

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3300/Del/2016
Assessment Year: 2009-10

Shri Inamul Haq S/o Sh. Mohd. Yamin, Vill.Megh Chhappar, Ambalaa Road, Saharanpur PAN: AAIPH2840K	Vs.	Income Tax Officer, Ward-2. Saharanpur (U.P)
(Appellant)		(Respondent)

Assessee by:	Shri Ankit Gupta, Adv.
Department by:	Ms. Harpreet Kaur Hansra, Sr. DR
Date of Hearing:	12.08.2025
Date of pronouncement:	10.10.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal filed by assessee is against order dated 29.03.2016 of Learned Commissioner of Income-Tax (Appeals)-, Muzaffarnagar (hereinafter referred as "the Ld. CIT(A)") under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred as "the Act") arising out of assessment order dated 17.03.2015 of the Learned Assessing Officer/The Income Tax Officer, Ward-2, Saharanpur (hereinafter referred as "Ld. AO") under Sections 147/143(3) of the Act for assessment year 2009-10.

2. Brief facts of case are that assessee is a Pensioner of the Government Department. The assessee filed his return of income at Rs.1,21,546/- on 30.07.2009. Later on, it was noticed that assessee sold immoveable property for a sale consideration of Rs.41,57,100 (Circle Rate Rs.51,73,925/-) as per section 50C of the Act. As the land sold was capital asset and no income from capital gain was shown in the return from transaction of immoveable property, notice under Section 148 of the Act dated 06.01.2014 was issued for escapement of income. The assessee filed reply dated 26.02.2014 stating that return filed by him on 30.07.2009 may be treated as filed under Section 148 of the Act. Notices under Section 143(2) and 142(1) of the Act along with questionnaire were issued. Shri Deepak Gupta, CA/AR attended proceedings, filed replies and relevant material. On completion of assessment proceeding, Ld. AO passed order dated 17.03.2015 by making addition of Rs.14,05,500/-, Rs.37,090/- and Rs.50,31,150/-.

3. Against order dated 17.03.2015 of Ld. AO, the appellant/assessee preferred appeal before the Ld. CIT(A) which was dismissed vide order dated 29.03.2016.

4. Being aggrieved, appellant/assessee preferred present appeal with following grounds:

“1. That the Learned CIT(A) is wrong and unjustified in not allowing exemption u/s 54F in respect of all the three houses-one in the name of

appellant and two in the name of son, constructed out of the sale proceeds of land.

2. That Learned CIT(A) is wrong and unjustified in restricting the exemption u/s 54-F in respect of only house belonging to the appellant up to the date of filing of return, on the ground that no compliance of the provisions of section u/s 54F(4)) has been made ignoring the fact that the entire amount remained in Bank account and payment to the contractor was made after withdrawing the amount from the bank account. In alternative the exemption should has been allowed up to the time for filing the return u/s 139(4).

3. That Learned CIT(A) is wrong and unjustified in not allowing the exemption u/s 54-F in respect of houses constructed in the name of son and various decisions replied upon by the appellant has not been distinguished”.

5. Appellant/assessee through application dated 05.01.2023 requested following additional grounds of appeal:

“1. That the notice issued u/s 148 and reassessment order passed u/s 147 r.w.s. 143(3) are illegal, bad in law and without jurisdiction.

2. That, the assessment order passed by the non-jurisdictional officer, therefore, the assessment order passed is illegal, bad in law and without jurisdiction.

3. That, no application of mind by the assessing officer while recording the alleged satisfaction and failed to establish the live nexus between tangible material and income escaped assessment, which is vague, incorrect and baseless, hence, the proceedings initiated is illegal, bad in law and without jurisdiction. The CIT (A) has erred in upholding the validity of the proceedings initiated U/s 147 read with section 148.

4. That no proper statutory approval has been taken by the Assessing officer U/s 151 of the I.T. Act, 1961, as required. If any approval is taken then the approval is in very mechanical manner without application of mind by the statutory authority hence the proceedings initiated U/s 147/148 is illegal, bad in law and without jurisdiction.”

6. Learned Authorized Representative for the appellant/assessee submitted that the assessee has filed an application, seeking to raise an additional ground of appeal, relates to challenge, the jurisdiction of the assessment order passed by the ITO, 1-2, Saharanpur, where the jurisdiction of the assessee lies with Income Tax, Ward -3, Saharanpur, therefore, the re-assessment initiated by the different officer and the assessment was completed by the different officer is illegal, bad in law and without jurisdiction. Admittedly, the issue is neither raise by the assessee before the assessing officer or the CIT (A), the same has been raised by the assessee, for the first time before the Hon'ble Tribunal, as these legal grounds and goes into the roots of matter, in view of decision of Hon'ble Apex Court, in the case of National Thermal Power Corporation Limited Vs. CIT, 229 ITR 383 (SC).

7. Learned Authorized Representative for the appellant/assessee submitted that the assessment order passed by the non-jurisdictional officer is illegal, bad in law and without jurisdiction and the re-assessment proceedings has been initiated by the Income Tax Officer, Ward-3, Saharanpur by issuing the notice U/s 148 on dated 06.01.2014 and also recorded reason to believe, that, income has escaped assessment. Thereafter, the whole re-assessment proceedings has been conducted by the Income Tax Officer, Ward-3, Saharanpur, whereas, the assessment order U/s 147/143(3) dated 17.03.2015 was passed by the Income Tax Officer, Ward-2, Saharanpur, which is illegal, bad in law and without

jurisdiction, as the change of jurisdiction has never been communicated to the assessee, if any, therefore, the assessment order passed by the non-jurisdictional officer makes the assessment order, illegal, bad in law and without jurisdiction. The Hon'ble jurisdictional Allahabad High Court has held, in the case of Pr. CIT Vs. Mohd. Rizwan, ITA No.100/2015 dated 30.03.2017, that, the jurisdiction can neither be waived nor created, even by the consent and even by submitting the jurisdiction, an assessee cannot confer upon any jurisdictional authority, something which he lacked inherently.

8. On merits, Learned Authorized Representative for the appellant/assessee submitted that disallowance of exemption under Section 54F claimed by the assessee against the Long Term Capital Gain is as under:

“a) That, in the year under consideration, the assessee has sold the immovable property of Rs.41,57,100.00, which has circle value at Rs.51,73,925.00, which has been added by the assessing officer U/s 50C and the same has not been challenged by the assessee.

b) That, the aforesaid sale of the property has resulted into the Long Term Capital Gain of Rs.50,31,180.00 (after considering the 50C).

c) The assessee has also claimed, during the assessment proceedings, the exemption of U/s 54F of Rs.40,14,000.00 against the Long Term Capital Gain. The assessee has made the investment, in the construction of the New House, in his name of Rs.14,40,000.00 and his son name amounting to Rs.25,74,000.00 (Rs.21,00,000.00+Rs.4,74,000.00).

d) That, the assessing officer did not allow the exemption U/s 54F due to the following reasons (finding of AO at page no.10 to 13 of the assessment order) :-

(i) That, he has followed the direction by the JCIT, Saharanpur U/s 144A, that, the 54F is only available for the construction of one new

(ii) residential house only. That, he has relied on the report of inspector, that, the assessee has not constructed any residential house and it is just renovation of old existing house, which has never been confronted to the assessee.

e) That, being aggrieved from the assessment order, the assessee has filed an appeal before CIT (A). The CIT (A) has allowed the exemption U/s 54F and restricted at Rs.7,20,000.00 against the claim of Rs.40,14,000.00 on the following grounds (finding of CIT(A) at Page No.26 to 30 of the CIT (A) Order) :-

(i) That, the investment was made construction of two houses, in the name of his only son Shri Aftab Alam.

(ii) That, the construction of three house has been claimed by the assessee, which are situated at different places and are not adjacent to each other and as such all three house are separate unit, not as one unit.

(iii) That, the assessee has not deposited, in the capital gain scheme before date of filing of ITR U/s 139(1) of the ACT, ie. why he is restricted the exemption at Rs.7,20,000.00 against the claim of the assessee of Rs. 14,40,000.00 invested, in the construction of the house in his own name.

f) That, being aggrieved the order of CIT (A), the assessee has filed an appeal before your Hon'ble Court. The CIT (A) has erred in not allowing the exemption of U/s 54F of the ACT without considering the following facts and decision of Hon'ble Court as relied below :-

(i) That, the assessee has purchased the land, in name of his son, when he was minor and constructed the house by the sale proceed of the property in his name, which means, total investment was made by the assessee and the name of the son has been put up for the sake of convenience, as the assessee is having only one son.

- (ii) That, the CIT (A) has ignored, the decision of Hon'ble Delhi High Court, in the case of CIT Vs. Kamal Wahal, ITA No.4/2013 on dated 11.01.2013 (kindly refer Page No.34 to 39), in which the Hon'ble Court has allowed the exemption U/s 54F, when the property was purchased, in the name of his wife.
- (iii) That, the Hon'ble ITAT Delhi Benches has relied on the decision of CIT Vs. Kamal Wahal (Supra) has allowed the exemption U/s 54, when the father purchased the property, in the name of his son, in the case of Bhagwan Swaroop Pathak Vs. ITO, in ITA No.2754/Del/2019 dated 05.03.2020 (Kindly refer page no.42 to 46).

In view of the above facts and circumstances, the assessee claim regarding the investment in the name of his son, should be allowed, in view of the aforesaid jurisdictional precedence.

(iv) That, as per section 54(1), the assessee should invest, "a residential house", cannot be read as one residential house and also it cannot be restricted, that, two houses can constitute one unit, whereas, the Hon'ble Madras High Court has held, that, exemption will be allowed to the assessee, for the investment of multiple residential houses irrespective of their locations, in the case of M/s Trilok Chand and Sons Vs. ITO, T.C.(A). No.771 of 2009 dated 14.03.2019 (Kindly refer page no.1 to 26).

(v) That, in reference, to the allegation of the CIT (A), that, there is a violation of section 54F (4), that, the assessee did not deposited the sale proceed, in the capital gain account. The said issue was come up before the Hon'ble the Karnataka High Court, in the case of CIT Vs. Shri K. Ramchandra Rao, in ITA No.47 of 2014 and also before Hon'ble Madras High Court, in the case of Venkata Dilip Kumar Vs. CIT, in W. P. No. 16249 of 2018, in which the Hon'ble Court hold that, if the sum has been utilized towards the cost of construction with in the period of three years from the date of transfer, than it is to be considered, that, the assessee has satisfied, the mandatory requirement U/s 54(1) to get exemption. Section 54(2) can not be read in isolation and mere non compliance of procedural requirement U/s 54(2), itself cannot stand, in way of assessee, in getting the benefit of section 54. The same decision has also followed by the ITAT, in the following cases :-

- (a) Smt. S. M. Shoba Vs. ITO, In ITA No.1955/Bang/2019 dated 30.03.2022 page no.65 to 78.

(b) Shri Haider Noman Kohrakiwala Vs. ACIT, In ITA No.2367/Bang2019 dated 13.10.2020 page no.79 to 86.

(c) Mrs. Seema Sabharwal Vs. ITO, In ITA No.272/Chd/2017 dated 05.02.2018 page no.87 to 98.

- (vi) That, in the instance case, there is no dispute, that, the total sale proceed has been invested in the construction of new houses and the Hon'ble High Court, the CIT Vs. Sambandam Udaykumar reported in 251 CTR 371 took the view that, once it is demonstrated that the consideration received on transfer of capital asset has been invested in or construction of residential house, even through the construction is not completed in all respect as required under law, assessee cannot be denied benefit under section 54F.

In view of the above submission, it is clear that all the allegation made by the (A) are fully covered, in the favor of the assessee by the decision of Hon'ble art, hence, the exemption claimed by the assessee U/s 54F need to be allowed”.

9. Learned Authorized Representative for the Department of Revenue submitted that the assessee didn't raise jurisdictional issue at the assessment and appellate proceedings. Ld. CIT(A) has considered three houses at different locations. Detailed inquiries were made.

10. From examination of record in light of aforesaid rival contentions, it is crystal clear that the additional grounds of appeal nos. 1 & 2 are regarding exercise of jurisdiction by non-jurisdictional Ld.AO. Undisputedly, reassessment proceedings were initiated by the ITO, Ward-3, Saharanpur whereas the assessment order under Section 147/143(3) dated 17.03.2015 was passed by the ITO, Ward-2, Saharanpur. The exercise of jurisdiction by non-jurisdictional Ld. AO was not challenged during assessment and appellate proceedings.

10.1 Hon'ble High Court of Allahabad in PCIT vs. Mohd. Rizwan, ITA No.100 of 2015 decided on 30.03.2017 has held as under:

“56. If an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside order passed by authority or forum having no jurisdiction. This is what was held in State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another AIR 1996 SC 2664.”

10.2 In view of above material facts especially passing of assessment order by non-jurisdictional officer/Ld. AO in light of above well settled law, being illegal is set aside. Accordingly, additional grounds of appeal nos. 1 and 2 are allowed.

11. Additional Ground of appeal nos. 3 and 4 are rendered as academic in nature.

12. Moreover, on merit, not allowing exemption under Section 54F of the Act in respect of all three houses (one in name of appellant and two in name of son constructed out of sale proceeds of land) has been challenged. Ld. CIT(A) failed to notice decision of Hon'ble High Court of Delhi in CIT vs. Kamal Wahal – ITA No.4 of 2013 decided on 11.01.2013, which provides as under:

“7. We have no hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgments of the Madras and Karnataka High Courts (supra) are in favour of the assessee, the revenue fairly brought to our notice a similar view of this Court in [CIT Vs. Ravinder Kumar Arora](#) : (2012) 342 ITR 38 (Del.). That was also a case which arose under [Section 54F](#) of the Act. The new residential property was acquired in the joint names of the assessee and his wife. The income tax authorities restricted the deduction under [Section 54F](#) to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee's wife. This view was disapproved by this Court. It noted that the entire purchase

consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, [Section 54F](#) in terms does not require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed "a residential house".

8. This Court in the decision cited alone also noticed the judgment of the Madras High Court (supra) and agreed with the same, observing that though the Madras case was decided in relation to [Section 54](#) of the Act, that Section was in pari materia with [Section 54F](#). The judgment of the Punjab and Haryana High Court in the case of [CIT Vs. Gurnam Singh](#) :

(2014) 327 ITR 278 in which the same view was taken with reference to [Section 54F](#) was also noticed by this Court.

9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of [Section 54F](#), the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which [Section 54F](#) seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue.

The appeal is accordingly dismissed with no order as to costs.”

13. Income Tax Appellate Tribunal, Delhi Benches, New Delhi in the case of Bhagwan Swaroop Pathak dated 05.03.2020 in ITANo.2754/Del/2019 in para nos. 7 has observed as under:

“7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has demonstrated before the Assessing Officer as well as the CIT(A) that the purchase of property in the name of the son was acquired by the assessee himself through the consideration

received from the sale deed of earlier old property. The bank statement and the cheque issued to the builder as well as the confirmation received from the builder demonstrated that the payment was made by the assessee for purchase of new property within the stipulated time as prescribed u/s 54. Though, the assessee is not filed any return and at that stage never claimed Section 54, once the reopening u/s 148 has been issued, the assessee cannot be denied his entitlement /claim for deduction or exemption under income tax statute on the sole ground that no return was filed. The benefit of income tax act and its provisions related to exemption and deduction has to be taken into account while computing the income of the assessee and it is the proper procedure on the part of the Assessing Officer to follow all the aspect of taxation within the corners of Income Tax Act. As regards the name under whom the property is purchased, it can be seen that the son of the assessee is a direct relation and as per the Hon'ble Delhi High Court decision in case of CIT(A) Vs. Kamal Wahal 351 ITR 4 where assessee purchased new house in 6 ITA No. 2754/Del/2019 name of his wife, the claim under Section 54 is held valid. Thus, the exemption could not be denied if entire investment had come out of proceeds of old property. Thus, the order of the CIT(A) is not justified in light of the decision in case of Kamal Wahal (supra). Therefore, the appeal of the assessee is allowed.”

14. In view of above material facts i.e. investment of all sale proceeds of the property in the name of assessee in purchase of land in name of a son when he was minor and raising of construction in light of above well settled principles of law, it is held that Ld. CIT(A) erred in not allowing exemption under Section 54F of the Act. Therefore, impugned order of Ld. CIT(A) upholding addition of Rs.50,31,150 on account of Long Term Capital Gain by Ld. AO is set aside. Accordingly, grounds of appeal nos. 1 to 3 are allowed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10th October, 2025.

Sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 10 /10/2025

Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi