

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
and
SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No.6109/Del./2012
(ASSESSMENT YEAR : 2007-08)**

Smt. Shashi Gupta,
B – 195, Ramprastha, Surya Nagar,
Ghaziabad.

vs. ITO, Ward 2 (3),
Ghaziabad.

(PAN : AIVPG8799D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : S/Shri V.K. Jain & Nem Singh, Advocates
REVENUE BY : Shri B.R.R. Kumar, Senior DR

Date of Hearing : 03.11.2015

Date of Pronouncement : 24.11.2015

ORDER

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the assessee, is directed against the order of the Commissioner of Income-tax (Appeals), Ghaziabad dated 10.09.2012 for the assessment year 2007-08.

2. The revised grounds raised by the assessee are as under :-

“1. The order passed by the Hon'ble CIT(A) is bad in law, wrong on facts and against the principles of natural justice.

2 (a) The Ld CIT(A) has erred in confirming the disallowance of exemption of Capital Gains u/s 54 of the Income Tax Act made by the Ld. AO amounting to Rs.20,40,600/- claimed by the appellant in respect of investment in new residential house

on 04.08.2005 which is within one year of sale of her share in residential house on 16.04.2006 instead considering the date of sale as 05.09.2006.

(b) The Ld CIT(A) has failed to appreciate that the appellant has transferred all the rights in 1/4th share of the property to Mr. Ramesh Chand Kalra and the possession was handed over on 16.04.2006 vide agreement to sell dated 16.4.2006.

(c) The LD CIT(A) has wrongly concluded that the Agreement to sell dated 16.4.2006 is not a genuine document ignoring the fact that even the buyers i.e Ashok Seth and Poonam Seth in sale deed executed on 05.09.2006 has acknowledged that sum of Rs.20 lacs was paid by Sh. Ramesh Chand Kalra to the applicant Smt. Shashi Gupta who were nominees of Sh. Ramesh Chand Kalra pursuant to agreement dt.16.4.2006.

3 (a) The Ld CIT(A) has erred in concluding that the exemption u/s 54 in respect of amount of Rs.933950/- representing cost of construction of the new house in finishing the house cannot be allowed as the house was purchased beyond the period of one year before the sale of the old house.”

3. Ground No.1 is not pressed so dismissed.
4. Ground No.2 relates to disallowance of Rs.20,40,600/- representing claim of exemption under section 54 of the Income-tax Act, 1961 (hereinafter ‘the Act’).
5. The facts are that the assessee sold her 1/4th share in the residential house at B-30, Geetanjali Enclave, New Delhi – 110 030, under a sale deed dated 05.09.2006 for a consideration of Rs.49,50,000/- and declared long term capital gain of Rs.43,27,615/-. In respect of this above gain, the assessee claimed exemption of Rs.20,40,600/- under section 54 of the Act

on the ground that she has purchased a new house property at Ramprastha, Ghaziabad. The AO, however, observed that the said property which was purchased was on 04.10.2005 i.e. before a period of one year, which is before the date of sale of her share in the residential property i.e. 05.09.2005. The assessee in respect of the above observation of the AO contended that she had entered into an agreement to sell dated 06.04.2006 and, therefore, the claim was in accordance with section 54 of the Act. However, the AO disagreed with the said contention of the assessee and rejected her said claim. On appeal by the assessee, the CIT (A), however, turned down the appeal and upheld the disallowance on the ground that there are many glaring contradictions as well as inconsistencies in the argument and documents presented by the assessee, to the extent that this document i.e. agreement to sell i.e. 16.04.2006 appears to be concocted just for the purpose to meet the valid objections raised by the AO.

6. Before us, the Id. AR filed a Synopsis wherein he has submitted as under :-

“(a) The assessee namely-Shashi Gupta was married in the reputed family of Shri Om Prakash Gupta in the year 05.02.1972 with one of Shri Narendra Prakash Gupta who had died on 27.06.1998.

(b) Smt. Kiran Devi w/o Shri Om Prakash Gupta purchased property at Plot No. 30, Block-B, Lok Sewak Co-operative House Building Society Ltd at Village Begumpur (Geetanjali Enclave), Lado Sarai, New Delhi in the year 1975. Smt. Kiran Devi expired on 02.06.1984 and after expiry as per Hindu Law the afore said residential property devolved in favour of Shri

Om Prash Gupta (Husband), Shri Mahendra Prakash Gupta, Shri Narendra Prakash Gupta, Shri Shiv Prakash Gupta, Shri Ram Prakash Gupta (Sons) and Smt Pushpa Aggarwal, Smt Phool Gupta, Smt Veena Gupta, Smt Suman Gupta (Daughters).

(c) Smt Pushpa Aggarwal, Smt Phool Gupta, Smt Veena Gupta and Smt Suman Gupta, the daughter of Late Smt. Kiran Devi the legal heirs relinquished/released all their rights, titles, interests, claims and share in the said property in favour of Shri Om Prakash Gupta, Shri Mahendra Prakash Gupta, Shri Narendra Prakash Gupta, Shri Shiv Prakash Gupta and Shri Ram Prakash Gupta the other legal heirs on 05.02.1990. There after the said property mutated, transferred and substituted in joint name of Shri Om Prash Gupta, Shri Mahendra Prakash Gupta, Shri Narendra Prakash Gupta, Shri Shiv Prakash Gupta and Shri Ram Prakash Gupta on 09.04.1990 and each member has 1/5th undivided share in the said property.

(d) On 27.06.1998 Shri Narendra Prakash Gupta died leaving behind Smt. Shashi Gupta (Wife), Mr. Shailendra Gupta, Mr. Nitin Gupta (Sons) and Ms. Seema Gupta (Daughter) the legal heirs. Also on 15.04.1999 Shri Om Prakash Gupta died intestate leaving behind Shri Mahendra Prakash Gupta, Shri Shiv Prakash Gupta, Shri Ram Prakash Gupta (Sons) and Smt Pushpa Aggarwal, Smt Phool Gupta, Smt Veena Gupta, Smt Suman Gupta (Daughters) and Smt. Shashi Gupta (Daughter-in law [wife of predeceased son Shri Narendra Prakash Gupta]), Mr. Shailendra Gupta, Mr. Nitin Gupta (Grand-Sons) and Ms. Seema Gupta (Grand-Daughter) the legal heirs.

(e) Mr. Shailendra Gupta, Mr. Nitin Gupta, and Ms. Seema Gupta relinquished/released all their rights, titles, interests, claims and shares in the said property in favour of their mother Smt. Shashi Gupta on 29.03.2000.

(f) Smt Pushpa Aggarwal, Smt Phool Gupta, Smt Veena Gupta and Smt Suman Gupta, relinquished / released all their rights, titles, interests, claims and shares in the said property in favour of Shri Mahendra Prakash Gupta, Shri Shiv Prakash Gupta, Shri Ram Prakash Gupta and Smt. Shashi Gupta on 29.03.2000.

(g) Accordingly the said property mutated, transferred and substituted in the joint names of Shri Mahendra Prakash Gupta, Shri Shiv Prakash Gupta, Shri Ram Prakash Gupta and Smt. Shashi Gupta and each member has 1/4th undivided share.

(h) All the four Co-owner having equal share agreed to sell the said property to Shri Ramesh Chandra Kalra s/o Shri K. L. Kalra, B-49, Shivalik Colony, New Delhi and Shri Ashish Rajpal s/o Shri G. D. Rajpal, B-1/53, Malviya Nagar, New Delhi-17 for a sum of Rs.1.98 Crores and as per the terms and conditions mentioned in agreement dated 16.04.2006 copy of the same at page 77 to 79 of the paper Book. The relevant para of the agreement is reproduced here as under:-

" WHEREAS the second party paid certain amount to the first party for purchase of the said property for total sale consideration of Rs.1.98 Crores. The said property is owned by the first party.

AND whereas the payment made by second party to first party as per details below:

Rs.20,00,000/- vide cheque No.759207 dated 16.01.2005 drawn on I.C.I.C.I Bank, Saket, New Delhi, by Sh. Ramesh Chander Kalra in favour of Smt. Shashi Gupta.

Rs.3,50,000/- vide cheque No.759210 dated 16.01.2005 drawn on ICICI Bank, Saket, New Delhi, by Sh. Ramesh Chander Kalra in favour of Sh. Shiv Prakash Gupta.

Rs.3,50,000/- vide cheque No.759208 and dated 16.01.2005 drawn on ICICI Bank, Saket, New Delhi by Sh. Ramesh Chander Kalra, in favour of Sh. Mahendra Prakash Gupta.

Rs.3,50,000/- vide cheque No.759209 and dated 16.01.2005 drawn on ICICI Bank, Saket, New Delhi, by Sh. Ramesh Chander Kalra, in favour of Sh. Ram Prakash Gupta.

And whereas the balance sale consideration has been agreed to be paid by the second party to the first party, time to time or at the time of sale transaction within six months of this date and whereas Smt. Shashi Gupta one of the owner of the said

property (first party) handed over the vacant possession of her ¼ share of the property to the second party today / on this date.

Now this agreement witness as under:

1. That the second party shall pay the balance sale consideration of Rs.1 crore 67 lacs 50 thousands to the first party as follows:

1.	Shri Mahendra Gupta	Rs.46 lacs
2.	Shri Shiv Prakash Gupta	Rs.46 lacs
3.	Shri Ram Prakash Gupta	Rs.46 lacs
4.	Smt. Shashi Gupta	Rs.29.5 lacs

2. That the sale transaction shall be concluded on/or before 01.10.06 by that time, second party shall pay the remaining consideration amount of Rs.1 Crores 67 Lacs 50 thousands to the first party and the first party shall simultaneously execute the sale deed with respect to the said property in favour of the second party or his nominee(s) and shall also handover the vacant and peaceful % balance possession of the said property to the second party or their nominee(s).”

(i) The assessee had ¼ share in the property B-30, Geetanjali Enclave, New Delhi-30 which was sold to Sh. Ramesh Chander Kalra vide agreement dated 16.04.2006. She has already received an advance of Rs.20,00,000/- vide cheque number 759207 on 16.01.2005 drawn on ICICI Bank, Saket, New Delhi as part consideration for her ¼ share in the property.

(j) The sale deed could not be registered because of family dispute and the balance consideration could not be received. The assessee had purchased a new residential house property B-195, Ramprastha Surya Nagar, Gaziabad for Rs.20,00,000/- + 40600/- vide registered deed dated 04.08.2005. Therefore the money received from Sh. Ramesh Chandra Kalra as part sale consideration was invested in purchase of new house property B-195, Ramprasta Surya Nagar, Gaziabad.

(k) As already mentioned above, vide agreement dated 16.04.2006 all the family member (Four member having equal

share in the property B-30, Geetanjali Enclave, New Delhi) agreed to sell the said property to Sh. Ramesh Chandra Kalra s/o K. L. Kalra, R/o B-49, Shivalik Colony, New Delhi and Shri Ashish Rajpal S/o Sh. G. D. Rajpal, R/o B-1/53, Malviya Nagar, New Delhi for total consideration of Rs.1.98 Crores.

(l) That Mr. Kalra had taken the possession from the assessee on the terms and conditions as specified in agreement dated 16.04.2006 and committed to the assessee that the balance amount of Rs.29,50,000/- will be paid on or before 6 months from 16.04.2006 and/or on registered deed in favour of the Sh. Ramesh Chander Kalra and Sh Ashish Rajpal or their nominee(s) whichever is earlier.

(m) On 4.09.2006 the assessee had received the balance amount of Rs.29,50,000/- i.e. Rs.19,50,000/- vide pay orders No.039172 dated 04.09.2006 and Rs.10,00,000/- vide bankers cheque No. 394334 dated 04.09.2006 and signed the registered deed on S.09~2006 which is registered in the name of Sh. Ashok Seth and Smt. Poonam Seth who are the nominee(s) of Sh. Ramesh Chander Kalra and Sh. Ashish Rajpal. Therefore, the transaction of sale was completed in the following manner:-

- (i) Firstly, the assessee has received an advance of Rs.20,00,000/- on 16.01.2005 from Mr. Ramesh Chandra Kalra which was invested in purchase of new house property at Ghazibad on 04.08.2005.
- (ii) Secondly, on 16.04.2006 an' agreement was signed between the assessee along with other joint holders of the property B-30, Geetanjali Enclave, New Delhi and Sh. Ramesh Chander Kalra and Sh Ashish Rajpal the purchaser of the property. In this agreement and Mr. Ramesh Chandra Kalra assured the assessee to pay balance amount for her share in the property ie the effective date of sale of share in the property of the assessee.
- (iii) Thirdly, the registered sale deed was signed on 05.09.2006 and the assessee has received the balance sale consideration amount of Rs.29,50,000/-.

Therefore, the sale transaction was within assessment year 2007-08 and hence the assessee had declared it in her return of income and shown Long Term Capital Gain of Rs.1,53,065/- after taking the benefits as provided in section(s) 54 and 54EC of the Income Tax Act, 1961.”

7. On the other hand, the Id. DR supported the order of the Id. CIT (A).

8. We have heard both the parties and perused the record. The facts as emerging and undisputed are that assessee purchased a residential house property B-195, Ramprastha Surya Nagar, Ghazibad for Rs.20,40,600/- vide registered deed dated 04.08.2005. However, the above purchase of residential house is held to be not entitled to exemption under section 54 of the Act, on the ground that such purchase of property at Ghaziabad happened one year prior to the sale of her share in the residential property at B-30, Geetanjali Enclave, New Delhi – 110 030. The assessee, however, supported the claim on the basis of an agreement for sale dated 16.04.2006, which has not been accepted by the authorities below on the ground that such an agreement is not a genuine document. It is, however, not disputed that assessee sold her share in the property for a consideration of Rs.49,50,000/- which was received in the following manner :-

- | | | |
|-------|--|----------------|
| (i) | Received cheque no.759207 dt. 16.01.2006 | Rs.20,00,000/- |
| (ii) | Received DD no.039172 dt. 04.09.2006 | Rs.19,50,000/- |
| (iii) | Received cheque no.394334dt. 04.09.2006 | Rs.10,00,000/- |

From the aforesaid facts, it is apparent that substantial consideration was received by the assessee even 15 months prior to the agreement of sale

dated 06.04.2006. Moreover, the agreement dated 16.04.2006 is signed by all the four co-owners and the Vendee, Shri Ramesh Kalra and also is duly witnessed. The agreement further specifically states as under :-

“And whereas the balance sale consideration has been agreed to be paid by the second party to the first party. Time to time or at the time of sale transaction within six month of this date and whereas Smt. Shashi Gupta one of the owned the said property (first party) handed over the vacant possession of her ¼ share of the property to the second party today / on this date.

NOW this agreement witnesses as under :

1. That the second party shall pay the balance sale consideration of Rs.1 Crore 67 Lacs 50 thousands to the first party as follows:

1. Shri Mahendra Prakash Gupta	Rs.46 Lacs
2. Shri Shiv Prakash Gupta	Rs.46 Lacs
3. Shri Ram Prakash Gupta	Rs.46 Lacs
4. Smt. Shashi Gupta	Rs.29.5 Lacs

2. That the sale transaction shall be concluded on or before 01.10.06 By that time, second party shall pay the remaining consideration amount of Rs.1 Crores 67 Lacs 50 thousands to the first party and the first party shall simultaneously execute the sale deed with respect to the property in favour of the second party or his nominee(s) and shall also handover the vacant and peaceful ¾ balance possession of the said property to the second party or their nominee(s).”

From the above, it is vivid that the possession to the extent of 1/4th share of the assessee's house in that house stood transferred on 16.04.2006 itself. However, the Id. CIT (A) has stated that such an argument is outlandish as property is a joint property and there is no meaning in one of the Vendors giving possession to the purchaser (vendee). However, such an

observation is a non-issue because what is relevant is the question of fact whether the possession regarding 1/4th share of the assessee has been taken possession or not, thus the factum that such an arrangement has any meaning or not is irrelevant. It was for the purchaser to satisfy and having so accepted by the vendee, it cannot be suggested validly that the possession has not been handed over, more particularly when in an affidavit the Vendee has specifically affirmed as under :-

“I. R.C. Kalra S/o K.L. Kalra R/o B-49, Shivalik Colony, Malviya Nagar, New Delhi do hereby confirm as under :-

1. That vide agreement to sale dated 16.4.2006 between me and Smt. Shashi Gupta and others for purchase of ¼ share of her portion in the house located at B-30, Geetanjali Enclave, New Delhi.
2. I have taken possession of ¼ share of the house as on 16.4.2006 against consideration as agreed upon detailed in the sale agreement dt.16.4.2006.
3. That I have option to get the sale deed executed in my name or in the name of my nominee as per cl.2 of the referred agreement.”

The observation of CIT (A) that in the sale deed, the possession of the property was taken on 05.09.2006 cannot be seen in isolation because in the agreement to sale on 16.04.2006 suggested by the affidavit of the Vendee clearly buttress the claim of the assessee, that she has handed over her share of the property to Vendee. Having regard to the above factual position, we are of the opinion that possession of the property stood

handed over on 16.04.2006. Furthermore on facts of the case, the Hon'ble Apex court held that registration of the transfer in accordance with the agreement to sale cannot be termed as the "date of transfer" as envisaged by Section 50C read with section 2(47) of the Act (Sanjeev lal & Anr. Vs. CIT & Anr. (2014) 365 ITR 389(SC)), wherein, it was held as under:-

"In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforesaid question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:

"2(47) "transfer", in relation to a capital asset, includes,-
....
(ii) the extinguishment of any rights therein; or....."

Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset."

Having regard to the above binding precedent, we reject the conclusion of the Id. CIT (A) that agreement to sell is a mere start of the sale and cannot become the act of sale for section 54 of the Act. Moreover, it needs to be appreciated here that a hyper technical approach cannot be adopted to an incentive granting provision. Here is a case, where the assessee is a widow who has received advance in June 2005 against sale of her share and thereafter, purchased a residential property in August 2005, but yet exemption is not held eligible on the ground that the sale is in September 2006. According to the Revenue, had the sale deed be executed in August 2006, everything will be in order. We do not subscribe to such a pedantic application of the incentive provision. It was on account of such an approach, the Hon'ble Apex Court in Sanjeev lal & Anr. Vs. CIT & Anr. (supra) has held as above. Thus, in view of the aforesaid, we allow the ground raised by the assessee.

9. Ground No.3 relates to exemption claimed by the assessee u/s 54 of the Act in respect of an amount of Rs.933950/- representing cost of construction of the new house in finishing the house which was not allowed by the AO on the reason that the said house was purchased beyond the period of one year before the sale of the old house.

10. The Id. CIT (A) had held in respect of the above claim as under :-

“ The assessee further claimed that it had incurred Rs.9,33,950/- to make the house purchased habitable one and

therefore in computation, benefit of investment of Rs.9,33,950/- should be given.

Since entitlement of exemption u/s 54 has already been denied; this ground of appeal is discussed on merits only as an alternative scenario; in case, benefit of section 54 is allowed to the assessee for any reason.

The A.O. has mentioned the nature of work done in the assessment order itself on page 5. I find that many aspects for example, marble flooring, part of wood work, POP work, part of wall finishing etc. may not be treated as "necessary" for making the house inhabitable; rather these are for betterment or up-gradation of the looks and facilities of the house and hence cannot be treated as cost incurred which was necessary for inhabitable house; while various portions of expenditure are normally required before making the house worth 'habitable'.

On a reasonable estimate basis, I hold that out of expenditure of Rs.9,33,950/- claimed, expenditure to the extent of Rs.4 Lac needs to be disallowed. Thus assessee will get a part relief.

However, since, as of now, no exemption u/s 54 is available; this ground of appeal is treated as rejected.”

11. We have heard both the parties and perused the material. We have already held herein above while disposing off ground no.2 that the assessee is entitled to exemption under section 54 of the Act in respect to purchase of property at Ghaziabad . Thus, all expenses incurred for purchase of the house and renovation of the house to make it habitable are allowable. In the instant case, the Id. CIT (A) has himself accepted the basic claim to the extent of Rs.4 lakhs, which aspect has not been challenged before us by the Revenue by filing a cross appeal on this issue before us. Thus, the issue

which remains is in respect to estimation. The assessee had claimed as under :-

“3. Although the assessee's further claim of Rs.9,33,950/- as cost of repair & renovation on residential property no. 195, Block-B. Sector-12, THA colony, Ram Prastha Colony, Ghaziabad stand rejected. However, its allowablility also needs to be discussed, independtly from the observation made above in Para 2.4. The assessee has claimed Rs.9,33,950/- as cost of repair & renovation, as per Bill dated 16.04.2006 of M/s Madhukar Promoters & Developers Pvt. Ltd. The perusal of the bill 16.04.2009 show that the payments have been made for the work performed as under:-

S.No.	Description	Amount (in Rs.)
	Finishing work at Ground Floor & First Floor 6 Bed Rooms, 2 Dining Room, 2 Kitchen, 6 Bathrooms, 2 Sote and Stairs.	
1.	Marble Flooring with material	2,97,000/-
2.	Terrace on First Floor	11,500/-
3.	Tile work with material	35,150/-
4.	Wood work (with material)	1,12,500/-
5.	Pop Work in Bed Room, Dining Room in Kitchen etc.	67,100/-
6.	<u>Wall Finish</u> Internal, Cement Plaster with Plastic Emulsion External -Sand Face Synthetic Paint on Door & Window (with material)	61,200/- 20,000/- 12,000/-
7.	C.P. Fitting with 2 Kitchen and 6 Bathroom steel sink Ceramic Sink and water storage tank	72,500/-
8.	Conduit pipe fitting with copper wire standard quality TV and Telephone wiring and fitting	70,000/-
9.	Hot & Cold water fitting with Aqua guard	25,000/-
10.	Furniture & Fixture - Almirah TV Trolley, Kitchen Wood Work	1,50,000/-
	Total	9,33,950/-

Having regard to the above evidence and payment having been made to discharge the said bill, in the absence of any evidence to the contrary, there

is no justification to restrict the claim to Rs.4 lakhs on estimate basis. In Saleem Fazelhoy v. DCIT - 106 ITD 167 (Mum), it was held that expenditure incurred on making house habitable is considered as investment in purchase of house, and hence deduction u/s 54F of the Act is allowable. In the another case in Mrs. Gulshanbanoo vs. JCIT - (2002) 83 ITD 649 (Mum.), it was held that cost of new house for the purpose of section 54, include not only cost of purchase of new house but also includes other necessary expenditure to make house habitable. Ld. Counsel also relied on the Order of the Ahmedabad Bench in the case of Shri Srinivasa R. Desai 90 DTR 346. The assessee after purchasing the flat has incurred further cost which are in the nature of cost of construction and it has been held that the cost so incurred will form an integral part of the qualifying investment under section 54 of the Act. In the light of the aforesaid case laws, the claim of the assessee stands allowed and we order accordingly.

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

Order pronounced in open court on this 24th day of November, 2015.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(A.T. VARKEY)
JUDICIAL MEMBER**

**Dated the 24th day of November, 2015
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.