

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5635/Del/2016
Assessment Year: 2012-13

Smt. Vatsala Asthana, DC-97, Maya Enclave, Hari Nagar, New Delhi	Vs.	Income Tax Officer, Ward-49(4), New Delhi
PAN :AEFPA4935D		
(Appellant)		(Respondent)

Appellant by	Shri Sanjeev Jain, CA
Respondent by	Shri G. Johnson, Sr.DR

Date of hearing	01.08.2019
Date of pronouncement	06.08.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 01/09/2016 passed by the learned Commissioner of Income-tax (Appeals)-17, New Delhi [in short the Ld. CIT(A)] for assessment year 2012-13 raising following grounds:

- 1. That the learned CIT(Appeals) has erred in upholding the action of the Assessing Officer in making a disallowance of claim made by the assessee u/s 54F of the Act.*
- 2. That the learned CIT(Appeals) having found that the assessee has paid a sum of Rs.50,36,422/- before the due date of submission of the income tax return to the builder towards purchase of residential flat, ought to have directed the Assessing Officer to allow exemption u/s 54F of the Act in respect of the payment so made.*
- 3. That the learned CIT(Appeals) has erred in rejecting the bonafide submission of the assessee that majority of the payment stood paid before the due date of filing return u/s 139(4) of the Act and the learned CIT(Appeals) ought not to have drawn any adverse inference against the assessee only on the ground that the assessee had not*

deposited the balance amount in the specified capital gain bank account.

4. *That the appellant craves the right to amend, append, delete any or all grounds of appeal.*

2. Briefly stated facts of the case as culled out from the order of the lower authorities are that the assessee was engaged in teaching profession. For the year under consideration, the assessee filed return of income on 08/08/2013 declaring income of Rs.2,70,520/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. The assessment was completed on 23/03/2015, under section 143(3) of the Act at total income of Rs.71,29,500/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and filed certain additional evidences. The Ld. CIT(A) called for a remand report from the Assessing Officer and after considering the rejoinder of the assessee, dismissed the appeal. Aggrieved, assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. In ground No. 1, the assessee has challenged the action of the Assessing Officer of disallowing claim of the assessee under section 54F of the Act. In ground No. 2, the assessee is aggrieved with not considering the sum paid for purchase of the new asset before the due date of the filing of return of income despite allowability of which was accepted by the Assessing Officer in the remand proceeding. In ground No. 3, the assessee is aggrieved by further deduction under section 54F in respect of the payment made for purchase of the flat beyond the due date of the filing of the return of income i.e. 31/03/2012. The grounds of the assessee are connected with single issue of deduction under

section 54F of the Act and, thus all the grounds are adjudicated in consolidated manner.

4. The brief facts qua the issue in dispute are that the Assessing Officer noticed sale of plot of land located at Gurgaon, (which was held jointly with her husband) for a total sale consideration of Rs.1,95,00,000/-. After indexation of the cost of the acquisition, the capital gain was computed at Rs.1,77,19,468/- and the share of the assessee of the capital gain was worked out to Rs.88,59,734/-. During the year, the assessee invested a portion of the sale consideration on sale of plot of land (original asset) for purchase of a residential house at Noida (new asset). The assessee claimed deduction under section 54F of the Act amounting to Rs.90,02,000/- against the capital gain and thus net capital gain declared was nil. In the case of the assessee being individual the due date of filing of return of income under section 139 (1) of the Act was 31/07/2012 and till that date the assessee made payment for purchase of new asset amounting to Rs.36,87,458/-. The Assessing Officer examined the quantum of deduction allowable under section 54F of the Act and held that the amount of Rs.36,87,458/- only was eligible for deduction under section 54F of the Act. The deduction available was computed by the Ld. Assessing Officer as under:

$$\begin{array}{l}
 \text{deduction} \\
 \text{available=} \\
 = \\
 \end{array}
 \quad
 \begin{array}{l}
 \underline{\text{Capital gain x consideration invested in new asset}} \\
 \underline{\text{consideration received on sale of the original asset}} \\
 \underline{\text{Rs. 88, 59, 734X 36, 87, 458}} \\
 \underline{\text{97, 50,000}}
 \end{array}$$

5. Before the Ld. CIT(A), the assessee made two fold submissions. The first submission of the assessee was that till 31/07/2012, the assessee made payment of Rs.50,36,422/- for

purchase of the new asset as against the finding of the Assessing Officer in the assessment order at Rs.36,87,458/-. Thus, in view of the assessee, even as per the interpretation of provision of section 54F, according to the Assessing Officer, the assessee was entitled for deduction in respect of payment of Rs.50,36,422/-.

6. The second argument of the assessee was that the provisions of the section 54F of the Act being beneficial provisions for promoting construction of the residential house, the due date for filing of return of income should be considered as per section 139(4) of the Act, i.e., belated return and payment made till that due date i.e. 31/03/2014 should have been allowed for deduction under section 54F of the Act. In support of this argument before the learned CIT(A), the assessee relied on decisions of Hon'ble Punjab and Haryana High Court in the case of CIT Rohtak Vs. Jagtar Singh Chawala and decision of Hon'ble Karnataka High Court in the case of CIT Vs K. Ramchandra Rao. The assessee also relied on the CBDT Circular No. 471 dated 15/10/1986. The factual information of payment of Rs.50,36,422/- before 31/07/2012 was verified by the Assessing Officer in the remand proceeding and found by him not to be incorrect. The Ld. CIT(A), however, did not consider this claim of the assessee. The second argument of the assessee was also not accepted by the Ld. CIT(A) observing that CBDT Circular(supra) was not applicable as circular relate to the circumstances under which entire capital gain was not invested in the new asset due to delay on the part of the Delhi Development Authority (DDA).

7. Before us, the Ld. counsel filed a paper-book containing pages 1 to 7 and referred to page 3 of the paper book, wherein total payments of Rs.70,08,252/-for purchase of new asset is

recorded. The Ld. counsel submitted that the fact of the payment of Rs.50,36,422/- before 31/07/2012 has even been accepted by the Ld. Assessing Officer in remand proceeding and, therefore, the Ld. CIT(A) is not justified in not considering the amount of Rs.50,36,422/- for deduction under section 54F of the Act. Regarding the balance payment out of the total payment of Rs.72,08,252/-made for purchase of the new asset, the Ld. counsel submitted that for the purpose of section 54F, it is not necessary that investment should have been made by the original due date of filing of the return of income under section 139(1) as section 139 cannot meant only section 139(1) , but it means all sub-sections of section 139 of the Act. In support of his contention, he relied on the decision of the Hon'ble High Court of Rajasthan in the case of Principal Commissioner of Income Tax Vs. Shankar Lal Saini in Income- Tax Appeal No. 153 of 2017. The Ld. counsel also relied on the decision of the Hon'ble High Court of Karnataka in the case of CIT, Bangalore Vs. K Ramchandra Rao in IT Appeal No. 494 in 495 of 2013 and 46 and 47 of 2014. The Ld. counsel also relied on the decision of the Tribunal Mumbai bench in case of Kishore H Galaiya Vs. ITO in ITA No. 7326/Mum/2010.

8. On the contrary, the Ld. DR relied on the order of the lower authorities.

9. We have heard the rival submission of the parties and perused the relevant material on record, including the paper book containing pages 1 to 7 filed by the assessee. The issue in dispute before us is in respect of the quantum of deduction allowable under section 54F of the Act. Under the provisions of section 54F, if capital gain arises on transfer of long-term capital asset other

than residential house (original asset) to an eligible assessee and the consideration received on sale of original asset is invested in purchase or construction of residential house (new asset) within the period specified, the assessee is entitled for deduction under section 54F of the Act in proportion of the investment made in new asset as compared to the sale consideration received on sale of the original asset.

10. Further, section 54F(4) has prescribed that the amount of net consideration received on sale of the original asset,

- 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 utilized 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 his return of income u/s 139, 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 by the Central government.

11. Thus, the requirement of law is that for eligibility of deduction under section 54F of the Act investment in purchase of the new asset must be made within one year of transfer of the original asset and if the assessee is unable to invest in purchase of the new asset before filing of return of income, the amount

shall be deposited in banks in specified capital gains scheme account, before due date of the filing in terms of section 139(1) of the Act.

12. In the instant case, the dispute is regarding the amount of payment made for purchase of the residential flat (new asset) before the due date of the filing of return of income. The contention of the assessee is that the due date of the filing of the return of income should be reckoned as under section 139(4) of the Act, whereas according to the Revenue, the due date of the filing of the return of income should be as per section 139(1) of the Act.

13. In the case of the assessee, due date of the filing of return of income in terms of section 139(1) of the Act is 31/07/2012 and due date for filing return of income in terms of section 139(4) of the Act is 31/03/2014 (i.e. one year from the end of relevant assessment year or completion of assessment, whichever is earlier). The amount paid by the assessee on the various dates, as mentioned on page 3 of the paper-book, is reproduced as under:

S.No.	Cheque No.	Date	Bank Name	Amount	Total
1.	008935	13.09.2011	ICICI Bank	200000	
2.	008937	17.09.2011	ICICI Bank	500000	
3.	008941	22.09.2011	ICICI Bank	2895845	
4.	019407	09.03.2012	ICICI Bank	92593	
5.	019052	25.07.2012	ICICI Bank	673992	
6.	019053	25.07.2012	ICICI Bank	673992	5036422
7.	062548	16.12.2012	Corp. Bank	273992)	
8.	000007	16.12.2012	Bank of Baroda	400000)()	
9.	030412	17.03.2013	ICICI Bank	673992)	(1347984

10.	288250	01.08.2013	Canara Bank	823846	<u>823846</u>
					<u>7208252</u>

14. As far as payment of Rs.50,36,422/- made for purchase of new asset before 31/07/2012 is concerned, the Ld. Assessing Officer has also accepted in remand proceeding allowability of the sum of Rs.50,36,422/- and thus, we hold that this amount is undisputedly allowable for considering deduction under section 54F of the Act.

15. Regarding the payment made by the assessee before 31/03/2014, Hon'ble High Court of Rajasthan in the case of Shankar Lal Saini (supra) held that, where assessee, an individual deposited unutilized sale consideration in capital gains scheme within the due date of filing of belated tax return under section 139(4), the capital gains relief under section 54F of the Act would be allowable. In the case of K. Ramachandra Rao (supra), the Hon'ble Karnataka High Court held that assessee having invested entire sale consideration in construction of residential house within three years from the date of the transfer, he could not be denied exemption under section 54F on the ground that he did not deposit said amount in capital gains account scheme before due date prescribed under section 139(1) of the Act. In the case of Kishore H Galaya (supra), the coordinate bench has held that the date of filing return of income under section 139(1) for the purpose of utilization of the amount for purchase/construction of residential house has to be construed with respect to the due date prescribed for filing return of income under section 139(4) of Act. The relevant finding is reproduced as under:

“Amount exceeding capital gains arising from sale of old residential house having been paid by assessee to a builder within three years for construction of new residential house, assessee was entitled to exemption under s. 54 notwithstanding that assessee obtained possession after three years and also failed to deposit capital gains in the capital gains account scheme before due date of filing return of income under s. 139(1) for relevant year.”

16. In view of the above decisions, the payment made by the assessee towards purchase of residential house up to the due date of filing of the return of income prescribed under section 139(4) of the Act i.e. 31/03/2014 is allowable for considering deduction under section 54F of the Act. Respectfully, following the above decisions, we accordingly direct the Assessing Officer to consider amount utilized by the assessee for purchase of the house till 31/03/2014(which includes the payment of Rs.50,36,422/- made up to 31/07/2012) for deduction under section 54F of the Act.

17. The grounds of the appeal are accordingly partly allowed.

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

Order is pronounced in the open court on 6th August, 2019.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 6th August, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi