

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN “SMC” BENCH: DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**[THROUGH VIRTUAL MODE]**

**ITA No.149/DDN/2024  
[Assessment Year : 2022-23]**

|  |                            |   |
|--|----------------------------|---|
| Mrs. Dhoomi Devi<br>C/o-Hotel Udai Palace Near<br>Narsingh Temple<br>Joshimath Chamoli,<br>Uttarakhand-246443<br><b>PAN-ADKPD6984B</b> | Vs                         | ITO<br>Ward-1(4)4<br>Srignagar, Chamoli<br>Uttarakhand-246174 |
| <b>APPELLANT</b>   |                            | <b>RESPONDENT</b>   |
| <b>Assessee by</b>   | Shri Tarandeep Singh, Adv. |   |
| <b>Revenue by</b>  | Shri A.S. Rana, Sr. DR     |   |
| <b>Date of Hearing</b>   | 08.12.2025                 |   |
| <b>Date of Pronouncement</b>   | 13.02.2026                 |   |

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by the assessee against the order dated 08.08.2024 by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld. CIT(A)”] in Appeal No. NFAC/2021-22/10329482 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 05.03.2024 passed u/s 143(3) r.w.s. 144B of the Act pertaining to Assessment Year 2022-23.

2. Brief facts of the case are that assessee is an individual and the case was selected for scrutiny under CASS for reason i.e. “large

investment in immovable property as compared to the total income”. The AO then passed the assessment order u/s 143(3) r.w.s. 144B on 05.03.2024 at a total income of INR 2,70,31,224/- as against the total income declared at INR 29,45,000/- in the return of income filed by the assessee.

3. During the year under appeal, assessee had sold a property and purchased another property and claimed deduction of INR 1,90,86,224/- u/s 54F of the Act which was disallowed by holding that the assessee is owner of more than one residential property. Besides this, an addition of INR 50 Lakhs is made on account of money paid in cash for purchase of property.

4. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 08.08.2024, dismissed the appeal of the assessee.

5. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“That on facts and in law the impugned order dated 08 August 2024 passed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "CIT(A)") and the order of Assessment Order dated 05 March 2024 passed by the Assessing Officer (hereinafter referred to as the "AO") are bad in law and void ab initio.*
2. *That on facts and in law the CIT(A) has erred in passing the impugned order violating settled principals of natural justice, i.e. inter alia not providing an opportunity of being heard in person.*

3. *That on facts and in law the CIT(A) has erred in upholding disallowance of deduction claimed u/s 54F of Rs 1,90,86,224/-.*
4. *That on facts and in law the AO and CIT(A) have erred in not appreciating that conditions prescribed in clause (a) to proviso of section 54F(1) are satisfied in the present case and therefore the appellant is eligible to claim deduction u/s 54F of Rs. 1,90,86,224/-*
- 4.1 *That on facts and in law the AO/CIT(A) have erred in not appreciating that following properties inherited by the appellant are not a "residential house as they are commercial properties or in commercial use:*
  - (a) *Building at Gopeshwar-purchased in 1965 by appellant's husband*
  - (b) *Building at Gopeshwar - purchased in 1973 by appellant's husband*
  - (c) *Lodge at Village Kothiaisain-constructed in 2007 by appellant's husband*
  - (d) *Building at Joshimath(purchased in 1999 by appellant's husband) - Ground, First, Second and Third Floors*
- 4.2 *That on facts and in law the CIT(A) has erred in observing that the appellant has failed to furnish material or evidence to demonstrate that the above properties were commercial/ in commercial use.*
- 4.3 *That on facts and in law the AO/CIT(A) have erred in not investigating/examining the factum of actual use of the above properties but recording conclusions giving undue weightage to nomenclature inadvertently used by the appellant in its written pleadings.*
5. *That on facts and in law the CIT(A) has erred in upholding an addition to Total Income of Rs 50,00,000/- on account of alleged "on-money" for purchase of property.*
6. *That on facts and in law the CIT(A) has erred in upholding that seizure of cash and other documents by the FST team on 19-01-2022 i.e during the course of State Assembly Elections from one Mr Nadeem Ahmad Khan adequately demonstrates payment of alleged "on money" by the appellant for purchase of a property.*
7. *That on facts and in law the AO/CIT(A) have erred in:*
  - (a) *Not appreciating that appellant had never negotiated, interacted or dealt with M-Nadeem Ahmad Khan.*

- (b) *Not providing to the appellant copy of statement of Mr Nadeem Ahmad Khan and copies of other material / evidences seized from him on 19-01-2022.*
- (c) *Not providing an opportunity to cross-examine Mr. Nadeem Ahmad Khan.*
- (d) *Not bringing on record the details of proceedings initiated (if any) against Mr Nadeem Ahmad Khan.*
- (e) *making/upholding the addition premised conjectures and surmises.*

*That the appellant craves for leave to add, amend, modify or alter the grounds of appeal,”*

6. **Ground of appeal Nos. 1 & 2** raised by the assessee are general in nature, hence dismissed.

7. **Ground of appeal Nos.3 to 4.3** raised by the assessee are with respect to the disallowance of deduction u/s 54F of the Act of INR 1,90,86,224/-.

8. Heard the contentions of both the parties and perused the material available on record. The assessee is owner of Four properties, one is situated at Gopeshwar which was purchased by her husband in 1965 and second property is also situated at Gopeshwar and was purchased by her husband in the year 1973; third property is situated at village Kothiaisain, constructed by her husband in 2007 and fourth property at Joshi Math purchased by her husband in 1999. All the properties were purchased/constructed by assessee's late husband and assessee become the owner of these properties after the death of her husband and they were given on rent and rental income received is duly declared by the assessee. The

assessee had sold one property jointly owned by her son for a total sum of INR 6.00 crores out of which assessee's share was of INR 3.00 crores. Out of the long terms capital gains from the sale of said property, assessee claimed deduction u/s 54EC for investment in NHAI Bond of INR 50 Lakhs and further claimed deduction of INR 1,90,86,224/- u/s 54F of the Act proportionately out of total cost of acquisition of new house property for INR 2,10,19,420/-. The AO disallowed the deduction claimed u/s 54F of the Act by holding that assessee is having more than one residential house property as on the date of transfer and thus, is disqualified for entitlement of claiming deduction u/s 54F of the Act. The said disallowance was confirmed by Ld.CIT(A) by observing that no evidences were filed by the assessee in support of the claim that all the other properties owned by the assessee as on the date of transfer and alleged as residential properties were commercial in nature.

9. Before us, assessee filed additional evidences in the shape of identity proofs and affidavits of the tenants wherein they all have stated that they occupied certain portion of the properties owned by the assessee and used by them for their business purposes and were not used for residential purposes. The assessee prayed that these additional evidences be accepted and deduction u/s 54F of the Act be allowed. On careful consideration all these facts and the additional evidences now filed before us, it is observed that none of the said evidence was filed before the lower authorities and are crucial to decide the very nature of the property given on rent by the assessee.

If the same are utilized for commercial purposes and none of the unit was used for residential purposes, the claim of the assessee u/s 54F of the Act cannot be denied. Since these documents were not available with the lower authorities, the veracity of the same remained unexamined.

10. Since these documents are crucial to decide the issue in hand, therefore, in the interest of justice and further looking to the fact that these properties are situated at remote places therefore, collection of the evidences from the tenants is time consuming exercise, we admit these additional evidences. However, since these are not available before the lower authorities and not examined at any stage, this issue is remanded back to the file of the AO with the direction to examine the claim of the assessee with respect to the affidavits of tenants before us and decide the same as per law. With these directions, Grounds of appeal No. 3 to 4.3 raised by the assessee are allowed for statistical purposes.

11. **Ground of appeal Nos. 5 to 7** raised by the assessee are with respect to the addition of INR 50 Lakhs made by holding that the same as unexplained on-money paid in cash for the acquisition of the new property.

12. Facts of the issue are that on 19.01.2022 during the State Assembly election, one person namely Shri Nadim Ahmad Khan was

intercepted by the Police authorities and cash of INR 37 Lakhs was found in his possession alongwith the draft typed Sale Deed where the seller was Smt. Madhulika Sandhu, wife of late Shri Narendra Sandhu and the purchaser was Smt. Dhooma Devi, W/o Late Uday Singh Rawat, Chamoli i.e. the assessee and one loose paper containing certain scribblings that total sale transaction was for INR 2.50 crores out of which 2.05 crores was mentioned in draft deed and balance INR 45.00 Lakhs was to be paid in cash as on money. The allegation of the lower authorities is that the said cash was given by the assessee to Sh. Nadeem Khan to deliver the same to the seller of the property. The assessee finally purchased the said property for INR 02.00 crores and therefore, the lower authorities presumed that the difference of INR 50 Lakhs between the sale consideration found noted in the loose paper seized from the possession of Shri Nadim Ahmad Khan and as stated in final Sale Deed, was paid by the assessee in cash as on money. Accordingly, the AO made the addition of differential amount of INR 50 Lakhs in the hands of the assessee.

13. Against the said order, the assessee preferred the appeal before Ld.CIT(A) who confirmed the addition made by the AO.

14. Before us, Ld.AR for the assessee submits that during the course of search by the Police authorities of Shri Nadim Ahmad Khan, a sum of INR 37 Lakhs was found and seized and when he was asked about the source thereof, he never stated that such cash was given

by the assessee to deliver to the seller against the purchase of the plot and. Ld. AR further submits that as per the draft Sale Deed, the amount of total sale consideration was stated at INR 2.05 crores and on the loose paper it was stated as INR 2.50 Crores, therefore, he alleged the differential amount of INR 45.00 Lakhs as own money. However, the addition was made for the amount of INR 50 Lakhs towards alleged own money payment. Ld.AR submits as against this INR 37 Lakhs were seized from the possession of Shri Nadim Ahmad Khan and no evidence was found that the remaining amount was ever paid. Ld. AR further submits that the draft Sale Deed found from the possession of Shri Nadeem Khan was not signed by the assessee and nor the loose paper containing scribbling of alleged sale transaction was in the hand writing of the assessee and AO made no inquiry whatsoever from the seller of the property before making addition in the hands of the assessee, Ld. AR further submits that Shri Nadeem Khan never stated in his statement that the cash of Rs. 37 Lakhs found from his possession was given by the assessee nor any opportunity was provided to the assessee to cross-examine Shri Nadim Ahmad Khan so that the truth come to the surface. Accordingly, Ld.AR requested for the deletion of the addition made.

15. On the other hand, Ld. Sr. DR for the Revenue supports the orders of lower authorities and submits that Shri Nadim Ahmad Khan was the broker in the transaction and cash of INR 37 Lakhs was found from his possession alongwith a typed draft Sale Deed and one loose paper containing certain scribblings according to which

land was sold for INR 2.50 crores and out of which INR 45 Lakhs were to be paid in cash. It is thus requested that the orders of the lower authorities based on such glaring evidences by making addition of INR 50 Lakhs as own money in the transaction of purchase of property by the assessee be uphold. He prayed accordingly.

16. Heard the contentions of both the parties and perused the material available on record. In the present grounds of appeal, the issue is whether any own money was paid by the assessee at the time of purchase of land. The assessee has entered into an agreement for purchase of land in terms of registered Sale Deed for a total consideration of INR 2.00 crore though the AO in the assessment order at page 2, observed that as per loose paper found from the possession of Shri Nadim Ahmad Khan and the draft Sale Deed, the sale consideration was stated to INR 2.05 crores and the total sale consideration is mentioned in the loose paper at INR 2.50 crores, leading to the differential amount of INR 45 Lakhs however, as per page 4 & 5 of the assessment order, the assessee has claimed to have purchased the same property i.e. 52, Rajkot, Dehradun for a sale consideration of INR 02 crores and incurred various expenses on account of registration fee etc. and thus, total cost of acquisition was claimed at INR 2,10,19,420/-. The AO based on the amount mentioned in the registered sale deed, had made the addition of differential amount of INR 50 Lakhs as own money paid by the assessee for acquisition of the said property. It is also a fact that during the course of search, a sum of INR 37 Lakhs was found from

the possession of Shri Nadim Ahmad Khan and as per his statement, he has not able to explain the source of this money. The claim of the assessee is that Shri Nadim Ahmad Khan has never stated that this cash was belonged to the assessee and was handed over by the assessee to him to deliver it to the seller. It is further observed that AO has made no inquiry whatsoever with respect to the transaction of sale of property with the seller. The assessee further claimed that Shri Nadim Ahmad Khan was never acted as broker in the transaction and solely because he was a property broker, AO had alleged that he was a broker soliciting the deal of purchase of property by the assessee. It is also a fact that the loose paper was found with Shri Nadim Ahmad Khan and not with the assessee and except the loose paper, Revenue has failed to bring any corroborative evidence to hold that such cash of INR 37 Lakhs was the money of the assessee. Further, no other evidence was available on record for payment of balance amount of INR 13 Lakhs in cash by the assessee to the seller of the property.

17. Looking to the entirety of the facts coupled with fact that the draft Sale Deed found with Shri Nadim Ahmad Khan was not signed by any person, he has never stated that cash of INR 37 Lakhs was given by the assessee and further no corroborative evidence was brought on record to presume that such cash was assessee undisclosed money. The presumption u/s 132(4A) of the act cannot be drawn against the assessee and it is settled law that presumption u/s 132(4A) is available against the person from whom possession,

documents are seized. Therefore, in view of these facts, no addition could be made in the hands of the assessee towards alleged on money payment and accordingly addition of INR 50 Lakhs made in the hands of the assessee is deleted. The Grounds of appeal No. 5 to 7 raised by the assessee are thus, allowed.

18. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 13.02.2026.

**Sd/-**

**(YOGESH KUMAR U.S)**  
**JUDICIAL MEMBER**

**Date:- 13.02.2026**

*\*Amit Kumar, Sr.P.S\**

**Sd/-**

**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

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