

आयकर अपीलीय अधिकरण  
पटना पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री जॉर्ज माथान, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 715/PAT/2024  
Assessment Year: 2017-18**

Seema Srivastava <i>(Appellant)</i>	Vs.	ITO, DC/AC-6, Patna <i>(Respondent)</i>
<b>PAN: AGPPS2798J</b>		

**Appearances:**

**Assessee represented by** : Sudipta Sannigrahi, CA.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 08-Apr-2025

Date of pronouncing the order : 06-June-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 14.11.2024,



which has been passed against the assessment order u/s 143(3) of the Act, dated 28.12.2019.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. For that the Ld. CIT(A), NFAC has erred in not allowing opportunity of virtual hearing as mandated u/s 250(2) of the Act read with Sub-section (6B) and the guidelines prescribed in the Faceless Appeal Scheme, 2021 vide notification dated 28.12.2021.*

*2. For that the Ld. CIT(A), NFAC has erred in holding that the impugned order has not been passed u/s 144 and that the mentioning of section 144 in last para of the assessment order is an inadvertent mistake which is required to be ignored whereas the fact remains that the impugned order has been passed u/s 144 for non-compliance to final SCN dated 07.12.2019.*

*3. For that the Ld. CIT(A), NFAC has erred in not taking into the consideration the fact that no proper & adequate opportunity of hearing was granted by the A.O. and thus, there has been violation of natural justice on the part of the A.O.*

*4. For that the Ld. CIT(A), NFAC has erred in upholding the rejection of claim of deduction u/s 54F amounting to Rs.2,58,34,383/- on account of purchase of residential house property at Delhi out of sale proceeds of land at Patna.*

*5. For that the Ld. CIT(A), NFAC has erred in holding that the assessee has not furnished the requisite details regarding claim of deduction u/s 54F either before the A.O. or during the appellate proceeding whereas the fact remains that the requisite details were submitted before both the authorities.*

*6. For that the Ld. CIT(A), NFAC has erred in ignoring the legislative intent behind provisions of sections 54 and 54F which are beneficial provisions promoting purchase/construction of residential houses, hence, liberal, pragmatic interpretation should be taken to the provisions and technical errors should not deprive assessee of legitimate claim of deduction/exemption particularly in the light of circular of CBDT bearing No. 14 (XL-35) dated 11/04/1955.*

*7. For that the non-allowance of claim of deduction u/s 54F amounting to Rs.2,58,34,383/- is wrong, illegal and unjustified in the facts and circumstances of the appellant's case.*



8. For that on the facts and circumstances of the case the Ld CIT has erred in confirming the levy of Tax u/s 115BBE regarding deemed income even though no addition has been made by the AO under the referred sections.

9. For that the appellant reserves its right to furnish detailed written submission along with documents and evidences on or before date of hearing.

10. For that the appellant may be given opportunity of personal hearing physically/virtually at the time of hearing of the appeal.

11. For that the whole order is bad in fact and law of the case and is fit to be annulled and/or restored back to the file of Ld. CIT(A), NFAC and/or the A.O.

12. For that the other grounds, if any, shall be urged at the time of hearing of the appeal.”

3. Brief facts of the case are that the assessee is an individual and had filed the return of income for AY 2017-18 showing total income of Rs. 21,00,750/- under the head “income from other sources” and the case was selected for scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS') to verify the issue on investment in immovable property, income from house property, capital gain/loss on sale of property, sales turnover/receipt and deduction/exemption from capital gains. The notice u/s 143(2) of the Act was issued and subsequently notice u/s 142(1) of the Act was also issued but there was no compliance by the assessee. The assessee had shown receipt of Rs. 2,87,77,235/- from sale of immovable property during the year under consideration and had claimed deduction u/s 48 of the Act in respect of cost of acquisition with indexation of Rs. 29,42,852/-. Further, the assessee had claimed deduction of Rs. 2,58,34,383/- u/s 54 of the Act and had shown ‘NIL’ income from long term capital gains on sale of immovable property during the year under consideration. It was also noted that the assessee had received Rs. 4,95,59,000/- from Arnyana Engycon Pvt. Ltd. and TDS of Rs. 2,47,795/- was deducted by the buyer



u/s 194-IA of the Act, and it was also observed that the assessee had received Rs. 15,00,000/- from Chitwan Blenders & Bottlers Pvt. Ltd. as rent and the tenant had deducted TDS of Rs. 1,50,000/- u/s 194-IB of the Act. The Ld. AO issued a show cause notice dated 30/11/2019 in response to which the reply was filed by the assessee. As regards the exemption u/s 54/54F of the Act, the assessee had submitted purchase deed of only the new asset against which the deduction was claimed. Therefore, the Ld. AO issued a final show cause notice. Subsequently, the total capital gain was worked out at Rs. 2,52,74,403/- which was lower than the capital gain of Rs. 2,58,34,383/- shown by the assessee in the return of income. However, the exemption u/s 54 of the Act was not allowed as the immovable property shown by the assessee was not a residential house. Further, the exemption u/s 54F of the Act was also not allowed as the assessee neither claimed any exemption u/s 54F of the Act nor had provided any details regarding all the applicable conditions deemed to be fulfilled as required u/s 54F of the Act. Accordingly, the exemption of Rs. 2,62,08,000/- claimed u/s 54 of the Act was disallowed and a sum of Rs. 2,58,34,383/- was added to the income of the assessee. No adverse view regarding the rent received was formed as the same had been shown under the head 'income from other sources' and the total income was accordingly assessed u/s 144 of the Act at Rs. 2,79,35,133/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who went through the submission of the assessee and dismissed the appeal. The relevant findings of the Ld. CIT(A) are as under:

*“Decision: Ground No. 1: It is submitted that the AO completed the assessment u/s 143(3) while making the addition u/s 144. The order is contradictory and bad, both in law and on facts.*

*It is noted that the submission of the appellant is not ground wise. The same is clear from the submission which is reproduced already. In the statement of facts also, the appellant has not specifically dealt with this ground. Further, on carefully perusing the assessment order, it is seen that the AO has mentioned "Assessed u/s 144 of the Act at a Total Income of Rs. 2,79,35,133/-" in the last para of the assessment order. However, there is no reference to the order being a best judgment order anywhere in the assessment order. The AO has considered the submissions of the assessee and has also referred to the results of enquiry made. Therefore, the mention of section 144 in last para of the assessment order appears to be an inadvertent mistake which needs to be ignored. Therefore, this ground is dismissed.*

*6.1 Ground Nos. 2 & 3 pertain to addition of Rs. 2,58,34,383/- as long term capital gain by disallowing the claim of deduction u/s 54. The details of the order of AO and basis of disallowance discussed in paras 5 to 5.4.*

*6.1.1 The appellant has filed a detailed submission. The first 7 pages of the submission discuss the AO's order. The submission of the appellant is to be found in pages 8 & 9 of the order which is followed by various case laws till the end of the order. The appellant has also not numbered the paragraphs in the submission. The relevant portion therefore starts just above the table on page 8 with the words "the whole assessment order was based on misappreciation of fact and total confusion of the learned Assessing Officer which can be seen from the following chart".*

*6.1.2 It is contended that the AO disallowed the claim of the assessee for clerical mistake of the section under which this exemption is claimed, whether it is section 54 or section 54F. The assessee submitted before the AO that the mistake was inadvertent. However, details of sale of land where the capital gain arises and purchase, cost of house property in New Delhi in which capital gain was utilized were also given. Since all details were available, it was the duty of the Taxing Authority to give all statutory allowance of exemption to the assessee, even when the assessee failed to claim that exemption. Accordingly, it is claimed that the AO's action was arbitrary, illegal and against provisions of law. She has relied on various case laws including the decision of the Supreme Court in the case of State of Kerala Vs. C. Velukutty (1966) 60 ITR 239 (SC) and Hukumchand Mills Ltd. Vs. State of Madhya Pradesh (1964) 52 ITR 583 (SC).*

*6.1.3 I have considered the submission carefully. The AO has referred to the issue in para 7 mentioning that "the assessee did not sell a residential house, therefore, the claim of exemption u/s 54 was not correct". The AO has observed that it was sale of asset other than residential house; therefore, the provisions of section 54F would be applicable if the assessee*

*fulfils the other applicable conditions in section 54F. Thereafter, the AO has reproduced the parts of the section 54F which mention the conditions i.e. clause a and b. In concluding para of the order i.e. para 9, the AO has given a finding that "exemption u/s 54 of the IT Act cannot be given as the assessee has neither claimed any exemption u/s 54F nor has provided any details regarding whether she fulfills all the applicable conditions as mentioned in section 54F of the I T Act".*

*6.1.4 The entire submission of the appellant is based on the premise that the AO has disallowed the claim because it was not made under appropriate section in the return of income. The case laws referred in the submission also support the same contention. However, neither before the AO nor during the appellate proceedings, the appellant has submitted or discussed as to how she fulfills various conditions required for claiming the deduction u/s 54F. The AO has clearly disallowed the claim because of two reasons including the assessee not providing any details regarding whether she fulfills all the applicable conditions u/s 54F. The appellant having failed to do so even during the appellate proceedings, the claim of deduction/exemption cannot be allowed. Therefore, both the grounds are dismissed.*

*6.2 Ground No. 4 pertains to initiation of penalty proceedings u/s 270A. The ground being premature is dismissed.*

*6.3 Ground No. 5 is general in nature and does not require any adjudication.*

*7. In the result, the appeal is dismissed."*

Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the submissions made and the paper book filed have been examined. Before us it has been submitted vide written submission filed that before the Ld. AO, the assessee had submitted revised computation of income and the copy of deed dated 05.11.2016 in respect of newly purchased property having transaction value of Rs. 2,52,00,000/- situated at New Delhi and had also submitted the sale deed dated 26.10.2016 registered at Sub-registrar, Danapur, Patna. Since the sale deed of the land in question and the purchase deed of new residential house property were both available



with the Ld. AO, he did not requisition any specific material in the final show cause notice dated 07.12.2019 and thus, the observation of the Ld. AO at page 4 that the assessee had not provided any details as requisitioned is contrary to the assessment record. It is further submitted that the timelines allowed for compliance in all the notices issued by the Ld. AO were too short and further proper and adequate opportunity of being heard was not allowed. While passing the impugned assessment order, the Ld. AO has arbitrarily disallowed the claim of the assessee u/s 54F of the Act for the reasons that:

- i) The assessee had not claimed the deduction u/s 54F of the Act.
- ii) The immovable property sold by the assessee is not a residential house and therefore, deduction u/s 54 of the Act is not permissible.
- iii) No details regarding fulfilment of the deduction u/s 54F of the Act has been brought on record.

5. It is further submitted that it would be evident from the assessment order that the Ld. AO had conducted enquiry from official website of Government of Bihar i.e. [www.bhumijankari.com](http://www.bhumijankari.com) and had not found any other property, be it residential or otherwise, in the name of the assessee and therefore, in all fairness and in view of the material on record, deduction u/s 54F of the Act was required to be allowed by ignoring the mistake committed in the return of income whereby deduction u/s 54 of the Act was claimed as against correct claim of deduction u/s 54F of the Act. The Ld. AO had taken unnecessary advantage of the ignorance of the assessee contrary to the spirit of the Circular of the CBDT bearing No. 14 (XL-35) dated 11.04.1955 wherein it has been clearly directed that “*Officers of the Department must not*



take advantage of ignorance of an assessee as to his rights and it is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department.” It is further submitted that on appeal a detailed written submission was filed wherein the following chart clarifying the exact calculation of capital gain was placed for better understanding of the issue at hand:

Sale Consideration from	Proportion of land in joint hold property		Total
	Seema Srivastava	A. N. Srivastava	
<i>Sale of Deed No. 10661 dated 12.09.2016</i>			
Total Area of land (in decimal)	38.962	12.625	51.587
Sale Consideration [A]	1,85,38,048/-	60,06,952/-	2,45,45,000
<i>Sale of Deed No. 12350 dated 26.10.2016</i>			
Total Area of land (in decimal)	21.5197	21.5	43.0197
Sale Consideration [B]	1,02,39,187/-	1,02,29,813/-	2,04,69,000/-
Total Sale Consideration received [A + B]	2,87,77,235/-	1,62,36,765/-	4,50,14,000/-
Indexed Cost of land sold	29,42,852/-		
Capital Gain	2,58,34,383/-		
Purchase cost of House Property at New Delhi	2,62,08,000/-		
Capital Gain	NIL		

6. It is submitted that the Ld. CIT(A), without granting any opportunity of personal hearing, dismissed the appeal and affirmed the assessment order by holding that (i) the impugned assessment order had not been passed u/s 144 and mentioning of Section 144 in the last para of assessment order is an inadvertent mistake and (ii) the assessee neither before the Ld. AO nor during the appellate proceeding had submitted or discussed as to how she fulfilled various conditions for allowance of deduction u/s 54F of the Act. It is submitted that the

conclusion drawn by the Ld. CIT(A) is contrary to the statement of facts and grounds of appeal filed along with the appeal memo wherein the appellant had specifically stated that the new asset was the only residential property acquired out of the sale proceeds of land and thus she qualifies for deduction u/s 54F of the Act. The Ld. CIT(A), without going into the merits of the deduction and without allowing opportunity of personal hearing and without considering the settled judicial precedents quoted in the written submission including that of Mumbai and Bangalore ITAT reported in **(2019) 107 Taxmann.com 180/ (2021) 124 Taxmann.com 201** has affirmed the action of the Assessing Officer and thereby deduction u/s 54F of the Act was arbitrarily declined. The submissions on the assessment order being passed u/s 144 of the Act, the violation of principles of natural justice have been filed in support of the claim along with the following three case laws:

- i) ***CIT v. Suresh Chandra Mittal (2001) 251 ITR 9 (SC)***: The Supreme Court ruled that the tax authorities must act fairly and not arbitrarily reject a taxpayer's claim when evidence supports it.
- ii) ***PCIT v. Wipro Ltd. (2022) 448 ITR 1 (SC)***: The Supreme Court ruled that if an assessee is eligible for exemption and has provided the required documents, tax authorities must grant the exemption unless valid reasons are recorded for denial.
- iii) ***CIT v. Reliance Infrastructure Ltd. (2022) 448 ITR 660 (Bom HC)***: The Bombay High Court held that denying exemption or deduction without considering relevant documents amounts to arbitrary action and violates the principles of natural justice.

7. Regarding non-allowance of claim of deduction under section 54F it is further submitted that the Ld. CIT(A) has erred in deciding the fact



after verifying the purchase deed submitted on 04.12.2019 to the Ld. AO and on 03.03.2021 to the Ld. CIT(A) of the residential house at New Delhi by sale of the above said land on the ground that the assessee had not claimed exemption u/s 54F of the Act whereas in the return she had claimed the deduction u/s 54 of the Act inadvertently which is a typographical mistake. This decision of the Ld. CIT(A) is totally wrong and as the Courts or Tribunals have permitted the correction of such errors. Reliance has been placed in the case of **CIT vs. Jai Parabolic Springs Ltd. (2008) 306 ITR 42 (Delhi HC)** which has distinguished the Hon'ble Supreme Court ruling in **Goetze India Ltd. vs. CIT (2006) 157 Taxman 1 (SC)** and permitted the fresh claims to be allowed at the appellate stage. It was submitted that the Ld. AO has a duty to apply the correct section for exemption and deduction even if the taxpayer has mentioned the wrong section and, in this respect, reliance has been placed on the following case laws:

- i) S.R. Koshti 276 ITR 165 (Guj)*
- ii) CIT v. Mahalaxmi Sugar Mills Co. Ltd. (1986) 160 ITR 920 (SC)*
- iii) CIT v. Gujarat Gas Co. Ltd. (2016) 389 ITR 130 (Guj HC)*
- iv) CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom HC)*

8. It is further submitted that the Ld. CIT(A) has erred in confirming the levy of tax u/s 115BBE of the Act regarding deemed income even though no addition had been made by the Ld. AO under the referred sections.

9. We have gone through the orders of the Ld. CIT(A) as well as the Ld. AO. In the course of the appeal before us, it was submitted that inadvertently the assessee had claimed deduction u/s 54 of the Act but



had invested in a residential house and section 54F of the Act was erroneously not mentioned although the same was applicable to the facts of the case of the assessee. The revised computation was filed along with the purchase/sale deeds. In paper book filed, at page 5 para 9 in the assessment order, the Ld. AO has mentioned that the assessee had neither claimed any exemption u/s 54 of the Act nor had provided any details regarding whether she fulfils all the applicable conditions as mentioned in section 54 of the Act, therefore, the exemption u/s 54 of the Act is not allowable.

10. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the order of the Ld. AO may be confirmed.

11. We have considered the rival submission and have also gone through the order of the Hon'ble Supreme Court in the case of **Goetze India Ltd.** (supra) which has also been discussed in the case of **CIT vs. Jai Parabolic Springs Ltd.** (supra) by the Hon'ble Delhi High Court. As mentioned by the assessee the limitation for allowing the deduction by filing a revised return is applicable only to the Assessing Officer and not to the Appellate Authority, therefore, the Ld. CIT(A) ought to have allowed the deduction which was inadvertently claimed u/s 54 of the Act but the assessee was otherwise eligible for deduction u/s 54F of the Act. Since this is a purely legal issue and the mistake occurred at the level of the Ld. AO, the Ld. AR submitted that the matter may be sent back to the Ld. AO as he has disallowed the claim without specifying the fact that section 54F of the Act was not applicable. Hence, in view of the settled judicial principle that the claim under a wrong section does not bar the assessee from making the claim under the correct section if the assessee is otherwise eligible and further even though the



deduction has to be claimed in the return of income for being allowed by the Ld. AO, however, this limitation is only for the Assessing Authority and the Appellate Authority can grant the exemption/deduction claimed if the facts on record convey so. Hence, since the assessee had purchased a residential house and she was eligible for deduction u/s 54F of the Act and had made calculations of capital gains and had submitted to same, accordingly it is deemed to be in the fitness of things that the order of the Ld. CIT(A) is hereby set aside and the matter is remitted to the Ld. AO to allow the claim u/s 54F of the Act and allow the requisite relief on the basis of evidence filed by the assessee as the assessee is eligible for the exemption under section 54F of the Act and in case any further evidence is required, the same may also be furnished by the assessee before him. The assessee shall be allowed a reasonable opportunity of being heard before deciding the issue in accordance with law.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 6<sup>th</sup> June, 2025.**

*Sd/-*

**[George Mathan]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 06.06.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Seema Srivastava, Samarpan, New Bailey Road, Saguna More, Danapur, Patna, Bihar, 800014.**
2. **ITO, DC/AC-6, Patna.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

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By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata