

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री गगन गोयल, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI GAGAN GOYAL, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 1462/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16

Jai Singh Sethia 284 Frontier Colony, Adarsh Nagar Behind, Bhagat Singh Park, Jaipur	बनाम Vs.	DCIT/ACIT, Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACHPS5306A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Dheeraj Borad, CA, Ld. AR
राजस्व की ओर से/ Revenue by : Sh. Manoj Kumar, JCIT, Ld. DR

सुनवाई की तारीख/ Date of Hearing : 27/02/2025
उदघोषणा की तारीख/ Date of Pronouncement : 06/03/2025

आदेश/ ORDER

PER: GAGAN GOYAL, ACCOUNTANT MEMBER

Assessee-appellant has challenged order dated 23.10.2024 passed by Ld. CIT(A) u/s. 250 of the Income Tax Act (for short 'Act') relating to the Assessment Year 2015-16.

2. Before Ld. CIT (A), the assessee challenged assessment order dated 26.09.2017 passed u/s. 143(3) of the Act. Vide impugned assessment,

By making addition of Rs. 63,66,234/- while disallowing deduction u/s. 54F of the Act, and another addition of Rs. 2,94,843/- on account of interest on re-fund of the equal amount, the Assessing Officer assessed total income of the assessee at Rs. 2,14,93,310/- by recomputing his income as under:-

“6. With the above remarks, the income of the assessee is re-computed as under:-

Income from Salary as declared	Rs. 27, 00,000/-
Income from House Property as declared	Rs. 9, 99,052/-
Income from capital gain as declared as declared	Rs. 1, 15, 36,383/-
Add: Deduction u/s 54F as withdrawn as per	Rs. 63, 66,234/-
Para 4 above	
Income from other sources as declared	Rs. 2, 53,207/-
Add: Addition as per para 5 above	Rs. 2, 94,843/-
Total	Rs. 2, 16, 43,305/-
Less: Deduction under chapter –VI as claimed	<u>Rs. 1, 50,000/-</u>
Total assessed income	Rs. 2, 14, 93,310/-
R/o to	Rs. 2, 14, 93,310/-

3. Ld. CIT (A) dismissed the appeal and sustained the additions made by the Assessing Officer. That is how; the assessee is before this Appellate Tribunal.

4. Arguments heard. File perused

5. Admittedly, for the Assessment Year 2015-16, assessee declared in return of income his income at Rs. 1,48,32,230/-. The case of the assessee was selected on for scrutiny thereupon notices u/s. 143(2) and 142(1) of the Act and questionnaire were issued on 19.09.2016 and 16.01.2017 respectively.

In compliance to the notices, the assessee furnished requisite details.

6. In the assessment proceedings, Assessing Officer noticed that on 15.05.2014 i.e. during the year under consideration, the assessee had sold house property situate at B-94, Shyam Nagar, Jaipur for a sale consideration of Rs. 2 Crores. In this regard, he had claimed exemptions on account of cost of acquisition of Rs. 79, 20,684/- and of Rs. 13,620/- on account of improvement after indexation. In this way, assessee had claimed exemptions of Rs. 63,66,234/- u/s. 54F of the Act and declared long term capital gain of Rs. 55,81,462/-.

7. The Assessing Officer was of the view that the assessee was not entitled to claim exemptions u/s. 54F of the Act, the assessee having sold a *residential Unit*.

Therefore, Assessing Officer issued a notice to the assessee to explain in this regard. Assessee furnished reply to the notice. In para 4.1 of the assessment order, relevant portion of the reply reads as under:-

“That the above land and building was given on rent to State Bank of Bikaner and Jaipur which runs its branch at the above mentioned premises i.e. B-94, Shyam Nagar, Jaipur. A copy of registered lease deed i.e. Rent deed dated 21.4.2009 executed by State Bank of Bikaner Jaipur in favour of assessee Jai Singh Sethia is enclosed. This lease deed itself clearly suggest that the property at B-94, Shyam Nagar, Jaipur commercial in Nature. The assessee is regularly filing his return of income from last more than 40 years and is regularly showing income from rent from this property rented to SBBJ as per the enclosed rent deed. Until sale of the property in the previous year relevant to A.Y. 2015-16 it was given on Rent to SBBJ and branch of SBBJ is being run in these premises.”

8. After considering the above said response, Assessing Officer found that the same was not acceptable due to the reason that the subject property was got registered with the Registrar as a residential property and not as commercial property, and further that the assessee had not furnished any proof that the said property was converted from residential to commercial.

In addition thereto, the Assessing Officer observed that in the return of income the assessee had himself declared income from the said property under the head “income from house property”, and that giving on rent did not change the nature of the house property from residential to commercial.

9. While dealing with the issue in appeal, Ld. CIT (A) upheld the reasoning and findings recorded by the Assessing Officer and declining the benefit of section 54F of the Act.

10. Section 54F of the Act allows an individual and HUF taxpayer to save tax on capital gains arising from the sale of a long-term capital asset, other than a residential property, by investing the gains in a new residential property.

11 In the course of arguments before us, Learned AR for the appellant has admitted execution of the sale deed, wherein the immovable property has been described as Residential. The only contention is that said property was being let out to Bank ever since 2009 and from its user, it could not be said that the property was residential in nature.

Admittedly, the user of the property was never converted by any permission from the competent authority.

It is also admitted that in the return of income, the assessee had shown income from rent under the head "Income from House Property".

12 Having regard to the provisions of section 54F of the Act and the property sold by the assessee in the year under consideration being a

residential property, the lower authorities were correct in arriving at the conclusion that provisions of section 54F of the Act do not come into application in this case.

13. In the alternative, the only contention raised by Learned AR for the appellant is that in case the appellant is not entitled to benefit of provisions of section 54F of the Act, he may be allowed exemption or deduction under section 54 of the Act in view of purchase of a new asset i.e. residential house. Ld. AR submitted that department is required to give appropriate relief or benefit to the assessee, even if an assessee omits to claim the same.

It may be mentioned here that before the Ld. CIT (A), in the course of arguments, it was contended on behalf of the assessee that while passing the assessment order, the Assessing Officer had himself observed that the assessee should have claimed exemptions u/s. 54 of the Act, and as such, Assessing Officer should have allowed the exemptions at least u/s. 54 of the Act.

While dealing with this contention, Ld. CIT (A) observed that before Assessing Officer, no exemption was sought by the assessee u/s. 54 of the

Act. Even the Assessing Officer did not examine eligibility of the assessee to any exemption u/s. 54 of the Act.

A perusal of Form 35 submitted before CIT (A) would reveal that the above said ground was specifically raised. It was required to be adjudicated in accordance with law.

14. In the given situation, this issue as to entitlement of the assessee to benefit of section 54 of the Act is required to be adjudicated. Since the facts may need verification, the matter may need to be remitted to Learned CIT (A) for decision of the appeal afresh after adjudicating this issue i.e. whether the assessee is entitled to the benefit of provisions of section 54 of the Act. But, we observe that the conditions as prescribed in sections 54 and 54F of the Act are similar, except that in section 54 of the Act condition prescribed is w.r.t. investment of capital gain only and whereas in section 54F of the Act it is investment of net consideration, that way rather by choosing exemption u/s. 54F of the Act, the assessee taken a higher burden of investment. It is observed that the fact that the assessee complied with the provisions of section 54F of the Act is nowhere under challenge, hence there is no need to refer the matter back to the file of the Ld. CIT (A). Moreover, the first appellate authority was under legal

obligation to decide the alternate ground taken by the assessee (Who is fulfilling all the conditions otherwise). In view of this, the AO is directed to allow the claim of the assessee u/s. 54 of the Act, after appropriate working is done considering the relevant figures involved. This ground raised by the assessee is allowed.

15. As regards, 2nd addition of Rs. 2,94,843/-, Ld. CIT(A) rejected the ground of challenge raised there, by observing that the assessee nowhere alleged that he was not in receipt of interest of Rs. 2,94,843/- for refund, in the Assessment Year 2009-10.

16. In the appeal, appellant as not challenged this addition by specifically pleading that he withdraws said ground of appeal.

17. Accordingly, this ground is rejected, same having been withdrawn.

Result

18. In view of above reasons and findings, this appeal is partly allowed and matter is remitted to the Ld. AO allowing the claim of the assessee u/s. 54 of the Act for limited purposes only, i.e. considering the relevant figures for the purposes of section 54 of the Act.

19. Appeal file be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 06/03/2025.

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Sd/-
(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/03/2025

*Ganesh Kumar, Sr. PS

की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Jai Singh Sethia, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT/ACIT, Circle-02, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1462/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar