

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.807/Ind/2024
Assessment Year:2016-17

Jai Prakash Narayan Sharma, C-116, Sainath Colony, Indore	<u>बनाम/</u> Vs.	ACIT -2(1) Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ADFPS3558K		
Assessee by	Shri Venus Rawka & Ms. Eva Rawka, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.06.2025	
Date of Pronouncement	15.07.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 30.09.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 20.12.2018 passed by learned DCIT/ACIT-2(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2016-17, the assessee has filed this appeal on the grounds as mentioned in Form No. 36 (Appeal Memo).

2. The background facts leading to present appeal are such that the assessee-individual filed return of AY 2016-17 declaring a total income of Rs.

22,60,030/-. The case was selected for limited scrutiny and notices u/s 143(2)/142(1) were issued which were complied with by assessee. In the return of income filed to department, the assessee declared taxable capital gain of Rs. 1,14,233/- from sale of a property at Gram Jatkhedi, Tej Hujur, District – Bhopal on 17.07.2025. However, the AO increased taxable capital gain to Rs. 90,77,095/- in scrutiny-assessment and accordingly made an addition of differential capital gain of Rs. 89,62,862/- [Rs. 90,77,095 (-) 1,14,233]. We give below a comparative chart of workings of capital gain made by assessee and AO:

	As per assessee	As per AO
Sale consideration	1,37,00,000	2,02,00,000
Less: Indexed cost	11,74,905	11,74,905
Long-term capital gain	1,25,25,095	1,90,25,095
Less: Exemption	1,24,10,862	99,48,000
Taxable Capital Gain	1,14,233	90,77,095

3. Thus, there are two variations made by AO. *Firstly*, the assessee declared sale consideration at Rs. 1,37,00,000/- equivalent to actual amount received from buyer as against which the AO adopted sale consideration at Rs. 2,02,00,000/- equivalent to the valuation done by stamps authority, in terms of section 50C. *Secondly*, the assessee claimed exemption of Rs. 1,24,10,862/- u/s 54 on the basis of investment made in new property (purchase price of new property Rs. 99,48,000 + subsequent

expenses of additional work Rs. 26,54,377) but the AO allowed exemption only of purchase cost of Rs. 99,48,000/- and disallowed exemption qua the cost of additional work.

4. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) granted part relief by passing following order:

"In considered opinion of this appeal, the intent and language of the above provisions is do not specifically bar any such simultaneous claim as far as the purchase and construction were completed within the stipulated period of 02/03 years from the date of purchase. Therefore, the denial of construction cost of Rs. 26,54,377/- by AO is found against the provisions of the section 54/54F of the Act. The disallowance made of Rs. 26,54,377/- is deleted.

In respect of the issue for working of LTCG on property sold, the appellant's claim that the actual sale consideration was fully utilized for claiming deduction is not tenable. For the purpose of calculating the taxable LTCG (before charging deductions thereon) and consequential tax liability thereon, the full value of consideration needs to be taken as per provisions of section 50C i.e, as prescribed by the stamp valuation authority. The same is in this case Rs. 2,02,00,000/- which ought to have been taken as full value of consideration irrespective of actual amount received by the assessee. The action of AO in applying the same is found just and within the applicable provisions of law. The

explanation offered by appellant if accepted would defeat the intent and purpose of bringing the provisions of section 50C by the statute. The grounds no. 1, 2, 3 are therefore dismissed and the action of AO in enhancing the LTCG to Rs. 65,00,000/-(2,02,00,000 less 1,37,00,000) is sustained.

6. In result, the appeal is partly allowed."

5. Still aggrieved, the assessee has come in next appeal before us.

6. Before us, Ld. AR for assessee submits that the CIT(A) has already held that the cost of additional work amounting to Rs. 26,54,377/- was eligible for exemption and hence the assessee's grievance to that extent is settled. Further, the assessee does not have any objection against application of section 50C by AO and adopting sale consideration at Rs. 2,02,00,000/- in place of Rs. 1,37,00,000/- declared by assessee. However, the assessee's grievance is that the quantum of exemption needs to be re-computed at Rs. 1,75,00,834/- and the resultant capital gain of Rs. 15,24,261/- ought to be taxed, accordingly further relief is required to be given to assessee. The Ld. AR for assessee filed following Written-Synopsis giving facts, the working of exemption and the judicial rulings relied upon by assessee and iterated the same during hearing:

BEFORE
THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH
INDORE (M.P.)

IN THE MATTER OF
JAIPRAKASH NARAYAN SHARMA

V/S

ACIT 2(1), INDORE

ASSESSMENT YEAR 2016-17

PAN: ADFPS3558K

ITA NO. 807/Ind/2024

The Assessee during the year under consideration sold agricultural land measuring 0.101 hectare on 17/07/2015 for consideration of Rs. 1,37,00,000/-. However stamp duty and guideline value of said land was amounting to Rs. 2,02,00,000/-

Thereafter the Assessee reinvested the said funds into purchase of duplex house property for Rs. 99,48,000/- and incurred capital expenditure for additional floor for Rs. 26,54,377/- totaling to Rs. 1,26,02,377/- against sale proceeds received for Rs. 1,37,00,000/-

During the Assessment proceedings the Ld Assessing officer denied our construction cost of Rs. 26,54,377/- for deduction us 54/54F and restricted our exemption to Rs. 99,48,000/- itself and computed capital gain as per 50C provisions.

Against the aggrieved order the Assessee was before CIT Appeals who ultimately allowed our full claim of Duplex House property for Rs. 1,26,02,377/- (Rs.99,48,000+Rs.26,54,377) including construction cost incurred by Assessee on Duplex House. However, CIT Appeals on the issue of computing capital gain sustained AO order for invoking 50C provision even in the case of 54F exemption involved.

My honors the only issue before the Ld Bench is whether Assessee qualifies for exemption us 54F based on *actual consideration received or Guideline value us 50C*. It is not a disputed fact that Assessee has sold Agricultural land and bought house against the sale proceeds which falls under the purview of exemption us 54F. Now as per statute section 54F the Capital Gain shall be calculated as under:

a) If the cost of the new asset is not less than the net consideration of the original asset, the whole of the capital gain shall not be charged under section 45;

b) If the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45;

Under proviso (b) the proportionate capital gain shall be allowed if cost of new asset is less than the net consideration as:

Long term capital gain * Amount Invested

Net Consideration

The Net Consideration for the purpose of section 54F means "*full value of the consideration received or accruing as a result of the transfer of capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer*". Therefore, bare meaning of Net Consideration differs from 50C which specifically replace stamp duty value for the purpose of section 48 only.

The provision of section 50C creates limited fiction to the section 48 and should not be extended to exemption sections 54F which is complete code in itself.

In the Assessee case the Net Consideration should be actual sale consideration received instead of Guideline value and proportionate gain allowed would be as below.

Rs. 1,90,25,095* Rs. 1,26,02,377/-

Rs. 1,37,00,000/- which shall be Rs. 1,75,00,833/-

In view of above the Net Taxable LTCG working is as under.

Calculation for deduction under section 54F	
Particulars	Amount
Market Value of the property	202,00,000
Sale consideration	1,37,00,000
Less:	
Index Cost of Land Transferred	11,74,905
Capital Gain	1,90,25,095
Cost of new house purchased	1,26,02,377
Capital gain exempt as per section 54F (19025095*12602377/13700000)	1,75,00,834
Taxable gain	15,24,261

In support of our claim, we wish to rely on various decisions as below.

1) Smt Sabita Devi Agrawal Vs ITO Siliguri(**ITA 1231 of 2016**)

Kolkata ITAT Bench A dated 19/12/2018

2) Lalit Kumar Kalwar Vs ITO (ITA 379/2018)


ITAT Jaipur Bench SMC dated 30/05/2023 at Paper Book 38-53

3) Sunil Miglani Vs DCIT Ghaziabad (ITA5829/2016)

ITAT Delhi Tribunal dated 02/03/2020 at Paper Book 58-60

4) Dhanveer Singh Gambhir Vs ITO (ITA 561/2014)

ITAT Indore Bench dated 19/11/2014



Submitted

(AR)

7. Replying to this, Ld. DR for revenue relied upon Para No. 13 & 14 of decision of Hon'ble Bombay High Court in **Jagdish C. Dhabalia Vs. Income-tax Officer, 25(2)(1), Mumbai (2019) 104 taxmann.com 208 (Bombay)** to contend that the provision of section 50C must be given full effect; that the provision of section 50C is relevant not only for computation of capital gain u/s 48 but also for determination of the quantum of exemption. Ld. DR accordingly requested that the calculation of exemption given by Ld. AR/assessee at Rs. 1,75,00,834/- is not acceptable to revenue.

8. Ld. AR filed following Additional Synopsis after conclusion of hearing:

BEFORE
THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH
INDORE (M.P.)
IN THE MATTER OF
JAIPRAKASH NARAYAN SHARMA
V/S
ACIT 2(1), INDORE
ASSESSMENT YEAR 2016-17
PAN: ADFPS3558K
ITA NO. 807/Ind/2024

During the hearing before the H'ble bench today i.e. on 26/06/2025 the Ld. DR. relied upon the Bombay High Court Case dated 12th March, 2019 (104 taxmann.com 208) against the various cases relied by us and contention of deeming provision u/s 50C should not be invoked for the purpose of calculation of exemption under section 54F.

My honors the decision of Bombay High court was specifically dealing with the issue of section 54EC which is investment in certain bonds for claiming exemption under head capital gain and it requires amount of **capital gain** to be invested unlike **net consideration** under section 54F. The important thing here is to consider wording "**net consideration**", which is used for computing section 54F benefit.

My honors at para 8 of the order of the court has elaborated and interpreted the section 45 which reads as under-

45. (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

The section 45(1) does not include section 54EC exemption section in line to other exemption sections and therefore any rational given under section 54EC shall not be interpreted to other exemption sections including 54F as legislature itself intended to keep it separate.

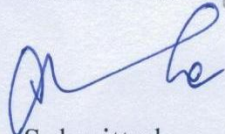
In our current case we are dealing with the facts of reinvestment under section 54F which mandates assessee to reinvest the net consideration of capital asset and section 54EC only requires to reinvest capital gain so derived. Therefore, both the sections cannot be interpreted in same manner.

Whereas Bombay High court final verdict is concerned, at para 13 of the order the court clearly concludes its decision for the computation of exemption under section 54EC and it is totally distinguishable with the facts of our case which we are dealing with meaning given of net consideration under section 54F.

Prayer

My honor in absence of any direct ruling of either of the high Court on exemption under section 54F, the issue may be debatable but direct decision of various coordinated Tribunals are in favour of assessee and therefore on principal of natural justice and adopting the view of h'ble supreme court in case of **CIT v/s Vegetable Products Limited (88 ITR 192)** that if two divergent views are possible then the view which favours the tax payer must be adopted.

Also, the decisions of various Tribunals relied by us for supporting our case have been laid down by ITAT's after the decision of Bombay High Court relied by Ld. DR. Therefore, we rely to the decisions cited by us which are squarely covered with the facts and synopsis submitted before the Bench.


Submitted

(AR)

9. We have considered rival submissions of learned Representatives of both sides and carefully perused the case record including the orders of lower authorities. After a careful consideration, we find two critical mistakes in the orders of lower-authorities which need to be addressed first:

- (i) The *first* mistake is such that the assessee himself claimed exemption of Rs. 1,24,10,862/- in the return of income whereas the total investment in new property as per figures considered by lower authorities come to Rs. 1,26,02,377/- being sum total of purchase price of new property Rs. 99,48,000 + subsequent expenses of additional work Rs. 26,54,377. Further, in his Written-Synopsis reproduced above, the Ld. AR is seeking exemption on the basis of investment of Rs. 1,26,02,377/- in new property. Thus, there is a variation in the amount of investment in new property from Rs. 1,24,10,862/- claimed in return to Rs. 1,26,02,377/- now being claimed. The reason of this variation is not discernible from the orders of lower authorities, it appears that the lower authorities have not applied mind to this aspect. If the reason of this variation is not verified, it will result in giving higher exemption to assessee. Therefore, the correct amount of new investment needs to be verified.
- (ii) The *second* mistake is such that in the return of income filed to department, the assessee has claimed 'full exemption' equal to the investment in new property. Under the scheme of Income-tax Act,

section 54 allows 'full exemption' but section 54F allows 'proportionate exemption' in the ratio of 'new investment' to 'net consideration'. That means, the assessee claimed exemption u/s 54. Thereafter, in entire assessment-order, the AO has discussed and allowed exemption u/s 54. Thereafter, in the order of first-appeal, the CIT(A) has mentioned section "54/54F". Now, the Ld. AR has, in his Written-Synopsis, given working of 'proportionate exemption' u/s 54F. Thus, there is an ambiguity at all levels. Therefore, the AO needs to apply correct provision of law in assessment-order and allow exemption thereunder.

10. Therefore, in such a situation, we feel it most appropriate to remand this matter back to the file of AO for adjudication afresh after examining two mistakes/issues discussed by us in preceding para. It is made clear that the AO shall not unsettle the proposition already accepted by CIT(A) that the cost of additional construction is also eligible for exemption; the AO can, however, verify the correct amount of such cost. Further, while computing exemption under correct provision of law, whether section 54 or 54F as applicable to assessee's case, the AO shall consider entire submission of assessee as the assessee may choose to file including the decisions relied by both sides before us as well any other decision as the assessee may bring to the notice of AO.

11. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 15/07/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15/07/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore