

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

**BEFORESHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2343/Del/2023  
Assessment Year:2020-21

Sh. Rajeev Vasudeva, 43 Prithvi Raj Road, New Delhi	<b>Vs.</b>	DCIT, Circle Intl. Taxation-3(1), Delhi
<b>PAN :AACPV4391F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Dr. Rakesh Gupta, Advocate Sh. Shrey Jain, Advocate Sh. Deepesh Garg, Advocate
Department by	Sh. Vijay B. Vasanta, CIT(DR) Sh. Shankar Lal Verma, Sr. DR

Date of hearing	18.10.2024
Date of pronouncement	08.11.2024

**ORDER**

**PER M. BALAGANESH, AM:**

Captioned appeal has been filed by the assessee assailing the final assessment order passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (in short 'the Act') pertaining to assessment year 2020-21 in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. The additional ground raised by the assessee vide letter dated 13.11.2023, stating that the directions issued by learned DRP under section 144C(5) of the Act dated 16.05.2023 does not bear the DIN Number, was stated to be not pressed by the learned AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly, the additional ground raised by the assessee is hereby dismissed as not pressed.

3. Though, the assessee has raised several grounds before us, the only effective issue to be decided in this appeal is as to whether the learned CIT(A) was justified in confirming the action of the learned AO in denying the claim of exemption under section 54F of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a senior citizen working with Egon Zehnder International. The assessee held investments in various mutual funds and in equity shares of unlisted companies shares. The Assessee sold his investments and earned long term capital gain of Rs. 6,41,66,420/-. The assessee made investments of ½ share in Plot no. 10, Ground Floor & First Floor, Padmini Enclave, Delhi and claimed

exemption under section 54F of the Act to the tune of Rs.3,83,55,102/- and remaining amount of Rs.2,58,11,318/- was duly declared as long-term capital gain by the assessee in the return of income. Apart from this, the assessee had declared income from salary, income from house property, income from business and income from other sources.

5. During the course of assessment proceedings, learned AO directed the assessee to justify the claim of exemption under section 54F of the Act. The assessee submitted the computation of capital gains and details of property owned/held by him as under:-

Sl. No.	Particulars	Remarks of assessee for claiming exemption u/s 54F	Whether purchase deed provided
1.	Flat AR 515A in the Aralias, DLF City, Gurgaon-122009	A residential flat owned by the assessee and rented for the year @ Rs.30 Lacs p.a.	Yes
2.	Unit in Emaar MGF 'Marbella, Sector-15, Gurgaon, Haryana-122001	Deposit with builder since 10.08.2010 and possessing of property still no provided by the builder. Not to be considered as House property and same is evident from the schedule House Property of ITR	Yes
3.	1 BHK Studio Apartment, Sector -109, Gurgaon, Haryana-122017	Booking amount of Rs.30 lacs paid on 10.04.2014 to builder and possessing of property still not provided by the builder, since project under dispute. Not to be considered as House property and same it is evident	No

		from the schedule House property of ITR	
4.	½ share of Plot No. 10, Ground Floor & First Floor, Padmini Enclave, New Delhi-110018	Sale consideration of long-term capital assets invested in this residential property for claiming exemption u/s 54F. Registered sale deed of property dated 04.08.2020 had already been submitted as Annexure-2.	Yes

6. The assessee submitted that the property mentioned in serial no. 2 in the above table is only a deposit amount paid by the assessee with builder and possession of the property was not handed over by the builder and accordingly the same cannot be construed as house property available with the assessee on the date of transfer of original assets (i.e. shares and mutual funds). Possession of this property was ultimately handed over to the assessee only on 15.04.2021, which falls in assessment year 2022-23. It was submitted that since the possession is not handed over to the assessee till the end of the year under consideration, any rental income arising thereon cannot be held to be assessable under the head 'income from house property' and accordingly, the cumulative conditions provided in the proviso to section 54F of the Act does not stand fulfilled in the instant case. Further, it was submitted that the assessee was only 50% owner

of the said property and hence cannot be construed as absolute owner of the property. Consequentially, he cannot be held to be owning any house property on absolute basis as on the date of transfer of original asset.

7. In respect of 1 BHK Studio Apartment, Sector-109, Gurgaon, Haryana-122017, the assessee submitted that he had paid only booking amount of Rs.30 lakhs on 10.04.2015 to the builder and possession of the property was not handed over, since the project is under dispute. Hence, such property cannot be construed as a property owned by the assessee as on the date of transfer of original capital asset.

8. The Learned AO, however, did not heed to any of the aforesaid contentions and proceeded to deny exemption claimed by the assessee under section 54F of the Act in respect of reinvestment made in the property of Padmini Enclave on the ground that assessee was owning more than one house property as on the date of transfer of original capital asset.

9. We find that the Hon'ble Supreme Court in case of CIT Vs. Balbir Singh Maini reported in 398 ITR 531 (SC) and Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana reported in 340 ITR 1

(SC) had held that when possession of the property was not handed over to the assessee, the assessee cannot be held to be the owner of such property. Further, we find that the assessee is only 50% owner of the property in Marbella Emaar MGF, hence, he is not the absolute owner. Lack of absolute ownership in a property cannot be construed as property fully owned and held by an assessee on the date of transfer of original capital asset. Reliance in this regard was placed in the decision of Hon'ble Madras High Court in case of Dr. P.K. Vasanthi Rangarajan Vs. CIT, (2012) 252 CTR 336 (Mad), which was rendered in the context of granting exemption under section 54F of the Act where that assessee was owning 50% share in property along with her husband. The Hon'ble Madras High Court held that unless assessee is found to be exclusive owner of the property on the date of transfer of original capital asset, benefit of exemption under section 54F of the Act could not be denied to the assessee.

10. Learned DR relied on the decision of Pune Tribunal reported in 25 SOT 53 (Pune Trib) in the case of Gopal D. Shetty Vs. ITO, wherein the word 'own' was a subject matter of interpretation.

Learned DR placed reliance on paragraph 35 of the said judgment, which reads as under: -

*“35. We may also have a look to the controversy arising in this case from one 3 more angle. On reading of the proviso to section 54F, it is seen that the expression "assessee owns, on the date of transfer of the original asset, any residential house" is used in the proviso with reference to "the residential house, the income of which is chargeable under the head 'Income from house property" (underlined ours). In other words, the expression "own any residential house" is used with a reference to the income of which is chargeable under the head "Income from house property". The Legislature has inserted sections 22 to 26 in the Income-tax Act for the purpose of determining the income, which is chargeable under the head "Income from house property" Section 22 to section 26 of the Act provides the manner of computing the income from house property chargeable to tax under the head "Income from house property". Section 22 charges to tax, in the hands of the owner, the annual value of house property. Section 23 lays down the manner of determining the annual value. Section 24 lays down allowable deduction from the annual value and section 25 lays down the amounts which are not deductible, notwithstanding the provisions of section 24. Section 25A enacts special provision for cases where unrealized rent allowed as deduction is realized subsequently. Section 26 provides the manner of computing income in cases where the property is owned by more than one co-owner. In other words, the income chargeable to tax under the head "Income from house property is to be computed in the manner laid down in sections 22 to 26 of the Act. In the case of Podar Cement (P.) Ltd. (supra), the Hon'ble Supreme Court has held that for the purpose of charging the income under the head "Income from house property", the owner is a person who is entitled to receive income from the property in his own right and the requirement of registration of the sale deed in the context of section 22 is not warranted. Therefore, in this view of the matter, the meaning given to the words "owner of house property" for the purpose of charging income of which under the head "Income from house property" by the Hon'ble Supreme Court in the case of Podar Cement (P.) Ltd. (supra) is to be imported for the purpose of defining the words "own of any residential house" occurring in section 54F of the Act. Therefore, for the purpose of section 54F of the Act, the meaning of "own" or "owner" is to be understood in the same sense in which it is understood for the purpose of sections 22 to 26 of the Act.”*

11. We have gone through the said judgment and, in our considered opinion, the said judgement could be relied upon only for the limited proposition of the fact that registration of a property need not be made mandatory for determining as to whether a particular assessee could be construed as the owner of the residential property. It is important to note that in the case before Pune Tribunal, possession of the property was duly handed over to that assessee. Whereas, possession of the property in respect of property referred to in serial no. 2 and 3 in the above table, was not handed over to the assessee. Hence, we hold that the decision of Pune Tribunal is factually distinguishable with the assessee.

12. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we hold that the assessee was not owning more than one house property on the date of transfer of original capital asset and accordingly would be entitled for claim of exemption under section 54F of the Act in the sum of Rs.3,83,55,102/-. Accordingly, ground nos. 1 to 6 raised by the assessee are allowed.

13. Ground nos. 8 & 9 are general in nature and does not require any specific adjudication.

14. Ground no. 7 raised by the assessee challenging the initiation of penalty proceedings under section 270A of the Act. Since, the relief is granted to the assessee on merits of the addition, the penalty proceedings initiated under section 270A of the Act would have no legs to stand.

15. In the result, appeal of the assessee is partly allowed.

***Order pronounced in the open court on 8<sup>th</sup> November, 2024***

***Sd/-***  
**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

***Sd/-***  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 8<sup>th</sup> November, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi