

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, Accountant Member  
&  
Shri Soundararajan K, Judicial Member**

ITA No.267/Coch/2024: Asst. Year : 2018-2019  
&  
SA No.42/Coch/2024

Sri.Reji Krishnan TC 4/1458(1) Krishnakripa CVRA C9, Kuravankonam Kowadiar PO Trivandrum – 695 003. <b>PAN: AEUPK8336B.</b>	vs.	The Income Tax Officer Ward 1(1) Trivandrum.
(Appellant/Applicant)		(Respondent)

Appellant by: Dr. Abhishek Murali, CA  
Respondent by: Sri. Sanjit Kumar Das, CIT-DR

Date of Hearing : 02.07.2024	Date of Pronouncement: 26.07.2024
------------------------------	--------------------------------------

**ORDER**

**Per Soundararajan K, JM :**

This is an appeal filed by the assessee challenging the order of the CIT(A)/NFAC dated 06.03.2024 vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1062085446(1) in respect of assessment year 2018-2019. The assessee has also filed a stay application for stay of the outstanding demand.

2. The brief facts of the case are that the assessee is an individual and declared total income of Rs.44,90,140. Subsequently, the case was selected for scrutiny and notices u/s.143(2) and 142(1) were issued, for which the assessee filed detailed written submissions along with documents. The Assessing Officer (AO) after considering

the reply and the documents had disallowed the claim made u/s 54F of the Act in respect of the investment made in the second residential house along with other expenditure involved in respect of the purchase of the property. The assessee originally sold two long term capital assets in different survey numbers on 10.07.2017 by way of separate sale deeds and he has utilized the sale consideration against the two residential houses purchased on 11.07.2016 and 14.07.2016. The assessee claimed deduction u/s.54F of the Act on the capital gains by stating that he had invested the sale proceeds of the two capital assets in the two residential houses. The AO granted benefit u/s.54F of the Act on the first purchase of residential house and disallowed the second purchase of residential house since the provision will not apply to the second house. The AO also disallowed the other expenditures for the reason that no documents were produced. The assessee challenged the above said order of the AO before the CIT(A) and contended that the assessee is eligible for deduction u/s.54F of the Act and the other expenses disallowed also not correct and prayed to allow the appeal.

3. The learned CIT(A) had partly allowed the appeal and confirmed the disallowance of deduction u/s.54F of the Act. As against the above said order of the CIT(A), the assessee has filed this present appeal before this Tribunal, by raising the following grounds of appeal:-

*“(i) The order of the AO/CIT(A) is erroneous, is contrary to law, opposed to the facts and circumstances of the case.*

**54F Disallowance when Assessee has Invested before Sale of Property**

(ii) *The Learned AO/CIT(A) have failed to apply the provisions of Section 54F correctly.*

(iii) *The Learned AO/CIT(A) has disallowed Exemption claimed u/s 54F on the sale of 2 separate agricultural lands to invest in 2 separate individual houses, despite the sale & reinvestment satisfying all provisions of the Act.*

(iv) *The Learned AO/CIT(A) ought to have noted Section 54F applies to each Sale of Land as long as the Assessee has complied with the provisions and provisos of Section 54F.*

(v) *The Learned AO/CIT(A) has incorrectly disallowed 54F on the ground that each individual sale of land is not eligible for Section 54F and all sales can be reinvested only 1 House Property, which is totally opposed to the established law.*

(vi) *Further the case laws relied upon by the AO/CIT(A) are completely different from the Appellant's case and relate to a single sale of Long Term Capital Asset. In the Appellant's case there are 2 separate transactions of sale of Lands.*

**Allowance of Commission Paid on House where 54F was Claimed**

(vii) *Consequently the brokers commission paid for the reinvestment disallowed w/s 54F is incorrect and ought to be allowed.*

**Disallowance of Document Writing Charges & Land Development Charges**

(viii) *The Learned AO/CIT(A) has arbitrarily disallowed 90% & 80% of the expenses incurred towards Document Writing Charges and Land Development Charges.*

(ix) *The AO/CIT(A) ought to have appreciated that when the expenses are considered as genuine in nature then a mere nominal allowance of the same is both incorrect and without any basis.*

(x) *The AO/CIT(A) ought to have allowed the entire expense or at least 50% or more of the same.*

(xi) *The consequential interest u/s 234 ought to be recalculated."*

4. The learned AR at the time of hearing argued that the second property is also eligible for deduction u/s.54F of the Act and the

other expenses incurred in respect of the transactions are also reasonable and therefore, prayed to allow the appeal.

5. The learned Departmental Representative relied on the orders of the authorities below and prayed to dismiss the appeal.

6. We heard the arguments of both sides and perused the material available on record. The main dispute involved in this appeal is against the disallowance of claim made u/s.54F of the Act in respect of the capital gains on the transfer of the capital assets, insofar as the second residential house is concerned. Before going into the merits of the case, let us have a look on the provision, which deals with the issue, i.e., section 54F, which reads as under:-

*“[54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.—(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:*

*[Provided that nothing contained in this sub-section shall apply where—*

*(a) the assessee,—*

*(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or*

*(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*

*(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and....”*

7. As seen from the above provision, in order to get the benefit u/s.54F of the Act, the assessee should have utilized the capital gain arising from the transfer of any long term capital assets by purchasing one residential house in India within a period of one year before or after two years on which the capital asset was transferred or otherwise the capital gain should be utilized for constructing one residential house in India within a period of three years from the date of transfer of the capital asset. We find from the above said provision, if the assessee has satisfied the above conditions, he is eligible to claim deduction u/s.54F of the Act on the capital gains received by way of transferring the long term capital assets. Further, the proviso also prescribes the circumstances under which the above sub-section would not be applicable, i.e., if the assessee owns more than one residential house on the date of transfer of the capital asset or purchase any residential house within a period of one year after the date of transfer of the original asset then the assessee is not entitled for any benefit under Sec 54F of the Act. As seen from the proviso, if the assessee has more than one residential house at the time of transferring the capital asset other than the new house purchased, then he is not entitled for the benefit provided u/s.54F of the Act. Similarly, if the assessee apart from the new residential house purchased, if he has purchased another residential house within a

period of one year after the date of the transfer of the capital asset, then also he is not eligible for the benefit provided u/s.54F of the Act.

8. Now coming to the present facts of the case, the assessee had sold two long term capital assets on 10.07.2017 and utilised the gain towards the purchase of a residential house on 11.07.2016. Therefore, as per section 54F of the Act, he is eligible for allowance u/s.54F of the Act in respect of the purchase made on 11.07.2016 since before one year he had purchased one residential house. Thereafter, he purchased another house on 14.07.2016 and claimed deduction u/s 54F of the Act which was denied by the AO. Therefore on the date of purchase of the second residential house on 14.07.2016 he has one residential house, and therefore, the second residential house purchased is not eligible for the benefit conferred under section 54F of the Act. Further, section 54F makes it clear that the assessee can purchase or construct one residential house in India and therefore, the second residential house is not eligible for the benefit provided u/s.54F of the Act. The AO as well as the CIT(A) considered the submissions and found that the assessee is not entitled to the benefit provided u/s.54F of the Act in respect of the second house purchased on 14.07.2016, and therefore, they assessed the same under the head "capital gains".

We find that the said orders of the AO as well as the CIT(A) in holding that the claim u/s.54F in respect of the second residential house purchased is not admissible is in accordance with the provisions of the Act, and therefore, we uphold the orders of the authorities below insofar as the disallowance u/s.54F of the Act is concerned. It is ordered accordingly.

9. In respect of the disallowance of commission paid to brokers and expenses on new assets, the assessee had claimed a sum of Rs.27,00,000 towards expenses, whereas the AO as well as the CIT(A) had disallowed the same for the reason that since the deduction u/s.54F of the Act on the investment in second house was disallowed, then automatically the expenses incurred on the said house is also not allowable. We find that the orders of the lower authorities are in accordance with the provisions of the Act, and therefore, we confirm the same.

10. The learned CIT(A) also disallowed the document writing charges of Rs.45,000 for the reason that there is no documentary evidences produced by the assessee. We find that the value of the second house is about Rs.2,95,43,031 and therefore, the document writing charges of Rs.45,000 claimed by the assessee is not a big amount and therefore, we allow this expense of document writing charges.

11. Similarly, in respect of the disallowance of land development charges of Rs.2,78,000, it is the case of the assessee that the same has been incurred on various dates by paying the charges to the local labourers, and therefore, they are not having any receipts for such payments. The AO had restricted the claim to 20% and confirmed the balance 80%, for the reason that no evidences were placed before him. We have perused the reply filed by the assessee as well as the arguments made before this Tribunal and we find that normally in this type of expenses the assessee would not be able to get any receipts from the labourers and therefore, the assessee was not able

to produce any receipt towards the charges paid to the labourers. The AO also estimated and restricted the claim to 20%. We find that the argument advanced by the Id.AR is correct and took a lenient view and restrict the disallowance to 50% of the land development charges claimed by the assessee. In effect, the assessee is getting a relief of Rs.1,39,000 in respect of the land development charges.

12. Since we have decided the appeal, the stay application becomes infructuous and the same is accordingly dismissed.

13. In the result, the appeal filed by the assessee is partly allowed and the stay application is dismissed as infructuous.

**Order pronounced in the open court on 26<sup>th</sup> July, 2024.**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

**Sd**  
**(Soundararajan K)**  
**Judicial Member**

Bangalore; Dated: 26<sup>th</sup> July, 2024  
Devadas G\*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar  
ITAT, Cochin