

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.746/Del/2023, A.Y.2017-18)

Mohan Lal Jain 403, Prabhat Kiran, 17, Rajendra Place, New Delhi PAN : AAGPJ8244F	Vs.	ACIT, Circle-63(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Rohit Jain, Adv. Ms. Deepashree Rao, CA, Sh. Hardeep Singh Chawla, Adv. Sh. Samarth Singh Dhumal, Adv.
Respondent by	Ms. Shweta Yadav, Sr. DR

Date of Hearing	18/01/2024
Date of Pronouncement	20/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax(Appeals), National Faceless Appeal Centre ["Ld. CIT", for short], dated 03/02/2023 for the Assessment Year 2017-18. Grounds of the assessee are as under :-

“1. That the Commissioner of Income Tax (Appeals) (hereinafter referred as Ld. CIT(A)) has erred in law and facts of the case while upholding the total income of the appellant at Rs. 1,39,60,530/- as against a total income of Rs. 1,04,01,920/- declared by the appellant in the return of income. In the return of income appellant had claimed deduction u/s 54 of the act against the above declared income under the head Long Term Capital Gain and Ld. ACIT, Circle 63(1), Delhi (hereinafter referred as Ld. AO) alleged in his order that the new property has not been purchased by the appellant within the time period specified by provisions of section 54 of the Act, thereafter Ld. CIT(A) sustain the addition of Rs.35,58,612/- As Such, the addition is bad in law and may please be deleted.

2. That the Ld. CIT (A) has erred in law and facts of the case while confirming the addition made by the Ld. AO amounting to Rs. 35,58,612/- u/s 54 of the Income Tax Act, 1961 on account of disallowance of deduction claimed without appreciating the submissions of the Appellant. As such, the addition of Rs. 35,58,612/- is bad in law and may please be deleted.

3. That the Ld. CIT (A) has erred in law and facts of the case while confirming the addition of Rs. 35,58,612/- u/s 54 of the Income Tax Act, 1961 on account of disallowance claimed, appellant had offered for tax income from Long Term Capital Gain of Rs.35,58,612/-being income arising from sale of property situated at Flat No.2001, 10 Floor, Nishant Cooperative Housing Society Ltd., Plot No.5, Sector-198, Dwarka. The date of transfer is 28 February 2017. The said property was transferred for a total sale consideration of Rs.1,38,00,000/- and the Long-Term Capital Gain is of Rs.35,58,612/-. As such, the addition is of Rs. 35,58,612/- is bad in law and may please be deleted.

4. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts of the case while confirming the addition made by the Ld. AO amounting to Rs. 35,58,612/-u/s 54 of the Income Tax Act, 1961 on account of alleged unaccounted income received under the garb of exempted Long-Term Capital Gains without appreciating the submissions of the Appellant. As such, the addition of Rs. 35,58,612/- is bad in law and may please be deleted.

5. *That the appellant craves leave to add, alter or delete any ground of appeal during the course of hearing.”*

3. Brief facts of the cases are that, the assessee filed return of income declaring at Rs. 94,02,280/- on 30/10/2017 thereafter revised return declaring total income of Rs. 1,04,01,920/- was filed on 30/03/2019. In the return of income, the assessee had offered for tax income from Long Term Capital Gain ('LTCG' for short) of Rs. 35,58,612/- being income arising from sale of property situated at Flat No. 2001, 10th floor, Nishant Co-operative Housing Society, Plot No. 5, Sector-19B, Dwarka, the said property was sold/transferred for a total sale consideration of Rs. 1,36,00,000/- and the Long Term Capital Gain of Rs. 35,58,612/- was computed as under:-

<i>“Sale consideration Received</i>	<i>Rs. 1,36,00,000/-</i>
<i>Less Transfer Expenses</i>	<i>NIL</i>
<i>Less: indexed Cost of acquisition and improvement</i>	
<i>F.Y 2005-06 2750000/497*1125</i>	<i>Rs. 62,24,849/-</i>
<i>F.Y 2005-06 433466/519*1125</i>	<i>Rs. 9,39,594/-</i>
<i>F.Y 2007-08 375000/551*1125</i>	<i>Rs. 7,65,653/-</i>
<i>Financial Year 2011-12 1393000/785*1125</i>	<i>Rs. 11,96,338/-</i>
<i>Financial Year 2013-14 95948/939*1125</i>	<i>Rs. 1,14,954/-</i>
<i>Long Term Capital Gain</i>	<i>Rs. 35,58,612/-“</i>

4. The assessment order came to be passed on 18/12/2019 by making disallowance of Rs. 35,58,612/- on the Ground that the Assessee has not fulfilled the conditions of Section 54 of the Act. Aggrieved by the assessment order dated 08/12/2019, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 03/02/2023, dismissed the Appeal filed by the assessee.

5. The solitary issue raised by the assessee in the present appeal is regarding denial of exemption of Rs. 35,58,612/- claimed u/s 54 of the Act. The Ld. counsel for the assessee submitted that the Ld. CIT(A) committed error by observing that the assessee has not purchased any new property within the time specified in the provision of Section 54 of the Act, thus, erroneously sustained the addition of Rs. 35,58,612/-. The Ld. Counsel further submitted that the possession of incomplete bare shell (new asset) was received by the assessee on 13/08/2016 which was not habitable in as much as unfinished items including floor, tiles, internal doors, bath room fittings etc, therefore, the assessee under took balance 'construction activity' spending more than 75 lacs (approximate) to

complete the Villa and made it habitable in 2018 therefore, the assessee is entitled to claim the benefit, thus the addition made by the A.O. which has been sustained by the CIT(A) is bad in law. The Ld. Counsel has taken us through the orders of the Lower Authorities and sought for the intervention by the Tribunal.

6. Per contra, the Ld. Departmental Representative submitted that the Assessee has not purchased any new property or constructed any residential house after execution of the Sale Deed, since the Assessee has violated the conditions of provision under Section 54 of the Act, the A.O. rightly made disallowance which has been confirmed by the Ld. CIT(A) and the same requires no interference.

7. We have heard the parties perused the material. Admittedly the assessee had sold his Residential property on situated at Flat No. 2001, 10th floor, Nishant Co-operative Society, Plot No. 5 Sector 19B, Dwarka dated 28/02/2017 in the Financial Year 2013-14 itself for total sale consideration of Rs. 1,36,00,000/- resulting in

Long Term Capital Gain of Rs. 35,58,612/-. It is also not in dispute that the assessee prior to execution of the said sale deed, vide sale agreement with endorsement dated 18/02/2014, the Assessee agreed to purchase a new residential Villa Bearing No. T3/VI, La-Tropicana, Magazine Road, Civil Lines, Delhi from one Mr. Peeyush Aggarwal. In the said Agreement dated 18th February, 2014, nowhere it is mentioned that the intended property to be sold by Piyush Aggarwal in favour of the Assessee is either under construction or is an incomplete property, the construction of the said property has been started much before the execution of the sale deed of the residential property (Flat) by the assessee. The Ld. CIT(A) has observed that *'the new Flat was purchased by the sale endorsement dated 18/02/2014 which was later stated that the purchased the bare shell Flat on 31/08/2016. The said new claim of the assessee was not supported by any documentary evidence.'* The findings of the Ld. CIT(A) are as under:-

"5.4 From the above, the fact as noted by the AO was that the new property was neither constructed "constructed within three years after the sale of property. If it is presumed that the assessee has constructed the house, then this condition is not satisfied because the construction was started before the sale of property." I

have very carefully considered the facts of the case and also the written submissions of the appellant. The construction of the new flat was completed as per the assessee at the end of January 2018. The date of sale of the Dwaraka property was on 28-2-2017. The new flat which according to the appellant was acquired on 18-2-2014 as per the endorsement of Mr Piyush Agarwal and the fact is confirmed by the appellant about the delay in construction. Whatever May be the reason for delay in construction, the material fact to be seen is whether the appellant's activity of construction is covered by the provisions of section 54 of the Act. The appellant had come with an argument at one place that: "At 4 of written submissions, he states that The possession of flat (on bare shell basis) was given to the appellant only on 13 August 2016. And In para 5, he states that the appellant has purchased a bare shell flat on 13th august 2016 i.e within the same financial year (i.e. within one year before date of transfer of old asset). For a property which he claims that endorsement of sale took place on 18-2-2014, the claim of the appellant in written submissions was that he get possession of the nation 13th August, 2016, and therefore he is entitled for the benefit of deduction under section 54 of the Act. The appellant had relied upon various judgments in this regard.

5.5 The fact of the matter is that as per the appellant, the new flat was purchased by a sale endorsement on 18-2-2014 which was later stated as that he purchased the bare shell flat on 13-8-2016. This new claim of the appellant was not supported by any document. Therefore, the legal support taken by the appellant is not much helpful to the appellant. For claiming the benefits of section 54, the provisions of section 54 of the Act makes it amply clear, in that, "Within a period of one year before or two years after the date of transfer of old house, the taxpayer should acquire another residential house or should construct a residential house within a period of three years

from the date of transfer of the old house." (Underlining mine to emphasize). In view of the clear provisions of the Act, the AO's action denying benefit of deduction to the appellant under section 54 of the Act is confirmed and the appellant's ground of appeal is rejected.

8. In the present case, as per the Agreement dated 18/02/2014, the Assessee has been given full right to use, to hold, enjoy, sell, mortgage the Property to be purchased by the Assessee. On the other hand, the first party i.e. Peeyush Aggarwal will not have any right, title or interest over the said property. It is also obverted that as per the Assessee, the new Flat was purchased by sale endorsement dated 18/02/2014, but later on contended that the Assessee has purchased Bare-Shell flat on 13/08/2016, which is not supported by any of the documents. On the contrary, the Assessee has entered into Agreement to Sell on 18/02/2014 which itself given with certain absolute rights to the assessee as mentioned above. For the purpose of claiming the benefit u/s 54 of the Act, within a period of one year before or two year after the date of transfer of old house, the tax payer should acquire another residential house or should construct a residential house within a

specified period of three years from the date of transfer of old house. Considering the fact that assessee has not fulfilled either of the conditions mentioned in Section 54 of the Act, we find no error or infirmity in the orders of the Lower Authorities in denying the benefit of deduction to the assessee u/s 54 of the Act, accordingly, we find no merit in the Ground of Appeal of the assessee.

9. In the result, the Appeal filed by the assessee is dismissed.

Order pronounced in open Court on 20th February, 2024

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER
Dated: 20/02/2024
Binita/R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

