

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

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

**ITA No. 3643/Del/2024 : Asstt. Year : 2012-13**

Omwati, H.No. 316, Village-Noornagar, Sihani Gods Valley Faram, Ghaziabad-201003	Vs	Income Tax Officer, Ward-2(2)(1), Ghaziabad-201001
(APPELLANT)		(RESPONDENT)
<b>PAN No. AEGPO9325L</b>		

**Assessee by : None**

**Revenue by : Sh. Akhilesh Kumar Yadav, Sr. DR**

**Date of Hearing: 02.12.2024**

**Date of Pronouncement: 05.12.2024**

**ORDER**

**Per Satbeer Singh Godara, Judicial Member:**

This assessee's appeal for Assessment Year 2012-13, arises against the order of CIT(A)/NFAC, Delhi dated 13.06.2024 in DIN & Order No. ITBA/NFAC/S/250/2024-25/1065625654(1) in proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "The Act").

2. Case called twice. None appears at the assessee's behest. She is accordingly proceeded *ex-parte*.

3. Learned departmental representative vehemently submits during the course of hearing that both the lower authorities have rightly disallowed the assessee's section 54F deduction claim amounting to Rs.78,54,055/- in assessment dated 04.12.2019, as upheld in the lower appellate discussion reading as follows:

*"5.7 The Ground Nos. (5) & (6) are in respect of claim of deduction u/s 54F of the Income Tax Act. The appellant has claimed that she has made investment of Rs 79,25,000/- in immovable property which qualifies for deduction u/s 54F of the I T Act. In support of the contention, the appellant had submitted valuation report of a property at H No Plot/Khasra No. 316, Noor Nagar, Sihani GOs Valley, Meerut Road, Ghaziabad. The AO has annexed a letter dated 02/12/2019, received from the Valuer to the assessment order wherein it is stated that he has done the valuation of property at aforesaid address which is stated to be a residential property claimed to be constructed in FYs 2011-12 & 2012-13 by the appellant. The valuer has stated that he had asked for copies sale deed of land, approved plans, contractors bills, purchase vouchers, electricity bills etc. The valuer has stated that he was not provided with any of the documents. The valuer has stated that he has accepted the appellant's contentions regarding the age of the property and based on the same he has computed the cost of construction of property at Rs.79,25,000/-. Based on the said letter the claim of deduction u/s 54F of the IT Act has been rejected on the ground that the Valuation Report was fabricated and that appellant did not have any plausible documentary evidence in support to claim of exemption u/s 54F of the I T Act. The appellant in submission dated-*

*"The action of the AO is grossly unjustified in view of following facts:*

*(i) That the Govt. Registered Approved Valuer had duly inspected the Assesses's house and after inspection has mentioned the dimensions of the house, period of construction of the house etc which does not appear to have been denied by the Registered Approved Valuer.*

*Nowhere the Approved Valuer has denied that the valuation report was not prepared and submitted by him. It is a fact that in the villages today itself in respect of ancestral properties which are coming after generation to generation, no evidence is there of ownership and hence it cannot be denied that the assesse had not constructed the house. Today, itself the house is very much situated there in the village. As regards the A.O.'s observation, that the assesse has not produced any approved map for the construction of the house, it is stated that in the villages today itself there is no such requirement of approved map from the concerned authority.*

*Further, the approved valuer was summoned at the back of the assesse without her knowledge and no opportunity*

*was given to the assessee before disbelieving the claim of the assessee of construction of the house. However, if in any case the A. O. was not satisfied about the construction of the house, he could have very well refer the matter of valuation to the Departmental Valuation Officer before completing the assessment which was also done by the Ld. ITO, Ward (1)(5) Ghaziabad during the assessment of Mr. Bali Tyagi who was also the Joint Owner in the transaction involved.(Order of Mr. Bali Tyagi is enclosed herewith for the reference) But No such refer to departmental Valuer was done by the A.O which shows that A.O was in a bit of hurry to pass the order against the appellant.*

*ii) That the assessee has made the cash withdrawals from her saving account from time to time and the bank statement was well before the AO and out of such cash withdrawals the assessee had made investment in the construction of the house. Merely because the assessee was not having bills of material purchased, the observations of the A.O. that house was not constructed by the assessee, from any angle cannot be considered good. Further, the A.O. has not brought out on the record any evidence that the assessee had invested the cash withdrawals of Rs.79 lacs and odd for other purposes other than construction of the house.'*

*The submission of the appellant has been considered vi-a-vis the assessment order on the subject of claim of deduction u/s 54F of the I T Act The appellant is entitled to claim deduction u/s 54F of the I T Act where she has sold a capital asset other-than residential property and the consideration is invested in a residential house which is purchased within two years of sale of the capital asset or a residential house property is constructed within three years of the sale of the capital asset. In the instant case the appellant has sold agricultural land and the consideration received by her i.e. Rs.80,41,666/- is claimed to have been invested in residential house to the extent of Rs.79,25,000/-. The appellant has furnished a valuation report for estimating the cost of construction in the property claimed to have been constructed in FY 2011-12 & 2012-13 The appellant has not produced any document such as approved plans of the property and its completion certificate to establish the period during which the construction was done. There are no documents to establish that the property in question is a residential property and it belongs to the appellant. The Valuer has also acknowledged in writing that he was not provided with or has not seen any documents to show that property valued belonged to the appellant. The Bank Account extract produced by the appellant shows*

*withdrawals to "the extent of Rs.68,50,000/- and not Rs.79,25,000/- which is the claimed by the appellant to have been invested in residential property. Therefore, the evidence produced by appellant is Insufficient to prove that appellant has purchase or constructed a Residential Property from the consideration received within the conditions prescribed u/s 54F of the Income Tax Act. The appellant has claimed that the investment was made in a village where there is no system of getting approval for building to be constructed or for getting approval after completion. The purchase of material is done entirely in cash without issue of bills and the contractors operate without issuing any bills and accept entire payment in cash. In our country all the villages are governed by a Gram Panchayat which issues clearances for construction of houses and also certifies the completion. Moreover, electricity bills are also relevant for determining the date on which the power supply commenced and the owner of the power connection. In absence of the details, the claim of deduction u/s 54F of the I T Act is not proved. It is settled law that person claiming deduction is required to produce cogent evidence in support of the claim. In the case of ParimisettiSeetha ramamma v. CIT [1965] 57 ITR 532 (SC)], the Hon'ble Supreme Court held that-*

*"The initial burden is on the revenue to show that particular receipt is liable to be taxed as income under the statute, but the onus of showing that a particular income is exempt from taxation, lies on the assessee."*

*Similarly in the case of CIT v. Ramakrishna Deo [1959] 35 ITR 312 (SC)], the Apex Court held that,*

*"The onus of showing that particular item of income is exempt under any clauses of section 10 is on the assessee."*

*The appellant has not adduced any documentary evidence to demonstrate that she had purchased land on which a residential property was constructed within the time limits laid down u/s 54F of the I T Act either in the assessment proceedings or in the appellate proceedings. Therefore, the denial of deduction claimed u/s 54F of the I T Act in the assessment order is upheld. The Ground Nos. (5) & (6) are REJECTED."*

4. We have given our thoughtful consideration to the assessee's pleadings and her stand adopted throughout as well as the learned lower authorities detailed discussion rejecting

her section 54F deduction. She has been held as not to have been proved the acquisition of the new residential house property; by purchase or construction, as specified in section 54F of the Act by producing all the supporting evidence.

5. Faced with this situation, we deem it appropriate in the larger interest of justice to restore the assessee's instant sole substantive ground back to the Assessing Officer to examine it afresh as per law within three effective opportunities of hearing, subject to a rider that it shall be the taxpayer risk and responsibility to plead and prove with all relevant facts, in consequential proceedings. Ordered accordingly.

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

Order Pronounced in the Open Court on 05/12/2024.

Sd/-

**(M. Balaganesh)**  
**Accountant Member**

**Dated: 05/12/2024**

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**