

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 191/JP/2021
निर्धारण वर्ष / Assessment Years : 2011-12

Kaushlendra Singh Flat No. 201, Plot No. 188 Vatslya Enclave terminal Market Road, Mansarovar , Ganesh Nagar, Jaipur.	बनाम Vs.	ITO, Ward-5(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AXYPS 9669 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C.P. Chawla (ITP)
राजस्व की ओर से / Revenue by : Ms Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 22/02/2022
उदघोषणा की तारीख / Date of Pronouncement : 04/05/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the assessee is directed against the order of the Id. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] dated 25.08.2021 for the AY 2011-12.

2. The assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case the learned CIT(Appeals), National faceless Appeal Centre, grossly erred in confirming the addition of Rs. 6,33,190/- made by the AO on account of long term capital gain, arose on sale of immovable property, situated at Plot No. C-174, RICCO, Housing Colony, Sitapura, Jaipur and

consequently erred in sustaining the order of the Assessing Officer passed u/s 143(3) 147 of the Act, merely on the technical ground that the investment was made by the appellant in the purchase of new residential house property, in the name of his wife Smt. Garima Singh who herself is a separate assessee and having separate source of income; and thus denied the benefit of section 54F of the Income-tax Act, 1961.

2. On the facts and in the circumstances of the case the learned CIT(Appeals), National faceless Appeal Centre, grossly erred in not properly appreciating the decisions of Hon'ble Rajasthan High Court in the case of Shri Laxmi Narayan vs. CIT D.B. Income tax appeal no. 20/2016-17-LL-1107-1117 and Mahadev Balai vs. ITO Ward-7(2) Jaipur-D.B. Income-tax Appeal no. 136/2017 dated 07/11/2017, and thereby holding that these decisions were of no help to the appellant for the reason that in these cases the wife was having no separate source of income.

3. On the facts and in the circumstances of the case the learned CIT(Appeals), National faceless Appeal Centre, was not correct in construing the provisions of section 54F and holding that the investment out of the sale proceeds of the old property required to be made in the name of assessee himself and not otherwise, despite numerous decisions of Hon'ble High Courts wherein it has been held that the intent and purpose with which the section was enacted by the parliament had to be considered and the interpretation which is not in consonance with the provisions should be avoided.

4. The appellant craves the right to add, alter or amend any of the grounds of appeal before the date of hearing.”

3. Brief facts of the case are that the assessee sold immovable property situated at Plot no. C-174, RICCO Housing Colony, Sitapura, Jaipur for sale consideration of Rs.14,75,000/- on 11/10/2010. The value of which evaluated at Rs.14,79,960/- by the Stamp Duty Authority. Out of sale consideration of Rs. 14,75,000/- the assessee made investment of Rs. 7,48,000/- in the purchase of new residential house property in the name of his wife namely, Smt. Garima Singh, within the prescribed time limit as prescribed under the provisions of

section 54F of the Act. Accordingly, the assessee claimed exemption u/s 54F of the Income tax Act. Consequently, no capital gain was chargeable under the head Long term capital gain on sale of above immovable property. Despite these facts, the AO while completing assessment u/s 143(3)/147 of the Act on 08/12/2018 disallowed the exemption claimed u/s 54F of the Act at Rs. 6,33,190/- and added the same to the total income of the assessee as long-term capital gain, holding/observing that since the assessee made investment in immovable property in the name of his wife and the assessee and his wife are different persons as well as separate assessee the deduction claimed u/s 54F of the Act, is not allowable to the assessee.

4. The AO arrived the findings as held that the assessee did not file her return of income voluntary as per provision of section 139 of the IT Act, 1961 besides having taxable income for A.Y. 2011-12, therefore, penalty proceedings u/s 271F of the Income Tax Act, 1961 is hereby initiated. Subject to above, total income is computed as under:-

Sr. No.		Amount (Rs.)
1.	Return income	1,65,540
2.	Add:-	
	On account of long term capital gain as discussed in para 5	6,33,190
3.	Total income	7,98,730

The AO findings are that total income as assessed at Rs. 7,98,730/- u/s 143(3) read with section 147 of the Income Tax Act, 1961. ITNS-150 showing calculation of tax and interest chargeable, if any, is attached herewith part of this order. The penalty proceeding u/s 271F and 271(1)(c) of the IT Act is hereby initiated.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has reiterated its arguments in para 4 pages 2 to 7 of the order. The Id. CIT(A) for the reasons stated in his order has rejected the arguments and submissions made by the assessee.

6. The Ld CIT (A) observed that the as under :

"5. Findings:

5.1 The Grounds of Appeal, the facts and circumstances of the case and the submissions of the appellant have been carefully considered.

Brief facts of the case are that during the period relevant to AY. 2011-12, the appellant sold immovable property, situated at Plot No.C-174, RICCO, Housing Colony, Sitapura, Jaipur for sale consideration of Rs. 14,75,000/- on 11.10.2010. The value of the property was evaluated Rs. 14,79,960/- by the Stamp Duty Authority. After taking benefit of Cost acquisition/ improvement, Long term capital gain worked out at Rs. 6,33,190/-.Thereafter, out of above sale proceeds, the appellant claimed investment of Rs. 7,48,000/- in purchase of residential house in the name of his wife namely, Smt Garima Singh, within the prescribed time limit as required u/s 54F of the Act. The appellant filed his return of income for the A.Y.2011-12, in compliance to notice u/s 148 of the Act on 26/04/2018 declaring total income at Rs.1,65,540/-. Exemption u/s 54F of the Act was claimed at Rs. 6,33,190/-in the return of income. The AO completed assessment u/s 14(3)/147 of the Act on 08/12/2018 determining the income of the appellant at Rs. 7,98,730/-.While completing the assessment the AO did not allow exemption claimed u/s 54F of the Act on the ground that the investment in purchase of immovable property was made in the name of wife of the appellant, holding, inter-alia, that

"the deduction claimed by the assessee u/s 54F of the in the name of his wife cannot be allowed. It is also mentioned here that the assessee and his wife are different persons as well as separate assessee.

Therefore, the said deduction is hereby disallowed and added back in the total income of the assessee on account of Long Term Gain for this year under the provisions of section 54 F of the income Tax Act, 1961. "

This resulted in addition of Rs.6,33,190/- on account of Long-term capital gain.

Aggrieved, the assessee is in appeal.

The appellant has submitted that AO was not justified in disallowing exemption claimed u/s 54F of the Act as the funds utilized for purchase of property belonged to the appellant only and merely the registered document was executed in the name of wife.

5.2 The appellant has placed reliance on the following two case laws pertaining to the jurisdictional Rajasthan High Court:

1. Decision of Hon'ble Rajasthan High Court (2017) in the case of Shri Laxmi Narayan vs. Commissioner of Income-tax, Jaipur -D.B. Income Tax Appeal No. 20/2016-2017-LL-1107-17/

2. Decision of Hon'ble Rajasthan High Court dated 07/11/2017, in the case of Shri Mahadev Balai Income-tax Officer, War-7(2) Jaipur in D.B Income Tax Appeal No. 136/2017

The appellant has contended that though the above cases were decided by the Hon'bie Rajasthan High Court in relation to section 54B of the Act, this section is pari material of Section 54F of the Act. Thus, he has contended that the above cases have been decided in favor of the assessee.

5.3 The contention of the appellant that Section 54B is pari material of Section 54 of the Act is acceptable. However, a careful perusal of the case laws pertaining to the jurisdictional Rajasthan High Court relied upon by the appellant yields the following:

1. Decision of Hon'ble Rajasthan High Court (2017) in the case of Shri Laxmi Narayan vs. Commissioner of Income-tax, Jaipur -D.B. Income Tax Appeal No. 20/2016-2017-LL-1107-17/

In the cases decided by this judgment, the facts are that exemption under Section 54B of the Act was denied without appreciating that the funds utilized for the investment for purchase of the property eligible under Section 54B belonged to the appellant only and merely the registered document was executed in the name of the wife and further, the wife had no separate source of income. Since in the instant case under appeal, the wife has separate source of income and is separate assessee as recorded by the assessing officer in the assessment order, the facts of the case are distinguishable from the present appeal.

2, *Decision of Hon'ble Rajasthan High Court dated 07/11/2017, in the case of Shri Mahadev Balai V/s Income-tax Officer, War-7(2), Jaipur in D.B. Income Tax Appeal No. 136/2017*

In the cases decided by this judgment, the facts are that exemption under Section 54B of the Act was denied without appreciating that the funds utilized for the investment for purchase of the property eligible under Section 54B belonged to the appellant only and merely the registered document was executed in the name of the wife and further, the wife had no separate source of income. Since in the instant case under appeal, the wife has separate source of income and is separate assessee as recorded by the assessing officer in the assessment order, the facts of the case are distinguishable from the present appeal.

5.4 *Accordingly, the facts in the two cases being distinguishable from the facts in the appeal at hand; the decisions rendered in the two case laws pertaining to the jurisdictional Rajasthan High Court, relied upon by the appellant, cannot come to the rescue of the appellant.*

5.5 *On the other hand, it is noted that in the case of Kalya v. Commissioner of Income-tax, the Hon'ble jurisdictional Rajasthan High Court [2012] 22 taxmann.com 67 (Raj.) decided that:*

...Learned counsel for the appellant canvassed that the object of granting exemption under Section 54B of the Act of 1961 is that a person who sells agricultural land for the purpose of purchasing

another agricultural land must be given exemption so far as capital gains are concerned. The word "assessee" used in section 548 of the Act for fulfilling the condition and subsequently enabling the assessee to claim exemption under Section 548 of the Act must be given a wide and liberal interpretation so as to include his legal heirs also. The provisions contained in Section 548 of the Act being socio-welfare and beneficial in nature were required to be construed liberally in favour of assessee, but the learned Tribunal arbitrarily disallowed the claim of the appellant-assessee and upheld the findings of the CIT(A) observing that no deduction under Section 54B of the Act would be available to the assessee-appellant on the issue of purchase of land in the name of his son and daughter-in-law, hence the impugned order needs to be set-aside.

5. Having heard the learned counsel for the appellant and carefully perused the relevant material on record including the impugned order, it is noticed that the appellant-assessee sold the agricultural land, which was mutated in his name, for a sale consideration of Rs. 1,61,09,100/-. Thereafter out of the selling price, the appellant-assessee purchased land in the name of his son and daughter-in-law for a total consideration of Rs. 1,22,71,440/-. It is relevant to note that the land sold was in the name of appellant-assessee, while the land purchased was in the name of his son and daughter-in-law.

7. A bare reading of Section 54B of the Income Tax Act does not suggest that assessee would be entitled to get exemption for the land purchased by him in name of this son and daughter-in-law. In the facts and circumstances of the case also aforesaid inference has not been drawn. Same is question of fact. No substantial question of law arises in appeal. Question whether purchase was by assessee or by son, is a question of fact.

8. Secondly, the word "assessee" used in the Income Tax Act needs to be given a 'legal interpretation' and not a 'liberal interpretation', as contended by the learned counsel for the appellant. If the word 'assessee' is given a liberal interpretation, it

would be tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not permit.

9. The Income Tax Appellate Tribunal, having considered all the facts and circumstances of the case, is found to have rightly disallowed the exemption under Section 54B of the Act.

10. The impugned order passed by the learned Tribunal is just and apposite, based on cogent findings, with which we fully concur and thus, the same warrants no intervention.

11. For the reasons stated above, the income tax appeal fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly."

5.6 In view of this decision of the Hon'ble jurisdictional Rajasthan High Court, above, the contention of the appellant cannot be accepted and the case laws cited by the appellant pertaining to other Hon'ble High Courts cannot come to the rescue of the appellant. The order of the assessing officer is accordingly, confirmed.

6. As a result, the appeal is dismissed."

7. Aggrieved by the CIT(A) order, the assessee is in appeal before us. Before the CIT (A), the assessee has reiterated that his submissions and which was not taken on record by the CIT (A). before us the Ld AR for assessee submitted a detailed Written submissions pages 1 to 5 of Paper Book which are as under :

*"BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH JAIPUR (SMC) IN APPEAL NO. ITA 191/JPR/2021-
A.Y.2011-12- SHRI KAUSHLENDRA SINGH, JAIPUR Vs INCOME TAX
OFFICER WARD-5(3) JAIPUR- (Earlier Fixed for hearing- 16/12/2021)-
DATE OF HEARING-*

Hon'ble Sir

01. The ground no. 1 of appeal is regarding confirmation of addition of Rs.6,33,190/-made by the AO on account of Long term capital gain arose on sale of immovable property , by denying exemption u/s 54F of the Income tax

Act, merely on the ground that the investment in the new residential house property was made by the appellant in the name of his wife .

Brief facts relating to this ground of appeal are that during the period relevant to the A.Y. 2011-12, the appellant sold immovable property situated at Plot no. C-174, RICCO Housing Colony, Sitapura, Jaipur for sale consideration of Rs.14,75,000/-on 11/10/2010. The value of which evaluated at Rs.14,79,960/-by the Stamp Duty Authority. Out of sale consideration of Rs. 14,75,000/-the appellant made investment of RS.7,48,000/-in the purchase of new residential house property in the name of his wife namely, Smt. Garima Singh, within the prescribed time limit as prescribed under the provisions of section 54F of the Act. Accordingly, the appellant claimed exemption u/s 54F of the Income tax Act. Consequently, no capital gain was chargeable under the head Long term capital gain on sale of above immovable property. Despite these facts, the AO while completing assessment u/s 143(3)/147 of the Act on 08/12/2018 disallowed the exemption claimed u/s 54F of the Act at Rs.6,33,190/- and added the same to the total income of the appellant as long-term capital gain, holding/observing that since the assessee made investment in immovable property in the name of his wife and the assessee and his wife are different persons as well as separate assessee the deduction claimed u/s 54F of the Act, is not allowable to the assessee.

The AO was not at all justified in rejecting the exemption claimed by the appellant u/s 54F of the Act at Rs. 6,33,190/-. In support of this following facts are submitted for your kind

consideration: -

(i) As per the provisions of section 54F of the Income tax Act, the purchase of a new residential house has to be purchased by the assessee. It is not specifically required under the law that a new residential house property should be purchased in the name of assessee only.

(ii)The funds utilized in purchase of a new residential house property belonged to the appellant and there was no contribution from the wife of the appellant.

Being aggrieved by the order of the AO, the appellant carried the matter in appeal before the ld. CIT(Appeals)-2 Jaipur, on 04/01/2019. Now, the ld. CIT(A) National Faceless Appeal Centre Delhi, confirmed the rejection of exemption u/s 54F of the Act, as made by the AO. It was submitted before the ld. CIT(A) that investment in the new residential house property, was made by the appellant in the name of his wife out of his own funds which were received on sale of property situated at Plot no. C-174, RICCO Housing Colony Sitapura Jaipur. Further it was submitted that no contribution was made by wife of the appellant. Section 54F of the Act, does not require that the new residential house property should be purchased in the name of the assessee. It merely says that the assessee should have purchased/constructed "a residential house". It is also not necessary to purchase/construct a residential house exclusively in the name of the assessee. Apart from above facts, the reliance was placed on the following decisions in which exemption u/s 54/54F/54B/54EC of the Act has been allowed notwithstanding the fact that investment in a new residential house was made in the name of wife/brother /sons.

(I) Decision of Hon'ble Rajasthan High Court Jaipur in the case of Shri Mahadev Balai Vs ITO Ward-7(2) Jaipur in D.B. Income Tax Appeal No. 136/2017 & others dated 07/11/2017. Wherein in the context of section 54B, it was held that when the investment is made in the name of the wife, the assessee shall be eligible for claim of deduction u/s 54B of the Act.

(II) Decision of Hon'ble ITAT Jaipur Bench Jaipur in ITA No.139/JP/2016, dated 08/12/2017, in the case of Shri Vivek Jain vs DCIT Circle-2 Jaipur, A.Y. 2012-13.

(III) Decision of Hon'ble Delhi High Court in the case of CIT- Vs Shri Kamal Wahal (Delhi HC) (2013) 351 ITR 4.

(IV) Decision of Hon'ble Delhi High Court in the case of CIT Vs Shri Ravindra Kumar Arora (Delhi) (2012) 342 ITR 38 (Del).

(V) Decision of Hon'ble Madras High Court in the case of CIT Vs Shri Natarajan (2007) 287 ITR 271 (Mad).

(VI) Decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs Shri Gurman Singh (2014) 327 ITR 278.

(VII) Decision of Hon'ble Karnataka High Court in the case of DIT Vs Mrs. Jennifer Bhide 349 ITR 80.

The ld. CIT(A) has not given any heed to the various submission put forth before him. The decisions of Hon'ble Rajasthan High Court Jaipur in the case of Shri Mahadev Balai Vs ITO Ward-7(2) Jaipur in D.B. Income Tax Appeal No. 136/2017 & others, dated 07/11/2017 on which reliance was placed during the course of appellate proceedings in support of assessee's claim as mentioned above has not followed by the ld. CIT(A), holding that the facts of the said case are distinguishable from the case of the assessee being the wife of the assessee has separate source of income and separate assessee as recorded by the assessing officer in the assessment order. Further, the ld. CIT(A), NFAC, following the decision of Hon'ble Rajasthan High Court in the case of Shri Kalya Vs CIT (251 CTR 174) has not allowed the exemption claimed by the assessee u/s 54F of the Act at Rs. 6,33,190/- holding /observing that the decision of the Hon'ble jurisdictional Rajasthan High Court above, the contention of the assessee cannot be accepted and the case laws cited by the appellant pertaining to the other Hon'ble High Courts cannot come to the rescue of the appellant. The order of the assessing officer is confirmed."

The above facts clearly indicate that the ld. CIT(A) has grossly erred in facts and in law in not allowing exemption claimed u/s 54F of the Act. In support of this following facts are submitted for your kind consideration: -

(i) For denying the exemption u/s 54F of the Act, the ld. CIT(A) has given his findings/observations that the wife of the assessee is having separate source of income and is separate assessee as recorded by the assessing officer in the assessment order. In this regard, it is submitted that nowhere in the assessment order it has been recorded by the AO that the assessee has separate source of income. The AO merely mentioned in the assessment order in Para 4.2 at page no.3 that the assessee and his wife are different persons as well as separate assessee. Further, it is submitted that the wife of the appellant was not assessed to tax during the period relevant to the A.Y. 2011-12. Thus, it is amply clear that the ld. CIT(A) denied the exemption u/s 54F of the Act on the basis of wrong facts to the above extent. Further, the Id. CIT(A) has misplaced his reliance on the

judgement of Hon'ble Rajasthan High court in the case of Shri Kalya Vs CIT (251CTR 174). In this context, it is submitted that the Hon'ble Rajasthan High court while deciding appeal on the issue of deduction u/s 548 of the Act, in the case of Shri Mahadev Balai Vs ITO in D.B ITA No. 136/2017, dated 07/11/2017 had considered its earlier decision in the case of Shri Kalya Vs CIT (251CTR 174) and other various decisions of Hon'ble High courts and held as under: -

"that the- it is the assessee who has to invest and it is not specified in the legislation that the investment is to be made in the name of the assessee and where the investment is made in the name of wife, the assessee shall be eligible for deduction."

The above findings given by the ld. CIT(A) are bad in the eye of law being not in accordance with the provisions of law and, therefore, the same deserves to be rejected. In support of this, reliance is placed on the Decision of Hon'ble ITAT Jaipur Bench Jaipur in ITA No.139/JP/2016, dated 08/12/2017, in the case of Shri Vivek Jain vs DCIT Circle-2 Jaipur-A.Y. 2012-13 (Serial no -2 of Paper Book) which is based on the decision of Hon'ble Rajasthan High Court Jaipur dated 07/11/2017 in the case of Shri Mahadev Balai Vs ITO in D.B ITA No. 136/2017. The Hon'ble ITAT Jaipur held that the assessee is eligible for deduction u/s 54F of the Act in respect of residential house property purchased in the name of his wife.

In this case the property which was sold, was belonging to the assessee - Shri Vivek Jain, while the investment in new house property (residential house) made in the name of Smt. Nikita Jain wife of the assessee. It was held by the AO that the wife of the assessee is having PAN and filing her return of income which is also assessed to tax, therefore, as per the provisions of Income tax Act husband and wife could not be considered as single entity and the benefit of investment made by an individual assessee cannot be given to another individual assessee.

Accordingly, it is submitted that the decision of jurisdictional Bench of Hon'ble Tribunal -ITAT Jaipur Bench Jaipur is clearly applicable in the case of the appellant and, therefore, exemption claimed by the appellant u/s 54F of the Act, may kindly be allowed.

Apart from above, reliance is placed on the following decisions of the Hon'ble ITAT Jaipur Bench Jaipur, in support of claim of the appellant u/s 54F of the Act: -

(i) Hon'ble ITAT Jaipur Bench Jaipur in ITNo.35/JP/2019, dated 12/03/2021, in the case of Shri Dharamveer Singh vs ITO Ward-2(1) Kota - A.Y. 2012-13. (Serial no.3 of Paper Book) relying on its own decisions in the case of Shri Mahadev Balai In ITA No 33/JP/2016 dated 24/132/2016 and in ITA no. 139/JP/2016 in the case of Shri Vivek Jain allowed deduction u/s 54F of the Act in respect of residential house property purchased in the name of his wife.

(ii) Hon'ble ITAT Jaipur Bench Jaipur in ITA no. 995/JP/2018, dated 31/07/2019, in the case of Shri Ashok Solanki vs ITO-Ward-6(3) Jaipur allowed exemption u/s 54F of the Act in respect of investment made in purchase of a residential property in his own name along with the name of his brother.

(iii) Hon'ble ITAT Jaipur Bench Jaipur in ITA No. 478/JP/2017 dated 19/02/2018, in the case of Smt. Chatru Bai vs ITO-Ward-2(3) Jaipur 2008-09, allowed the exemption u/s 54B for making investment in a new agriculture land purchased in the name of sons of the assessee.

(iv) Hon'ble ITAT Jaipur Bench Jaipur(Coordinate Bench) in the case of Shri Mahadev Balai Vs ITO in ITA no.333/JP/2016 dated 26/12/2016 (Serial no.4 of Paper Book) held that there is no impediment in the assessee's claim for relief u/s 54F of the Act as the assessee had purchased the property in the name of his wife.

Further the reliance is placed on the other decisions of Hon'ble High Courts which are given below: -

(i) Hon'ble Delhi High Court in the case of CIT-Vs Shri Kamal Wahal (Delhi HC) (2013) 351 ITR 4, allowed exemption u/s 54F of the Act holding that the new residential house need not to be purchased by the assessee in his own name nor it is mandatory that it should be purchased in his name.

(ii) Hon'ble Delhi High Court in the case of CIT Vs Shri Ravindra Kumar Arora (Delhi) (2012) 342 ITR 38 (Del), allowed the exemption u/s 54F of the Act observing that it would be treated as the property was purchased by

the assessee in his name and the name of the wife and the property purchased in the joint names, would not make any difference. Moreover, section 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of assessee only.

(iii) Hon'ble Madras High Court in the case of CIT Vs Shri Natarajan (2007) 287 ITR 271 (Mad), allowed deduction u/s 54 of the Act in respect of a residential house property purchased in the name of assessee's wife.

(iv) Hon'ble Punjab & Haryana High Court in the case of CIT Vs Shri Gurman Singh (2014) 327 ITR 278, allowed deduction u/s 54B of the Act in respect of another agriculture land purchased in the name of assessee and his son.

(v) Hon'ble Karnataka High Court in the case of DIT Vs Mrs. Jennifer Bhide 349 ITR 80, allowed deduction u/s 54 and 54EC of the Act, holding that where the entire consideration has flown from husband of the assessee, the assessee cannot be denied the benefit of section 54 and 54EC of the Act, in respect of a residential house property purchased in the name of assessee's wife.

In the light of above facts and the numerous decisions on which reliance has been placed in support of claim of the appellant u/s 54F of the Act, it is submitted that the order of the Id. CIT(A) NFAC, deserves to be reversed. Accordingly, it is humbly prayed that exemption claimed by the appellant u/s 54F of the Income tax Act, at Rs.6,33,190/- may kindly be allowed.

02. The ground no. 2 appeal is related to the ground no.1. The Id. CIT (A) has grossly erred in not properly appreciating the decisions of the Hon'ble Rajasthan High court in the case of Shri Mahadev Balai Vs ITO Ward-7(2) Jaipur in D.B. ITA No. 136/2017 decision & Other, dated 07/11/2017. In the light of legal proposition so laid down by the Hon'ble Rajasthan High court in the above case, where the investment in new house property has flown from the assessee, which is not in dispute in the case of the assessee. Only, for the reason that the investment made by the assessee in purchase of a new residential house in the name of his wife, the same cannot be the basis for the denial of deduction claimed u/s 54F of Act. Thus, it is evident that the Id. CIT (A) is not justified in not allowing exemption claimed u/s 54F of the Act.

03. The ground no. 3 of appeal is related to the ground no. 1 of appeal. In the light of above facts exemption u/s 54F, as claimed by the appellant may kindly be allowed.”

8. The Ld. DR, on the other hand strongly supporting the order of the CIT(A) submitted that there is no merit in arguments taken by the Ld. AR of the assessee and the AO has rightly taken has a fit case for confirming the addition made by the AO.

9. We have heard both the parties, perused materials available on record. The assessee claimed exemption U/s 54F of the Act against the investment of new residential house in the name of his wife is justifiable . The assessee sold immovable property for sale consideration of Rs.14,75,000/- on 11-10-2010.The value of which was estimated at Rs.14,79,960/-by the Stamp Duty Authority. Out of the sale consideration of Rs. 14,75,000/- the assessee made investment of RS.7,48,000/- in the purchase of new residential house property in the name of his wife namely, Smt. Garima Singh, within the prescribed time limit as prescribed under the provisions of section 54F of the Act.

10. Further we observed that the exemption was claimed U/s 54F of the Act on this account is Rs. 6,33,190/-. It is further noticed that the Assessing Officer has not disputed the purchase of new house in the name of wife of the assessee though the claim was denied by the AO . Therefore , the claim of deduction U/s 54F of the Act cannot be denied merely on the ground that the new residential house was purchased in the name of his wife when the investment made by the assessee from the sale proceeds of the existing asset and yielded capital gain from the said transactions.

11. Further we taken into consideration that the Ld AR for the assessee has placed the reliance on various decisions in which exemption u/s 54/54F/54B/54EC of the Act has been allowed notwithstanding the fact that investment in a new residential house was made in the name of wife/brother /sons.

12. Further, we rely on the decision of the Hon'ble jurisdictional High Court in case of Shri Laxmi Naraya vs. CIT vide decision dated 07.11.2017 in D.B. Income Tax Appeal No. 20/2016 has considered and decided an identical issue in paras 7.2 & 7.3 as under:-

“7.2 On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgment of different High Courts, the word used is assessee has to invest it is not specified that it is to be in the name of assessee.

7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment of land and therefore, it will not considered a part of investment in the land and same is required to be accepted.”

13. The CIT (A) erred in not allowing the exemptions claimed u/s 54F by following the decision of following the decision of Hon'ble Rajasthan High Court in the case of Shri Kalya Vs CIT (251 CTR 174) has not allowed the exemption claimed by the assessee u/s 54F of the Act at Rs. 6,33,190/- holding /observing that the decision of the Hon'ble jurisdictional Rajasthan High Court above, the contention of the assessee cannot be accepted. We are of the

considered view that the decision which was cited by the CIT (A) does not have any relevance with the present case.

14. In considering the above facts and circumstances of the case and taking into averments made by the Ld AR for assessee and numerous decisions of various Court and jurisdictional courts. We are allowing the exemption claimed u/s 54F of the Act. Grounds 1 to 3 of the appeal are related to each other. Hence all the ground are allowed and set aside the order passed by the NFAC

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

Order pronounced in the open Court on 04/05/2022.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04 /05/2022.

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Kaushlendra Singh, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 191/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar