

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 1801/Del/2024 : Asstt. Year : 2021-22

Ashish Bansal, House No. 24, Road No. 73, West Punjabi Bagh, New Delhi-110026 (APPELLANT)	Vs	DCIT, Circle-56(1), New Delhi-110002 (RESPONDENT)
PAN No. AFBPB4828B		

**Assessee by : Ms. Rano Jain, Adv. &
Ms. Mansi Jain, Adv.
Revenue by : Sh. Poojan Rana, Sr. DR**

Date of Hearing: 21.11.2024	Date of Pronouncement: 27.11.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2021-22, arises against the order of CIT(A)/NFAC, Delhi dated 21.02.2024 in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061271039(1) in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "The Act").

2. Heard both parties at length. Case files perused.
3. The assessee pleads the following substantive grounds in the instant appeal:

"1. On the facts and circumstances of the case, order passed by National Faceless Appeal Centre (NFAC) is bad both in the eye of law and on facts.

2(i) on the facts and circumstances of the case, NFAC has erred, both of facts and in law, in confirming the disallowance of an amount of Rs.3,26,86,651/-, claimed

by the assessee as exemption under section 54F of the Act.

(ii) The disallowance has been confirmed despite the assessee fulfilling all the conditions as prescribed in section 54F of the Act.

3. That the disallowance has been confirmed misunderstanding the facts of the case as the first property being encumbered, the same was not actual purchase.

4. Without prejudice to the above, provisions of section 54F being beneficial provisions, the Income Tax Department ought to have taken a liberal view while granting the said benefit."

4. Suffice to say, the assessee herein is aggrieved against both the learned lower authorities denying him section 54F deduction allowable in case capital gains arising from transfer of a long term capital asset (other than a residential house), are invested in one residential house within the prescribed period. We wish to make it clear that there is no dispute that assessee had sold/transferred his shares on 31.12.2020 giving rise to long term capital gains.

5. Now comes the issue between the parties. The assessee appears to have formerly executed a sale/purchase document *qua* 1/6th share in alleged residential house/plot bearing No. C-69, land area measuring 317 sq. yrd., Block-C, Shivaji Park near Punjabi Bagh, New Delhi involving consideration amount of Rs.74,00,000/- with M/s Global Agro Corporation Pvt. Ltd. He further appears to have invested an amount of Rs.6,47,00,000/- for an apartment No. CTD181 measuring 311 sq. ft. on 18th floor, Block-D, the Crest, DLF-5, Sector-54, Gurugram. It is for this latter residential house that the assessee had admittedly claimed section 54F deduction. The Assessing Officer's assessment discussion dated 08.12.2022 declined the same on the ground that the assessee had already

invested his capital gains in the former residential asset at New Delhi.

6. The assessee on the other hand submitted that the former residential asset in fact was a disputed property wherein not even possession has been delivered to him. We find from assessment discussion in para 5 page 12 that the Assessing Officer went by the corresponding recitals in the former sale deed that the assessee had indeed been delivered possession of the former house property. He accordingly disallowed the assessee's claim of Rs.3,26,86,651/- in very terms.

7. The assessee preferred appeal. The Revenue points out during the course of hearing that CIT(A)/NFAC came across his one more house property situated in Australia para 9 page 12 of the lower appellate discussion. The Revenue's case accordingly is that the assessee had all along not disclosed his Australian house property as well.

8. Be that it may, we invited the Revenue's attention to the amended section 54F vide Finance Act, 2014 w.e.f. 01.04.2015 that such a residential house is constructed "in India". Meaning thereby that any residential house of the concerned assessee outside India could neither be counted nor it forms subject matter of section 54F deduction. It is evident during the course of hearing from a perusal of the case file that assessee is a director in M/s Global Agro Corporation Pvt. Ltd. had been facing civil suit proceeding right from the year 2019 regarding the very property in hon'ble jurisdictional high court and therefore, the former sale deed is nothing but a collusive document only.

9. The facts also remains that once the assessee's said former sale deed; even if it contains possession recital, is

prima facie a collusive document for the limited purpose section 54F deduction herein, denial of the very claim regarding his second house property purchased in Gurugram would not be sustainable in law as it defects the intent of the legislature having provided for section 54 deduction. We therefore, reject the Revenue's contentions seeking to disallow the assessee's claim for this precise reason that he had already invested his capital gains in the said Delhi property but at the same time, we deem it proper in the large interest of justice to restore the issue back to the Assessing Officer to verify as to whether the above second house at Gurugram satisfies all the necessary conditions u/s 54F or not. It is made clear that it shall be the assessee's risk and responsibility to plead and prove all the relevant facts before the Assessing Officer within three effective opportunities, in consequential proceedings. Ordered accordingly.

No other ground or arguments has been pressed before us.

9. This assessee's appeal is partly allowed for statistical purpose in above terms.

Order Pronounced in the Open Court on 27/11/2024.

Sd/-

(M. Balaganesh)
Accountant Member
Dated: 27/11/2024

Sd/-

(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR