

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2892/Del/2023
Assessment Year: 2017-18

Sh. Mukesh Kumar Khurana, R-11/44, Raj Nagar, Ghaziabad	Vs.	Income Tax Officer, Ward-2(1)(4), Ghaziabad
PAN :AAYPK1746R		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Akhilesh Kumar Yadav, Sr. DR

Date of hearing	05.12.2024
Date of pronouncement	18.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [in short, the "CIT(A)-NFAC"], Delhi's DIN and order No. ITBA/NFAC/S/250/2023-24/1056594440(1), dated 27.09.2023 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Cased called twice. None appears at the assessee's behest. We accordingly proceeded ex-parte against the assessee.

3. It emerges with the able assistance coming from the Revenue side that both the learned Authorities have refused the assessee's section 54 deduction claim of reinvestment of his capital gain in purchasing or constructing a residential house, in course of assessment framed on 29.11.2019 as upheld in the CIT(A)/NFAC's lower appellate discussion as under:

3.1 The case of the assessee was selected for scrutiny vide notice issued u/s 143(2) of IT Act, 1961 on 14.08.2021. Assessee had sold an immovable property being house located at R-11/144 Raj Nagar Ghaziabad for Rs. 1,60,00,000/- and entire sale consideration was invested by the assessee in the acquisition of property located at KB 78/2 Kavi Nagar Ghaziabad for Rs. 1,57,90,000/- this invested property has two floors and both was registered in the name of assessee with his daughters jointly and all the sales consideration was discharged by the assessee out of sale proceeds received by the assessee. Assessee filed his return of income and disclosed Capital Gains claiming deduction u/s 54 of the IT Act. The A.O. Disallowed deduction in respect of one floor and the assessed the total taxable income of Rs. 67,13,435/- and calculated the tax liability of Rs 12,67,912/-.

Grounds of appeal:

4. The appellant has raised the following grounds of appeal:

"1. Order passed by the AO disallowing the deduction u/s 54 is bad in law while the fact is that assessee had invested all sale consideration in house property but avoid future

dispute he get the floor registered jointly with his daughters. Core objective behind the provision of section 54 is to attract the assessee towards investment in the house property."

Findings of the case and decision:

5.1 I have considered the facts of the case and material on record. The only issue of the appellant relates to the disallowance of deduction claimed under section 54 of the I.T Act, 1961 by the Assessing Officer. For the reference Section 54 of the IT Act, 1961, reads as under:-

"Profit on sale of property used for residence.

54.(1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,-

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year, and for the purpose of computing in respect of the new asset any capital gain arising from

its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain."

*As per provision of the Section 54 of the Act, 1961, exemption can be claimed only in respect of one residential house property purchased/constructed in India. If more than one house is purchased or constructed, then exemption under section 54 will be available in respect of one house only. As the appellant has purchased two flats therefore the Assessing officer has rightfully and within law disallowed the deduction claimed under section 54 of the I.T. Act, 1961. Therefore, this ground of appeal is disallowed.
6. In result, the appeal is dismissed."*

4. Mr. Yadav vehemently argues during the course of hearing that both the learned lower authorities have rightly refused the assessee's section 54 deduction herein as he had claimed purchase of two different flats as per the above extracted discussion.

5. We have given our thoughtful consideration to the relevant facts emerging from the instant case file. There would be hardly any dispute that the learned lower authorities have rejected the

assessee's impugned section 54 deduction claim on the foregoing issue only that he had purchased two different houses.

6. A perusal of the case file indicates that the assessee had in fact executed two separate purchase deeds for ground and first floor of the very house having plot no.KB-78/2, Kavi Nagar, Ghaziabad on 13.01.2017 only, which in fact, have been treated as different houses.

7. We are of the considered view in this factual backdrop that such an approach adopted by learned lower authorities in treating twin portions of the same residential house as amounting to two different houses itself, is not sustainable in law. We accordingly accept the assessee's instant sole and substantive grievance and direct the learned Assessing Officer to allow the assessee's impugned section 54 deduction claim and finalize his consequential computation as per law.

8. This assessee's appeal is allowed.

Order pronounced in the open court on 18th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 18th December, 2024.

RK/-

Copy forwarded to:

1. Appellant

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

Asst. Registrar, ITAT, New Delhi