

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.448/CTK/2024

C.O. No.06/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2022-23)

Income Tax Officer, Aayakar Bhavan, Penthakata, Puri	Vs	Krushna Chandra Pujapanda, Matimandap Sahi, H.O.Puri Town, Puri.
PAN No. : ABDPP 0879 N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Ashok Kumar Chatterjee, CA
राजस्व की ओर से /Revenue by	:	Shri Ashim Kumar Chakraborty, Id CIT DR
सुनवाई की तारीख / Date of Hearing	:	5 /12/2025
घोषणा की तारीख/ Date of Pronouncement	:	5 /12/2025

आदेश / ORDER

Per Bench :

This is an appeal filed by the revenue against the order dated 4.9.2024 passed by Id CIT(A), NFAC, Delhi in Appeal No.NFAC/2021-22/10363554 for the assessment year 2022-23.

2. The cross objection is filed by the assessee in appeal filed by the revenue in ITA No.448/CTK/2024.

3. Shri Ashok Kumar Chatterjee, Id AR appeared for the assessee and Shri Ashim Kumar Chakraborty, Id CIT DR appeared for the revenue.

4. It was submitted by Id AR that in the cross objection, the assessee has challenged the action of the revenue in filing the appeal against the order of Id CIT(A), where the assessee has been granted the benefit of deduction u/s. 54F of the Act. In Ground No.1 of the cross objection, it is mentioned that nowhere in section 54 and 54F of the Act, it is stated that the new asset should be registered in the name of the assessee himself, who claims the deduction and it would be sufficient if the sale proceeds of the original assets are invested in the new assets within specified time as per the Act. It was submitted that the assessee is an individual, who is a director and shareholder in M/s. Pujari Estate & Developers Pvt Ltd. It was the submission that the said M/s. Pujari Estate & Developers Pvt Ltd., did not have the funds and consequently, the assessee had lend Rs.13 crores to M/s. Pujari Estate & Developers Pvt Ltd., and M/s. Pujari Estate & Developers Pvt Ltd., had entered into an agreement for purchase of immovable property from M/s. Peerless Hotels Ltd., It was the submission that during the year, the assessee has paid Rs.13 crores and in the subsequent assessment years, the assessee has paid Rs.4 crores. It was the submission that the agreement for the purchase of land from M/s. Peerless Hotels Ltd., was for a consideration of Rs.17 crores. To a specific query as to whether the transfer of the property has taken place from M/s. Peerless Hotels Ltd., to M/s. Pujari Estate & Developers Pvt Ltd., it was submitted that the position still remains as advance only and the transfer has not taken place. It was the further submission that the Id CIT(A) has granted the benefit of section 54F of the Act and that should be upheld.

5. After going through the paper and appeal folders, it was put to Id AR as to from where the funds had come, Id AR gave evasive answer and he was

warned that evasive responses would lead to perverse orders. Subsequently, it was clarified that the transaction shows that the assessee was a Director and shareholder of M/s. Niladree Build-Tech Pvt Ltd. The shares of M/s. Niladree Build-Tech Pvt Ltd., was sold to one Shri T.P.Mohanty for a consideration of Rs.11.55 crores. It was the submission that it is out of said Rs.11.55 crores, the assessee had invested Rs.9.25 crores in time deposit. It was then intimated by Id CIT DR that the transaction of the sale of M/s. Niladree Build-Tech Pvt Ltd shares to Shri T.P.Mohanty has been held by the Assessing Officer to be a bogus transaction insofar as the shares had been sold at a valuation of Rs.510 per share and the face value of the share Rs.100 and M/s. Niladree Build-Tech Pvt Ltd., was a loss making company. It was specifically put to Id AR as to who was Shri T.P.Mohanty, who has purchased the shares of M/s. Niladree Build-Tech Pvt Ltd. Id AR submitted that he has no information and he does not know Shri T.P.Mohanty. It was then put to Id CIT DR that the Assessing Officer having held the sale of shares of M/s. Niladree Build-Tech Pvt Ltd., to be a bogus transaction, whereas the question was of making claim u/s.54F and why there is no addition in regard to said transaction. To this, Id CIT DR submitted that in the assessment order, the Assessing officer has added Rs.9.29.50,000/- as income from other sources in respect of sham transaction and has denied the assessee's claim of exemption u/s. 54F. It was the submission that the Id CIT(A) has not considered the facts in its right perspective and has granted the assessee the benefit of deduction u/s.54F of the Act.

6. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that neither the AO or the Id CIT(A) has considered the valuation of the shares of M/s. Niladree Build-Tech Pvt Ltd., by applying

Rule 11UA of I.T.Rules. The Assessing Officer has blindly held the transaction of the sale of shares of M/s. Niladree Build-Tech by the assessee to Shri T.P.Mohanty as a bogus transaction. The Assessing Officer has also not examined who the said Shri T.P.Mohanty is. When a transfer has been pointed out by the assessee, the Assessing Officer has the duty to examine the transaction and bring out the true colour of transaction. The Assessing Officer should not blindly treat the transaction as bogus. Further, coming to the issue of the assessee having made a time deposit of Rs.9.25 crores, the question now arises as to how the loan was given to M /s. Pujari Estate & Developers Pvt Ltd., for the payment to M/s. Peerless Hotel Ltd., especially when the assessee has been claiming that the loan was given because M/s. Pujari Estate & Developers Pvt Ltd., did not have any money. It is an admitted fact that the assessee himself as claimed that the transaction of the purchase of land from M/s. Peerless Hotels Ltd., has not been completed and the transaction remains as an advance. A perusal of the provisions of section 54F shows that the word used in Section 54F is "**purchased, or has within a period of three years after that date constructed, one residential house in India**". Therefore, the claim of Id AR in his cross objection that the asset should be registered in the name of the assessee himself no more survives till the transaction is complete but the purchase is not complete. Even otherwise, the purchase is being done by M/s. Pujari Estate & Developers Pvt Ltd., a company & separate taxable entity and the transaction which has been entered into by the assessee is granting of a loan to M/s. Pujari Estate & Developers Pvt Ltd., It is clearly not a purchase by the assessee for claiming the benefit of section 54F. Similarly, even for the benefit of section 54, it is the assessee who has purchased or has

within a period of three years constructed. Neither Section 54 and 54F is available to the assessee before us as the advance has been made by M/s. Pujari Estate & Developers Pvt Ltd., and it is M/s. Pujari Estate & Developers Pvt Ltd., who paid to M/s. Peerless Hotels Ltd. This being so as also considering the fact that the transaction in its entire gamut has not been examined by the AO or the Id CIT(A). Insofar as the Id CIT(A) has erred in granting the assessee the benefit of deduction u/s.54F, we are of the considered view that the issue must be restored to the file of the AO for fresh adjudication and we do so. The Assessing Officer shall ;

- i) examine the transaction of sale of shares of Niladree Build-Tech Pvt Ltd., to Shri T.P.Mohany as claimed by the assessee. The valuation of the shares and if the transaction is genuine it is to be done by applying the method of valuation as provided in Rule 11UA of I.T.Rules.
- ii) The assessee having made time deposit of Rs.9.25 crores, the Assessing Officer is to examine from where the assessee has given loan of Rs.13 crores to M/s. Pujari Estate & Developers Pvt Ltd., and whether the transaction is genuine.
- iii) The assessee has also shown cost of acquisition of the shares at Rs.6.65 crores being the cost of acquisition of the shares of M/s. Niladree Build-Tech Pvt Ltd, which has been sold. How the said valuation has been done and how cost of acquisition has been determined has not been examined nor adjudicated.

7. A perusal of the order of Id CIT(A) in page 7 para 7.1 shows that the assessee has submitted before the Id CIT(A) that the sale of shares is not a sham transaction and the property of Hotel (East and West) was sold with its assets including the vacant land in the name of the company and also paid the liability of the company which can be evidenced from the agreement and the

said transaction is for Rs.62 crores. What is the transaction, in fact, no details of the transaction are coming out either from the order of the AO or Id CIT(A). This being so, for a detailed enquiry and verification and for ascertaining the proper facts, the issues are restored to the file of the AO. The order of the Id CIT(A) granting the assessee the benefit of deduction u/s.54F stands reversed as nothing has been shown regarding the purchase or construction of a residential house.

8. In the result, appeal of the revenue stands partly allowed for statistical purposes and the cross objection of the assessee stands dismissed.

Order dictated and pronounced in the open court on 5/12/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

दिनांक Dated 5/12/2025

B.K.Parida, Sr.P.S(OS)

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

1. अपीलार्थी / The Appellant- Income Tax Officer,
Aayakar Bhavan, Penthakata, Puri
2. प्रत्यर्थी / The Respondent- Krushna Chandra
Pujapanda, Matimandap Sahi, H.O.Puri Town,
Puri
3. आयकर आयुक्त(अपील) / The CIT(A), NFAC, Delhi
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक
/ DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण,

कटक/ITAT, Cuttack