

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : BY VIRTUAL HEARING**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No. 790/Coch/2023
Assessment Years : 2017-18

SA No. 217/Coch/2023 (In ITA No.790/Coch/2023)
Assessment Years : 2017-18

Panattu Urumise Chacko, 34/1552, Panattu House, Edappally, Ernakulam – 682 024. PAN – ACEPC 5419 M	Vs.	The Income Tax Officer, Non Corp Ward-1(1), Kochi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Terry V James, Advocate
Revenue by	:	Smt. Girly Albert, Sr. DR

Date of Hearing	:	19.09.2024
Date of Pronouncement	:	15.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 22/09/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1056428966(1) for the assessment year 2017-18.

2. In the present case, the deduction claimed by the assessee u/s 54 of the Act was denied by the AO on the reasoning that the new house

was not constructed within 3 years. The view taken by the AO was subsequently confirmed by the Id. CIT(A).

3. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

4. The Id. AR before us fairly admitted there was a delay in obtaining the occupancy certificate from the competent authority, which was due to floods in the month of August 2018 and September 2019. As such, due to floods, there was severe scarcity of materials and labour to finish the work within the time. Nevertheless, the assessee is made substantial investment by buying the piece of land and doing construction activity on such land. Therefore, the benefit of deduction u/s 54 of the Act cannot be denied.

5. On the other hand, the Id. DR vehemently supported the orders of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the deduction claimed by the assessee under section 54 of the Act has been denied by the authorities below, as the assessee failed to complete the construction within the statutory time limit. As such, there was a delay in obtaining the occupancy certificate from the competent authority, which was obtained on 11/12/2019. Therefore, deduction was denied. However, it is undisputed fact that the assessee has made substantial investment in the property within the period of 3 years. Therefore, we are of the view that the assessee cannot be denied the benefit of deduction u/s 54 of the Act. In holding

so, we draw support and guidance from the judgment of Hon'ble Madras High Court in the case of CIT Vs. Sardarmal Kothari 30 ITR 286, wherein it was held as under:-

The assessee had claimed exemption of capital gain tax under section 54F. The Assessing Officer rejected the same on the ground that the construction was not completed when he made a personal visit. The Commissioner (Appeals) and Tribunal allowed the assessee's claim. Held that it was not in dispute that the assessee had purchased the lands by investing the capital gain and they had also constructed residential houses. In order to establish the same, the assessee submitted before the Commissioner (Appeals) material evidence, viz., invitation card printed for the house warming ceremony to be held on 12-7-2003. The assessee had also produced the completion certificates from the municipal authority. On the basis of the above documents, the Commissioner (Appeals) concluded that the requirement of the statutory provision had been complied with by the assessee and that was reconfirmed by the Tribunal in the orders impugned. The Tribunal had also taken note of its own earlier order in the case of Mrs. Seetha Subramanian v. Asstt. CIT [1996] 56 TTJ (Mad.) 417/59 ITD 94 (Mad.), wherein the Tribunal has held that, in order to get the benefit under section 54F, the assessee need not complete the construction of the house and occupy the same. It is enough if the assessee establishes that the assessee had invested the entire net consideration within the stipulated period. Therefore, the Tribunal was justified in allowing the assessee's claim.

6.1 It is an admitted fact that the provisions of deduction u/s 54 of the Act were brought out in the statute considering the scarcity of the house in India, thus we are of the view that liberal approach should be adopted. Furthermore, we also note that the assessee has made substantial investment in the new property, therefore, we are of the view that the assessee cannot be denied the benefit of deduction u/s 54 of the Act. Accordingly, we set aside the finding of the Id. CIT(A) and direct the AO to delete the addition made by him.

7. In the result, the appeal filed by the assessee is hereby allowed.

S.A. No. 217/Coch/2023

8. Since the issue involved in the appeal of the assessee has been disposed of, as discussed above, the stay petition filed by the assessee is dismissed as infructuous.

9. In the combined result, the appeal filed by the assessee is allowed and stay petition filed by the assessee is dismissed as infructuous.

Order pronounced in court on 15th day of October, 2024

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 15th October, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order
Asst. Registrar, ITAT, Bangalore