

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

I.T.A. No.10/Alld/2025
Assessment Year:2015-16

Suchitra Tandon, 57, Rani Mandi, Allahabad. PAN:AFTPT6845G (Appellant)	Vs.	A.C.I.T., Circle-2, Allahabad (Respondent)
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Appellant by	Shri Sanjay Kumar, Advocate
Respondent by	Shri A. K. Singh, Sr. D.R.
Date of hearing	09/04/2025
Date of pronouncement	10/05/2025

ORDER

PER SUBHASH MALGURIA:J.M.

This appeal vide I.T.A. No.10/Alld/2025 has been filed by the assessee for assessment year 2015-2016 against impugned appellate order dated 06/11/2024 (DIN & Order No.ITBA/NFAC/S/250/2024-25/1070130401(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

2. The facts of the case, in brief, are that the appellant assessee is an individual and e-filed her return of income on 23/09/2016 declaring total income of Rs.14,36,970/-. The Assessing Officer completed the assessment and assessed the total income of the assessee at Rs.82,82,550/- after making an addition of Rs.68,45,580/- under the head

Long Term Capital Gain. The assessee had sold an open land during the assessment year under consideration and claimed exemption u/s 54 of the Act. The contention of the Assessing Officer is that section 54 of the Act speaks of residential house, the income of which is chargeable under the head, 'income from house property'. The said residential house could be consisting of the building or land appurtenant thereto. Thus, the land appurtenant thereto has to be sold along with the building and if the land sold without the building will not be considered as 'residential property'. The appellant assessee submitted before the Assessing Officer that the land appurtenant to the bungalow of the appellant assessee was sold and therefore, it has to be treated as house property and the exemption available u/s 54 of the Act should be provided to the appellant assessee. However, the Assessing Officer did not accept this contention of the assessee and held that the sale deed produced by the appellant assessee shows that the property transferred is the open land and without any building. Hence, the provisions of section 54 of the Act are not applicable to the facts of the present case. Accordingly, the Assessing Officer disallowed the exemption claimed by the assessee u/s 54 of the Act amounting to Rs 68,45,580/-. Aggrieved, the assessee carried the matter in appeal before learned CIT(A). The learned CIT(A) dismissed the appeal of the assessee. The findings of the learned CIT(A) are reproduced as under:

6. Ground No 1 is relating to disallowance of exemption u/s 54 of the Act amounting to Rs 68,45,580/-. The brief facts of the case are that the appellant is an individual and had sold an open land during the impugned AY and claimed exemption u/s 54 of the Act. The contention of the AO is that section 54 of the Act speaks of residential house, the income of which is chargeable under the head, 'income from house property'. The said residential house could be consisting of the building or land appurtenant thereto. Thus, the land appurtenant thereto has to be sold along with the building and if the land sold without the building will not be

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considered as 'residential property'. The appellant submitted before the AO that the land appurtenant to the bungalow of the appellant was sold and therefore it has to be treated as house property and the exemption available u/s 54 of the Act should be provided to the appellant. However, the AO did not accept this contention and held that the sale deed produced by the appellant shows that the property transferred is the open land and without any building. Hence, the provisions of section 54 of the Act are not applicable to the facts of the appellant. Accordingly, the AO disallowed the exemption claimed by the appellant u/s 54 of the Act amounting to Rs 68,45,580/-.

6.1 Thus, now the basis question for adjudication is that if land appurtenant to the building, if sold without building, whether it could be treated as residential house property. From the submissions made by the AR of the appellant, it is clear that the bungalow and land appurtenant thereto was originally allotted by means of lease deed dated 06.04.1996 to Mr P D Tandon, father-in-law of the appellant. On demise of Mr P D Tandon, the property was inherited by Mr Dinesh Chandra Tandon, husband of the appellant. On demise of Mr Dinesh Chandra Tandon, the property was inherited by the appellant. The bungalow in question (house No 37, Elgin Road, Allahabad) had 764.95 sq mtrs of land which was adjacent to the bungalow. This land consisting of the front portion of the bungalow with lawn and garden was sold by the appellant to M/s Tulsiani Constructions & Developers, Allahabad. From these facts, it is clear that only the front portion of the land was sold by the appellant without selling the building (Bungalow). The bungalow continues to be in the possession of the appellant as on the date of execution of sale deed on 30.05.2014 of the adjacent land. Thus, what appellant has sold is nothing but open land. The said land was appurtenant to the bungalow when considered as a single property. But in the instant case, the appellant has divided the property into front portion which consists of only the open land and the back portion consisting of the bungalow and some land appurtenant to it is retained by the appellant.

6.2 The land appurtenant to the building comes into picture when land

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and building are sold together. If the appurtenant land is sold without building as in the instant case, the transferred asset cannot be treated as residential property as defined in section 54 of the Act. The appellant has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of P K Lahri v/s CIT [146 Taxman 349 (All)]. In the said case the land was belonging to the son and the building was belonging to the father. The Hon'ble High Court held that when the land was sold without building which was belonging to the father, the land in question would be called as adjacent land and not land appurtenant to the building as owners are different. From the decision it is clear that even though land & building are belonging to the same person and only the land is sold without building, this will not amount to the sale of the residential property and it will amount to sale of adjacent land. Therefore, the facts of the said decision are found to be against the appellant and in favour of the revenue.

6.3 In view of the above, I am convinced that merely because the land sold was appurtenant to the bungalow, it cannot be held to be the residential property as the bungalow has not been sold but only the adjacent land has been sold. From the sale deed dated 30.05.2014 produced also mentions the property sold as open land without any building. Hence, provisions of section 54 of the Act are not applicable to the facts of the appellant's case. Accordingly, the disallowance made by the AO u/s 54 of the Act of Rs 68,45,580/- is upheld. Ground No 1 is dismissed.

3. Aggrieved with the order of learned CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

4. Learned Counsel for the assessee, during the course of hearing in Income Tax Appellate Tribunal, submitted that the CIT(A) has wrongly observed that the land sold was adjacent land and not residential only because it was mentioned as 'open land' in the sale deed and the land sold

without building is not residential property and is not eligible for being considered for rebate u/s 54 of the Act. He submitted that originally the lease was in the name of P. D. Tandon and in the lease it is clearly mentioned that it is a house/residential property with a built in house and bungalow. On the death of P. D. Tandon, the house along with the open land was inherited by Shri Dinesh Cahandra Tandon and subsequently, on death of Shri Dinesh Chandra Tandon, the same was inherited by the assessee Suchitra Tandon. He submitted that the assessee has sold open land, which was appurtenant to the residential house and the assessee is eligible for exemption u/s 54 of the I. T. Act. He relied on the judgment of Hon'ble Allahabad High Court in the case of P. K. Lahri vs. CIT [2005] 196 CTR (All) 406, [2005] 275 ITR 17 (All) and on the judgment of Hon'ble Karnataka High Court in the case of Shri C. N. Anantharam Bangalore vs. Assistant Commissioner of Income Tax (I.T.A. No.1012 of 2008).

5. On the other hand, learned Sr. Department Representative for Revenue strongly supported the orders of the authorities below. He submitted that the assessee has sold only a part of land (as a plot of land) and not a land appurtenant to building and the Assessing Officer and the learned CIT(A) have rightly held that the assessee is not entitled to deduction u/s 54 of the Act in respect of the capital gain. Learned Sr. Department Representative relied on the following case laws:

- (i) M. Anil V. Income Tax Officer [2008] 10 SOT 655 (Cochin)
- (ii) Smt. Janki Kishan Hingorani vs. Pr. CIT [2024] 158 taxmann.com 3 (Rajkot-Trib.)
- (iii) CIT vs. Zaibunnissa Begum [1985] 151 ITR 320 (AP)
- (iv) Smt. Asha George vs. Income Tax Officer [2013] 351 ITR 123 (Kerala)

6. We have heard the rival parties and have gone through the material placed on record. The facts of case law, relied by learned Counsel for the assessee, in the case of P. K. Lahri (supra), are distinguishable on facts. In that case the land was belonging to the son and the building was belonging to the father. In that case Hon'ble High Court held that when the land was sold without building, which was belonging to the father, the land in question would be called as adjacent land and not land appurtenant to the building as owners are different. Thus, it is clear that even though land and building are belonging to the same person and only the land is sold without building, this will not amount to the sale of the residential property and it will amount to sale of adjacent land.

6.1 In the case of M. Anil (supra), the case law relied on by learned Sr. D.R., it has been held as under:

*"(para-7).....On the perusal of the agreement and the schedule thereof, it is clear that what the **assessee has transferred** is 24.5 cents **of vacant land and not the building** or any residential house. We, are, therefore, of the opinion that the **Assessing Officer has rightly rejected the claim of the assessee in respect of the exemption under section 54**. We, therefore, confirm the order of the CIT (Appeals) on this issue and reject ground No. (ii) taken by the assessee..."*

6.2 In the case of Smt. Zaibunnissa Begum (supra), the case law relied on by learned Sr. D.R., the Hon'ble court has observed as under:

*"(para-6)... **If land alone is sold, the provisions of section 54 will have no application**, inasmuch as the income from the land is not chargeable under the head 'Income from house property'. **In order to secure the benefit of section 54, it is necessary that the building together with land is transferred** and the income from such building and land is chargeable under the head 'Income from house property' under section 22 of the Act.*

(para-7)... The land contiguous to the building may be so vast in its extent that a person can conveniently lay out the surplus extent of land into plots and sell those plots without causing detriment to the proper enjoyment of the building. Could it be said that in these cases the land leased for a fire-wood depot or sold by laying out into plots constituted land appurtenant to the building? We do not think so. There is force in the contention of the learned standing counsel for the Revenue that the expression 'land appurtenant thereto' occurring in section 54 is a matter of enquiry depending upon the facts and circumstances of each case and the authorities must determine the extent of land that is considered to be appurtenant to the building based on some acceptable criteria.

(para-11)...(2) If the building has extensive lands appurtenant thereto and even if the building and the land have been treated as one single unit and enjoyed as such by the occupiers, an enquiry could be made to find out whether any part of the land contiguous to the building can be put to independent user without causing any detriment to the effective and proper enjoyment of the building as such....If any surplus is arrived at on such an enquiry, then the extent of such surplus land may not qualify to be treated as land appurtenant to the buildingthe land used by the occupiers for ... horticultural purposes, although forming part of the land adjacent to the building, does not qualify to be treated as land appurtenant to the building...."

7. In view of the foregoing, we are in agreement with the findings of learned CIT(A) that merely because the land sold was appurtenant to the bungalow, it cannot be held to be the residential property as the bungalow has not been sold but only the adjacent land has been sold. Hence, the provisions of section 54 of the Act are not applicable to the facts of the

present case. Accordingly, the disallowance made by the Assessing Officer and confirmed by learned CIT(A) is upheld.

8. In the result, the appeal of the assessee stands dismissed.

(Orders pronounced on 10/05/2025 in accordance with Rule 34(4) of the I.T.A.T. Rules)

Sd/.
(SANJAY AWASTHI)
Accountant Member

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Dated:10/05/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R. ITAT, Lucknow