

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“DB” BENCH, AGRA**

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND  
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकरअपील सं. / ITA No. 429/Agr/2015**  
**(निर्धारण वर्ष / Assessment Year: 2011-12 )**

ACIT- 2(1)(1) Agra.	बनाम/ Vs.	Shri Madhukar Kapoor 64, Surya Nagar, Agra.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ACNPK-8849-G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Dr. Arun Kumar Yadav – Ld. CIT-DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Sh. Anurag Sinha, Adv. – Ld. AR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	18-02-2025
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	23-04-2025

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2011-12 arises out of an order passed by learned Commissioner of Income Tax (Appeals)-II, Agra [CIT(A)] on 26-03-2015 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28-02-2014. The sole grievance of the revenue is qua grant of deduction u/s 54 / 54F. Having heard rival submissions and upon perusal of case records, the appeal is adjudicated as under.

2. In the assessment order, Ld. AO assessed capital gains on sale of certain house property for Rs.454.98 Lacs which was not shown by the assessee in the return of income. The assessee sold his 2/3<sup>rd</sup> share of land situated at 5/161, Saunth Ki Mandi, Agra to M/s Mahim Patran Pvt. Ltd. (MPPL) in which the assessee acted as a director. The total

consideration was fixed at Rs.7 Crores. The assessee's son was holding 1/3<sup>rd</sup> share in the land and he also entered into agreement to sale. This land was found to be in possession of MPPL. M/s MPPL since a long time constructed a building on the said land according to its requirements. The Ld. AO, in terms of Sec.2(47)(v), as well as in terms of the provision of Sec.53A of Transfer of Property Act, held that the sale of property was completed during this year and the resultant gains would be assessable to capital gains. The assessee explained that the said property was given to MMPL as a tenant since a long time and it continued to be tenant even after the execution of agreement to sell. The assessee was reflecting rental income in the return of income. The agreement stipulated that the possession would continue to remain with the seller till final payment is received and transfer is registered. The assessee also stated that the possession was not parted with. However, Ld. AO assessed capital gains of Rs.454.98 Lacs and framed the assessment.

3. The assessee's submissions during first appeal were subjected to remand proceedings vide AO' remand report dated 19-09-2014. The assessee sought deduction u/s 54 and filed supporting evidences which were rejected by Ld. AO on the ground that new property at Maharani Bagh was purchased by the assessee jointly with Smt. Milan Kapoor. Further, the assessee was having three house properties and therefore, it was not entitled for deduction u/s 54F. The assessee controverted the arguments of Ld. AO and stated that it would be entitled for impugned deductions. The argument that the assessee would be entitled for deduction u/s 54 was again subjected to remand proceedings which remained un-responded to by Ld. AO.

4. The Ld. CIT(A) concurred with the findings of Ld. AO that the transfer had taken place in this year only. However, the Ld. CIT(A) agreed that the assessee was not given opportunity to furnish details on claim of deduction u/s 54 / 54F. The Ld. CIT(A), in para 6.8, observed that the rental income from impugned property was offered and computed under the head income from house property. However, it was not clear as to whether the property was a residential house or not. For the said purpose, Ld. AO was directed to verify the aforesaid fact and also ascertain the claim of deduction u/s 54 / 54F accordingly. On the issue of purchase of new property, Ld. AO was directed to ascertain the source of payment of new investment and allow the deduction to the extent of investment as made by the assessee. Aggrieved, the revenue is in further appeal before us on the ground that Ld. CIT(A) has erred in admitting additional evidences and allowing deduction as claimed u/s 54 / 54F. The Ld. AR, in its written submissions, claims that when the assessee is lawfully entitled for exemption, the same ought to have been granted to the assessee. The Ld. AR also contends that the impugned property was a residential house and the new property as purchased by the assessee was also a new residential house. Therefore, the assessee would be entitled for exemption u/s 54. Even if the impugned property could not be considered as residential house, the assessee would still be eligible to claim deduction u/s 54F. The Ld. AR stated that Property at 65, Surya Nagar was a property on which construction was not permitted. The property at Professor Colony, Agra was lying as a vacant plot. The property at Safdarjung House, Agra is stated to be used for commercial purposes. On these facts, Ld. AR laid its claim towards deduction u/s 54F.

5. We find that it is admitted position by the assessee that the transfer has happened in this year. The only question to be addressed is whether the assessee would be entitled for deduction u/s 54 / 54F or not. Both parties converge on the point that Ld. CIT(A) could not have remanded the matter back to the file of Ld. AO. It has also been stated that the consequential order has not been passed yet. It could also be seen that second remand report has never come from Ld. AO. In the light of all these facts, we set aside the impugned order to the extent of remand back of the issue of deduction u/s 54/ 54F. The limited issue is to decide the assessee's eligibility to deduction u/s 54 / 54F. For the aforesaid purpose, the matter, to that limited extent, stand restored back to the file of Ld. CIT(A) for fresh adjudication with a direction to the assessee to substantiate its case. If no assistance is forthcoming from Ld. AO, the Ld. CIT(A) would be free to adjudicate the issue on the basis of material as available on record.

6. The appeal stand partly allowed for statistical purposes.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-  
(SATBEER SINGH GODARA)  
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 23-04-2025

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR  
ITAT AGRA