

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 263/Ind/2023**  
**Assessment Year: 2015-16**

Keshav Kanungo, Flat No. A-603, Virasha Heights, Near Danish Bridge, Bhopal (Appellant/Assessee)	<b><u>बनाम/</u></b> <b>Vs.</b>	ACIT, Circle-2(1), Bhopal (Respondent/Revenue)
<b>PAN: ABVPK 2942 F</b>		
Assessee by	Ms. Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr DR	
Date of Hearing	12.02.2024	
Date of Pronouncement	26.02.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 30.05.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 26.10.2017 passed by learned ACIT, 2(1), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on following grounds:

1. *That on the facts and in the circumstances of the case and in law, the findings of the Ld. CIT(A) that the disallowance made by the AO of Rs. 91,57,000/- is restricted to Rs. 43,46,453/- are wholly wrong and contrary*

*to the provisions of law and therefore be quashed and it be held that Rs. 91,57,000/- is not chargeable as income in A.Y. 2015-16 in view of the provisions of sub section 4 of section 54F of the Income-tax Act, 1961.*

- 2. That on the facts and in the circumstances of the case and in law, it be held that the income from LTCG at Rs. 1,38,47,826/- is not chargeable to tax in A.Y. 2015-16 in view of the fact that Rs. 50,00,000/- was claimed u/s 54EC and Rs. 91,57,000/- was deposited in capital gain account scheme and therefore the addition sustained of Rs. 43,46,453/- was wholly unlawful and unjustified and therefore be deleted.*
- 3. That on the facts and in the circumstances of the case and in law and having regard to the fact that the assessee had acquired flat on 22.09.2017 from the builder at a cost of Rs. 49,18,500/- and offered deemed LTCG Rs. 26,48,811/- in A.Y. 2018-19, no part of capital gain is chargeable to tax in A.Y. 2015-16. And therefore the Ld. CIT(A)/NFAC erred in law and on facts in sustaining disallowance of Rs. 43,46,453/- under head capital gain in A.Y. 2015-16. The said disallowance/addition be kindly quashed /deleted.*
- 4. That on the facts and in the circumstances of the case and in law, that the levy of interest u/s 234A, 234B and 234C is unlawful and, therefore, the said levy be kindly deleted."*

2. The brief facts are such that the assessee-individual submitted return of income for AY 2015-16 declaring a total income of Rs. 31,02,140/-. The case was selected for limited scrutiny to examine 'large claim of exemption u/s 54B to 54GA' and the AO issued statutory notices u/s 143(2)/142(1). During assessment-proceeding, the AO found that the assessee declared a taxable long-term capital gain on sale of an agricultural land made on 13.03.2015 at Rs. Nil after claiming exemption of Rs. 50,00,000/- u/s 54EC on account of investment in bonds of REC and Rs. 91,57,000/- u/s 54 on account of deposit in Capital Gain Deposit Scheme, 1988 ["CGDS A/c"] for making investment in a residential house. When the AO show-caused assessee to explain the exemptions u/s 54EC and 54, the assessee filed details of exemptions but at the same time revised his claim of exemption

u/s 54 to exemption u/s 54F vide letter dated 13.10.2017. The AO accepted exemption u/s 54EC without any objection. However, with regard to other exemption, although the AO accepted assessee's request of switch-over from section 54 to 54F yet disallowed exemption u/s 54F ultimately for two-fold reasons, namely (i) the assessee has not invested entire amount of consideration in CGDS A/c, and (ii) the assessee purchased new residential flat on 22.09.2017 for Rs. 49,18,500/- but it was beyond the prescribed limit of 2 years u/s 54F from the date of transfer of land, the period of 2 years having expired on 12.03.2017 (Date of transfer was 13.03.2015 + 2 years). This way, the AO denied exemption u/s 54F in toto. Aggrieved by AO's order, the assessee carried matter in first-appeal.

3. During first-appeal, the CIT(A) granted part-relief by allowing exemption to the extent of Rs. 48,10,547/- and thereby restricting addition to Rs. 43,46,453/-. The order of CIT(A) is re-produced hereunder for an immediate reference:

**"5.2 Decision:**

*I have perused the assessment order, grounds of appeal and submission filed by the appellant. I find from the assessment order that the deduction u/s 54F was denied by the AO on the ground that the appellant has not invested the entire sale proceeds in capital gain scheme and the investment is not made within two years from the date of transfer of the original asset.*

*The appellant has submitted that his share in the sale proceeds was Rs. 1,41,57,000/- and after reducing the indexed cost of acquisition, the long term capital gain comes to Rs. 1,38,47,286/-. The appellant claimed that he had invested Rs. 50 lakhs in bonds and deposited Rs. 91,57,000/- capital gain account. The appellant claimed deduction u/s 54EC of Rs. 50 lakhs and deduction u/s 54F of Rs.91,57,000/-. The appellant has claimed that the amount of Rs. 91,57,000/- was deposited in the capital gain account within*

the prescribed time limit but he could invest only Rs. 49,18,500/- in purchase of new flat hence, he offered Rs. 26,48,811/- in A.Y. 2018-19 as per the proviso to section 54F(1) of the IT Act.

I have considered the facts of the case and submission of the appellant, I find that the AO has allowed the deduction u/s 54EC of Rs. 50 lakhs which is not disputed by the appellant. The dispute is about the deduction u/s 54F. As per the AO entire sale consideration is not invested in capital gain account and the investment is not made within 2 years from the date of transfer of the original asset. I find that as per the provisions of section 54F(1)(a), full deduction is allowable only if the investment in the new asset is not less than the net consideration. As per section 54F(1)(b), if the cost of new asset is less than the net consideration of the original asset, then so much of the capital gain as bears to the whole of the capital gain the same proportionate as the cost of new asset bears to the net consideration. In the instant case, the net consideration is Rs. 1,41,57,000/- (since the appellant has given any details of any expenditure incurred wholly and exclusively in connection with such transfer). The amount of capital gain is Rs. 1,38,47,286/- and cost of new asset is Rs. 49,18,500/-. **I find from the assessment order that the AO has claimed the appellant has purchased the house on 22.09.2017, however, the appellant has claimed that he has booked the flat on 15.07.2015. Therefore, I hold that the appellant's investment was made within 2 years from the date of transfer of original asset.** However, since the investment made in new asset is less than the net consideration, the appellant is entitled for proportionate deduction u/s 54F(1)(b) of the Income-tax Act, 1961. The ratio of the new asset with net consideration comes to 34.74%. Therefore, the deduction u/s 54F would be 34.74% on capital gain of Rs. 1,38,47,286/-, which comes to Rs. 48,10,547/-. Thus, the disallowance made by the AO of Rs. 91,57,000/- is restricted to Rs. 43,46,453/-, since the appellant was eligible for proportionate deduction u/s 54F to the tune of Rs. 48,10,547/-. The contention of the appellant that he has offered difference amount of Rs. 26,48,811/- in A.Y. 2018-19 is found acceptable since the claim of the deduction u/s 54F in the present year was not as per the law, hence the same is allowed as per the law assuming the investment in new asset was made within the prescribed time limit. The provisions of section 54(1)(proviso) comes in picture only when the investment in new asset is not made within the prescribed time limit. The facts of the case laws relied upon by the appellant are not identical to the facts of present case. Therefore, the contention of the appellant is not acceptable. Thus, the ground raised by the appellant are partly allowed."

[Emphasis supplied]

4. Still not satisfied with the order of CIT(A), the assessee has come in next appeal before us. The revenue is, however, not in appeal against the part-relief granted by CIT(A).

5. Ld. AR for assessee initially assailed the finding made by AO. She submitted that as per provisions of section 54F, the assessee can either purchase a new property in 2 years or construct in 3 years from the date of transfer of original asset. She submitted that the AO has wrongly observed that the assessee's case falls within "purchase" category, in fact the assessee's case falls within "construction" category and therefore the assessee was having time period of 3 years and not 2 years as noted by AO. To show how the case of assessee falls within 'construction', Ld. AR carried us to a letter dated 15.07.2015 issued by M/s Virasha Infrastructures from whom the assessee purchased new residential flat, copy of letter is filed at Page No. 34 of the Paper-Book. Referring to same, Ld. AR submitted that the assessee booked flat with M/s Virasha Infrastructures on 15.07.2015 itself, though the sale-deed was executed on 22.09.2017 in favour of assessee on completion of construction. Thus, the case of assessee essentially falls within the category of 'construction' and not 'purchase'. Ld. AR submitted that the AO ignored the letter dated 15.07.2015 and given adverse decision merely taking into account the sale-deed dated 22.09.2017, therefore the AO's order was wrong. However, the CIT(A) accepted assessee's investment in new flat made on 22.09.2017 as within permissible time-limit and accordingly allowed exemption to assessee and the department has not filed any cross-appeal or cross-objection against CIT(A)'s order, therefore there is no quarrel to that extent. Ld. AR submitted that the CIT(A)'s has, however,

allowed proportionate exemption u/s 54F and the assessee is not against proportionate system which is very much prescribed in section 54F.

9. However, Ld. AR submitted that the case of assessee has a totally different dimension which is not addressed by any of the lower-authorities and that is the grievance raised by assessee in grounds of appeal. Ld. AR submitted that in the AY 2015-16 under consideration, the assessee was entitled and accordingly claimed exemption u/s 54F(4) on the basis of deposit of Rs. 91,57,000/- made in CGDS A/c and not on the basis of investment in new house. Thereafter, the assessee offered re-taxable capital gain on account of non-utilisation of part of the amount deposited in CGDS A/c in subsequent AY 2018-19 on expiry of 3 years' period in terms of Proviso to section 54F(4), the 3 years' period from date of transfer expired on 12.03.2018 (Date of transfer was 13.03.2015 + 3 years). Therefore, the authorities must allow exemption u/s 54F(4) in AY 2015-16 under consideration for deposit of Rs. 91,57,000/- in CGDS A/c. Referring to Ground No. 3, Ld. AR pointed out a fact that the assessee has already declared a re-taxable gain of Rs. 26,48,811/- in subsequent AY 2018-19 based on non-utilisation of amount deposited in CGDS A/c. Thus, there is no mistake in the approach of assessee.

6. Per contra, Ld. DR for revenue strongly opposed the submissions of Ld. AR and emphasized the AO's contention that the assessee did not purchase property within the period of 2 years as prescribed in law. He,

however, agreed that the department is not in appeal against the order of CIT(A).

7. We have considered rival submissions of both sides and perused the orders of AO as well as CIT(A). At first, we refer the provision of section 54F which read as under:

*“54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;*

*(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

XXX

*Explanation.—For the purposes of this section,—*

*“net consideration”, in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.*

(2) XXX

(3) XXX

*(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in*

*the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall, be deemed to be the cost of the new asset:*

**Provided** *that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

*(i) the amount by which—*

*(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),*

*exceeds*

*(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,*

*shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and*

*(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid."*

8. Thus, after a careful reading of section 54F, we find that there can be two ways of claiming exemption u/s 54F, viz. (i) the assessee makes a direct investment in new residential house property, and (ii) the assessee deposits amount in CGDS A/c and thereafter invests in new residential house property by utilizing the amount so deposited. In present case, the assessee has not adopted 1<sup>st</sup> route, the assessee has adopted 2<sup>nd</sup> route which is very much clear from the undisputed facts that initially the assessee deposited Rs. 91,57,000/- in CGDS A/c and claimed exemption in AY 2015-16. Subsequently, the assessee made investment of Rs. 49,18,500/- in acquisition of new house on 22.09.2017 by utilizing part of the CGDS A/c and offered the capital gain relatable to unutilized portion of CGDS A/c in AY 2018-19. Therefore, the assessee should be allowed exemption in AY

2015-16 under consideration on the basis of deposit of Rs. 91,57,000/- made in CGDS A/c. This is, however, subject to a rider that the quantum of exemption shall not be exact Rs. 91,57,000/-, it shall be a lesser amount to be computed having regard to the 'proportionate formula' mentioned in section 54F(1)(b). The AO shall accordingly allow appropriate quantum of exemption to assessee. However, for subsequent AY 2018-19, the AO would be free to work out the amount of CGDS A/c not utilized by assessee in terms of Proviso to section 54F(4) and assess such appropriate amount in accordance with the provisions of Act for which we do not express any view from our side since the case of AY 2018-19 is not before us.

**9. Resultantly, this appeal is allowed in terms mentioned above.**

Order pronounced in open court on 26.02.2024.

sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 26.02.2024

CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar

Income Tax Appellate Tribunal  
Indore Bench, Indore