

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.659/Mum/2024
(Assessment Year: 2021-22)**

DCIT-27(2), Mumbai Vashi, Navi Mumbai 4 th Floor, Room No.419, 6 th Floor, Vashi Railway Station Complex, Vashi, Navi Mumbai- 400 073	vs	Priyanka Bhaskar Shah, Ghatkopar (E), 803, Indraprastha, Neelkanth Valley, Rajawadi, Ghatkopar (E), Mumbai-400 077 PAN: BJDPS3200H
APPELLANT		RESPONDENT

Assessee by : Shri Satyaprakash Singh, CA
Respondent by : Shri Yogendra T.Wakare(Sr. DR)

Date of hearing : 08/08/2024
Date of pronouncement : 13/ 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the revenue was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2021-22, date of order 21.12.2023. The impugned order was emanated from the order of the Learned National e-assessment Centre (NEAC), Delhi, order

passed under section 143(3) read with section 144B of the Act, date of order 29/12/2022.

2. The revenue has taken the following grounds of appeal:-

“(i) "Whether On the facts and circumstances of th& case and in Law, the Ld CIT(A) erred in allowing deduction u/§ 54 F amounting to Rs.9,50,16,715/- treating investment in two flats as one residential house by not appreciating the facts that as per the amended provision of section 54F{1} with effect from 01.04,2015, the assessee was allowed to invest and claim deduction under said section in respect of only one residential flat.

(It) Whether. On the facts and circumstances of the case and in Law, the Ld CIT(A) erred In allowing deduction u/s 54F of the Act ignoring the fact that the assessee had invested in two flats which were separate, registered separately and as per plan approved by RERA/NMMC both the flats could not have been made into one due to space between the two flats being "open to sky" and hence assessee was not entitled to claim deduction u/s 54f(1) of the Act.

(iii) Whether On the facts and circumstances of the case and in Law, the Ld, CIT(A) erred in relying upon affidavit of builder and revised plan submitted by the assessee during the course of assessment proceedings showing it to be a one residential house out of two separate flats, which were nothing but self serving documents and assessee could not submit contemporaneous evidences bearing the seal of Municipal Authorities or RERA dates back to October 2020 to till passing of the assessment order as noted by the AO in his assessment order and even before the Ld.CIT(A).

(iv) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

3. The brief facts of the case are that the assessee has earned long term capital gain (in short, 'LTCG') amount to Rs.9,50,16,715/- on sale of unsold equity shares. The assessee invested the sale proceeds of the shares in two adjoining residential flats and accordingly claimed exemption under section 54F of the Act

amount of Rs.9,50,16,715/-. The address of the two adjoining flats is - 601 & 602 in residential project, 'One Akshar' situated at Sanpada, Navi Mumbai. The developers are 'M/s Akshar Realtors'. The agreement for sale was prepared on the basis of combined flats and treated both the flats as one and total consideration of the flats amounting to Rs.12,54,00,000/-. The assessment was initiated and the Ld.AO rejected the assessee's plea for treating the two flats as one flat. As per the amendment to section 54F, when investments is made in multiple flats in the same residential complex, are not treated as a single flat w.e.f. A.Y. 2014-15. Thereafter, consequent to substitution of words "constructed residential house" by Finance Act (No.2) Act with effect from 01/04/2015, for the phrase, "constructed one residential house in India". Accordingly, only one flat was duly accepted for exemption under section 54F and the claim of exemption related to the other flat was duly rejected by the Ld.AO. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) considered the submission of the assessee and considered both the flats as a single flat as per the exemption claimed under section 54F of the Act. Being aggrieved on the appeal order, the Revenue filed an appeal before us.

4. We heard the rival parties and considered the documents available on record. The Ld.AR filed a written submission which is kept in the record (APB). The Ld.AR first argued that the assessee has made the agreement with the builders for purchasing Joint flats and converting them into one unit. All the relevant documents as proof of evidence for combining two flats into one unit were filed before the Id. AO, before the appellate authority and as well as the documents are filed before the Bench. The case of the Ld.AO is that the two units

are separate. The Ld.AO relies on the core plan of the 'One Akshar' and has noted that the 'OTS' (open to sky) space is structured between flat Nos. 601 & 602 and there is no common wall between the two flats. Hence both flats cannot be combined as claimed by the assessee. Whereas the plan of the flat and affidavit of the developers mentioned that the assessee has taken both the above said flats and both are adjacent flats. The Bench has asked both parties whether any physical verification was conducted to verify the claim of assessee. But reply was negative. Although the assessee is allowed to combine two flats as a single unit, this issue has not been physically verified by any revenue authorities. The Ld.AO has expressed the view that both flats cannot be combined. Thus, there is contradiction between parties on facts. Consequently, we are remitting the matter to the file of the learned AO with a specific directive. We instruct the Id. AO to carry out a physical verification of the flats. If both flats are combined, then the assessee should be given deduction u/s 54F of the Act.

5. In the result, the appeal of the revenue bearing **ITA No.659/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 13th day of August, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 13/08/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai