- [2021] 125 taxmann.com 110 (Bangalore ITAT) - The assessee had invested sale consideration received on transfer of Capital Asset in purchasing a new residential property in name of his married widowed daughter and the exemption was allowed to the assessee.

h) Mrs. Kamal Murlidhar Mokashi vs. ITO, Ward-8(3), Pune [2019] 110 taxmann.com 120 (Pune - Trib.) - In order to claim deduction under section 54F, new residential house need not be purchased by assessee in his own name or exclusively in his name.

13. Further, we find that the Hon'ble Jurisdictional Delhi High Court in the cases of CIT vs. Kamal Wahal [2013] 351 ITR 4 (Delhi) and CIT vs. Ravinder Kumar Arora [2012] 342 ITR 38 (Delhi), has held that new house purchased in the name of the spouse of the assessee was eligible for claiming deduction under section 54F. The provisions of section 54F are *pari-materia* with the provisions of section 54 of the Act and thus, the principle derived equally applies to section 54 as well. The Hon'ble Jurisdictional High Court has also held in the various judgments that Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Section 54F/54 of the Act are the beneficial provisions which should be interpreted liberally in favour of the

exemption/deduction to the taxpayer and deduction should not be denied.

14. Hence, keeping in view, the entire facts of the case, since, the sale proceeds have been duly invested in acquisition of new property within the due time allowed, the assessee is eligible for claim of deduction u/s 54F.

15. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 04/01/2024.

Sd/-

(Saktijit Dey)
Vice President

Dated: 04/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR