

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No.6933/Del/2019: Asstt. Year: 2016-17

Anik Chatterjee, CA Tarun Khandhari, Flat No. E614, Plot No. 14, Hum Sub Apartments, Sector-4, Dwarka, New Delhi	Vs	ITO, Ward-1(2), Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AAFPC3881Q		

**Assessee by : Ms. Renu Suri, CA
Sh. Tarun Khandhari, CA
Revenue by : Sh. Kanav Bali, Sr. DR**

Date of Hearing: 19.10.2022	Date of Pronouncement: 16.12.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-1, Gurgaon dated 18.06.2019.

2. The assessee has raised the following grounds of appeal:

"1. That the order is bad in law and against the fact of the case.

2. That the Id. Assessing officer has erred in not considering the Payment made for the Purchase of the new property for Exemption U/S 54.

3. That Ld. Assessing officer overlooked the judgments given by various courts wherein it is held that the deduction U/s 54 should be allowed to assessee even if the investment in new asset under builder construction agreement made before transfer of asset.

4. That Ld. Assessing officer did not consider the documentary evidence submitted by the appellant in support of legal complaint lodged against the builder for delay in handover of flat on part of builder.

5. The Ld. Commissioner of Income Tax appeals erred in law as well as on the facts without considering the submission and other documentary evidence submitted by the appellant and disallow the deduction claim by the appellant U/s 54."

3. The assessee filed return of income on 13.07.2016 declaring income of Rs.21,98,100/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee had claimed deduction of Rs.1,13,88,413/- u/s 54 of the Income Tax Act, 1961.

Date of purchase of property – 08.08.2014

Date of sale of property – 03.08.2015

4. The assessee has made payments for booking on 10.06.2014 of Rs.10 lacs and 19.06.2014 of Rs.15 lacs. The remaining payments made upto 04.11.2014 totaling to Rs.1,33,74,400/-.

5. Section 54F reads as under:

"Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date

constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such 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:

Provided *that nothing contained in this sub-section shall apply where—*

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation.—For the purposes of this section,—

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as

reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in

any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided *that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b) the amount that would not have been so charged had the amount actually utilized by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilized amount in accordance with the scheme aforesaid.”

6. Heard the arguments of both the parties and perused the material available on record.

7. Thus, the agreement for sale was signed on 08.08.2014 and the payments have been completed by

08.10.2014. Since, the amount equivalent to the capital gains has been utilized for acquisition of new house, the assessee be permitted to avail the benefit allowable u/s 54 of the Act.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 16/12/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 16/12/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR