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

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 397/JP/2016
निर्धारण वर्ष/Assessment Year : 2009-10.

The Income Tax Officer, Ward-1(2) Jaipur.	बनाम Vs.	Smt. Saroj Devi Agarwal, 5, Maha Laxmi Market, Nataniyon Ka Rasta, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACPPA 7478 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./C.O. No. 10/JP/2016
(Arising out of ITA No. 397/JP/2016)
निर्धारण वर्ष/Assessment Year : 2009-10.

Smt. Saroj Devi Agarwal, 5, Maha Laxmi Market, Nataniyon Ka Rasta, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward-1(2) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACPPA 7478 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by: Shri Rajendra Singh (JCIT)
निर्धारिती की ओर से/ Assessee by : Shri S.L. Poddar (Advocate)

सुनवाई की तारीख/ Date of Hearing : 15.09.2017.
घोषणा की तारीख/ Date of Pronouncement : 05/10/2017.

आदेश/ ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the by the revenue is filed against the order of ld. CIT (A)-I, Jaipur dated 05.02.2016 pertaining to assessment year 2009-10 whereas the assessee has filed the Cross Objection. First, we take up the appeal of the revenue. The revenue has raised the following grounds of appeal :

" 1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT (A) has erred in allowing the deduction u/s 54F of Rs. 54,12,140/-.

2. Whether on the facts and in the circumstances of the case and in law, the ld. CIT (A) has erred in admitting additional evidence in violation of provisions of Rule 46A of I.T. Rules, 1962.

The appellant craves the indulgence to modify, alter, add any other ground of appeal.

2. Briefly stated the facts of the case are that the case of the assessee was re-opened after recording reasons and issuing notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and assessment was completed under section 143(3) read with section 147 of the Act, 1961. Originally the assessment was completed on 14.11.2011 under section 143(3) of the Act on the returned income of Rs. 9,00,540/-. In the return filed under section 139(1) of the Act, the assessee claimed deduction of Rs. 54,12,140/- under section 54F of the Act against long term capital gain of Rs. 54,12,140/- on sale of plot of land for Rs. 58,60,000/- on the ground that sale consideration was invested in construction of house property situated at plot no. 3, New Colony, M.I. Road, Jaipur. Later on, finding that the claim of deduction u/s 54F was not admissible to the assessee, after recording reasons, notice under section 148 of the Act was served on the assessee. In response thereto, the assessee submitted that the return filed under section 139(1) on 30.07.2009 may be treated as return filed in response to notice under section 148. The Assessing Officer finalized the assessment under section 143(3)/147 of the Act by disallowing the deduction claimed under section 54F of the Act of Rs. 54,12,140/-. Aggrieved by this, the assessee preferred an appeal before

ld. CIT (A), who after considering the submissions of the assessee, partly allowed the appeal of the assessee. Now the revenue is in appeal before this Tribunal.

3. Ground No. 1 and 2 relates to allowing deduction u/s 54F of Rs. 54,12,140/- and admitting additional evidence in violation of provisions of Rule 46A of IT Rules, 1962 respectively.

3.1. The ld. D/R supported the order of the Assessing Officer and submitted that the assessee could not satisfy the requirement of provisions of section 54F for claiming the deduction. He placed reliance on the judgment of Hon'ble Jurisdictional High Court in the case of Zoraster and Company vs. CIT, (1987) 163 ITR 858 (Raj.).

3.2. On the contrary, the ld. Counsel for the assessee reiterated the submissions as made in the written submissions. The written submissions of the assessee are as under :-

> " 1. There is no dispute to the fact that a residential house was constructed by the assessee. The only dispute is whether a residential house, constructed on a commercial plot is eligible for deduction u/s 54F.
>
> The assessee submits that there is plethora of decisions to proclaim that, what is most vital in section 54F, is the investment in purchase/ construction of a 'residential house'. Some of them are listed hereunder to support the contention of the assessee-
>
> ***i. Shyam Sunder Makhija Vs. ITO [38 ITD 125 (JAIPUR ITAT)]***
>
> *A farm house, according to the dictionary meaning, is a farmer's house attached to a farm. In the present case there is no evidence that there was any farm in existence. The assessee had paid Rs. 7560 on 7th April,1984 as conversion charges. He again paid Rs. 4200 as development charges. The expression 'residential house' used in s. 54F has not been defined. The popular meaning of the word 'house' is a place or building used for habitation of man. "Residential house" is a dwelling house as distinct from a house of business, warehouse, office, shop, etc. In other words, residential house is a building used as a*

place of abode in which people reside or dwell in contra-distinction to one which is used for commercial or business purposes. A farm house is also a residential house. Therefore, the ITO could not take the view that what was in existence could not be called as a residential house. Since a house is called residential house with reference to the purpose of its user, it may not be necessary that somebody should live in it continuously. It is enough if it was a house for residence. The description of the construction, which is not in dispute, shows that it was a complete unit having a big hall, kitchen, toilet and verandah notwithstanding the size of the swimming pool, which was also there. As rightly pointed out on behalf of the assessee, there was no prohibition regarding the construction of a residential house on agricultural land. Therefore, the assessee is entitled to the deduction claimed under s. 54F, there being no other aspect or objection from the side of the Department about the claiming of such deduction. The AO is accordingly directed to deal with the matter of assessability of the capital gains taking into consideration the exemption allowable to the assessee under s. 54F

ii. ***ACIT Vs. Om PrakashGoyal [53 SOT 158 (JAIPUR ITAT)]***

Benefit of s. 54F cannot be denied on ground that land on which construction was done was agricultural in nature—All the conditions for claiming exemption u/s. 54F have been found satisfied—It is established that assessee purchased a plot of land and then constructed a residential house on it—House constructed on agricultural land or on other land does not matter, but the fact that house should be constructed—Therefore, order of CIT (A) confirmed—Revenue's appeal dismissed

iii. **SMT. SUNITA OBEROI vs. INCOME TAX OFFICER (2009) 30 DTR 474**

Capital gains—Exemption under s. 54F—Investment in property situated in a commercial block vis-a-vis residential use—When a house is located in a commercial complex, it cannot be accepted that it is a residential house or that it was used for residential purposes, in the absence of any evidence on record in support of user of the house as a

residence of the assessee—Assessee has given a different address in her return—If she was really staying in that property, she should have given that address as her home address in the return—No documentary evidence viz., ration card, bank pass book, driving licence, etc. was furnished by the assessee to substantiate her claim—On the contrary, she has been receiving rental income for the same property and it was found that the property was being used only for commercial purpose by assessee's husband—Further, no other person was staying in this block and using the property for residential purpose—Therefore, it cannot be accepted that this property was used for residential purposes and exemption under s. 54F cannot be allowed in respect of investment in the said property.

iv. **B Siva Subramanium Vs. ITO [ITA No. 01/mds/2013 (ITAT Chennai) 2014]**

Herein while discussing the issue of allowability of deduction u/s 54F, the Honble ITAT held as under:

"The provisions of section 54F mandates the construction of a

residential house, within the period specified. However, there is no condition that the building plan of the residential house constructed should be approved by the Municipal Corporation or any other competent authority. If any person constructs a house without approval of building plan, he will be raising construction at his own risk and cost. As far as for availing exemption u/s.54F, approval of building plan is not necessary. The approved building plan, certificate of occupation etc. are sought to substantiate the claim of new construction"

Thus in the case of the assessee the objection raised by the Assessing Officer that the approval of plan by the JMC was only for commercial complex and so the residential house raised on such land was not eligible for deduction u/s 54F is not sustainable, and the deduction is rightly claimed, as there is no dispute to the fact that a residential house has been raised, and the cost of construction is substantiated with the valuer's report filed during the original assessment

proceedings. Also further that the assessee was using the said premises for residential purposes, and had the address of the said premises on her ration card etc. [see pg. 43 of paper book]

Thus the objection raised by the Assessing Officer regarding non admission of the claim u/s 54F on the above ground is not sustainable.

2. The assessee has submitted the Declaration in the form of affidavit, by the Co-owners of the land, saying that the assessee was the absolute owner of the construction on the 1st and 2nd floor which consisted of the residential unit of the assessee [PAPER BOOK Page no. 40.] Thus the ownership of the said residential house vests completely with the assessee..

3. Also the Assessing Officer himself at para 2 (a) of the show cause notice issued pursuant to the notice u/s 148, and reproduced in the assessment order framed u/s 143(3) r.w.s. 148 at page 3 has stated as under:

" a) **You have claimed construction of building (ground, 1st and 2nd floor) on plot no. 3, New Colony, Jaipur having area of 846 sq. yards which was purchased in june, 1990 from one Smt. Nilofar Begum Quareshi, as per sale deed lying on record. As per this sale deed, your share in the land is 1/8th……."**

On perusal of the above finding of the Assessing Officer it is very clear that she was the owner of the land with 1/8th portion, on which she had constructed the building, thus the objection raised regarding the ownership of the said residential house stands quashed.

4. As regards the objection of the Assessing Officer that the construction of the residential house had started 7 months before the sale of plot, the assessee humbly submits that, it has held as under by the Hon'ble Allahabad High Court in the case of ***CIT Vs. H K Kapoor [150 CTR 128],***

" Perusal of the above provision will show that it does not lay down that the construction of any house must be begun after the sale of the old residential house and that the sale proceeds of the old residential house must be used for the construction of the new residential house. We are, therefore, of the opinion that the assessee complied with the requirement of the s. 54 in respect of the construction of the house at 64 Surya Nagar, Agra and that he is entitled to the exemption out of the capital gains from the sale of the house at Golf Link to the extent of the cost of construction of the house at 64, Surya Nagar, Agra. We, therefore, direct the ITO to modify the assessment accordingly."

The question for consideration is whether exemption on capital gains could be refused to the assessee simply on the ground that the construction of the Surya Nagar, Agra house had begun before the sale of the Golf Link house.

Similar question came up for consideration before the **Karnataka High Court in the case of CIT vs. J.R. SubramanyaBhat (1987) 64 CTR (Kar) 286 : (1987) 165 ITR 571 (Kar) : TC 22R.219**. In the case before the Karnataka High Court, the date of the sale of the old building was 9th Feb., 1977. The completion of the construction of the new building was in March, 1977, although the commencement of construction started in 1976. On these facts, the Karnataka High Court held that it was immaterial that the construction of the new building was started before the sale of the old building. We fully agree with the view taken by the Karnataka High Court. The Tribunal was right in holding that capital gains arising from the sale of the Golf Link house to the extent it got invested in the construction of the Surya Nagar house, will be exempted under s. 54 of the Act"

Thus, the objection that construction was started before the sale of asset is also not sustainable.

Based on above contentions the assessee humbly submits that, the claim for deduction u/s 54F has been correctly made by the assessee, and hence ought to be allowed as per the original assessment order."

3.3. We have heard rival submissions, perused the material on record and gone through the orders of the authorities below. We find that the ld. CIT (A) had dealt with the issues at length at para 3.2.2 at pages 14 to 22 of his order and taking into consideration various pronouncements of Hon'ble Supreme Court, High Courts and the Tribunal allowed the deduction. The observations of the ld. CIT (A) are reproduced as sunder :-

" 3.2.2 Determination

(i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. The brief facts of the case are that during the year under consideration, the appellant has sold a plot of land at Tarruchhaya Nagar and claimed deduction of LTCG u/s 54F, for the construction of 1st and 2nd floors at 3, New Colony, MI Raod, Jaipur. The basement, ground floor and the third floor

of the said property are used by the other co-owners for commercial purpose.

(ii) The AO disallowed the claim u/s 54F in respect of 1st and 2nd floors constructed by the appellant for her residential purposes on account of four objection/findings. During appellate proceedings, the AR contested each of the four findings of the AO and placed reliance on a number of judicial pronouncements. These are being discussed as under:

> AO (1)- The land on which construction was done is a commercial land, no permission for the residential purpose has been given by the JDA. Hence the construction on the 1st the 2nd floors cannot be treated as 'residential house' within the meaning of sec. 54F

(iii) It was the contention of the AR that there is no dispute to the fact that a residential house was constructed by the appellant. The dispute is whether a residential house, constructed on a commercial plot is eligible for deduction u/s 54F of the Act or not.

(iv) It would be relevant to reproduce here the extracts from the decision of Hon'ble ITAT, Jaipur in the case of Shyam Sunder Makhija Vs. ITO [138 ITD 125 (JAIPUR ITAT) wherein it was held that:

> "The expression 'residential house'used in s. 54F has not been defined. The popular meaning of the word 'house'is a place or building used for habitation of man. "Residential house" is a dwelling house as distinct from a house of business, warehouse, office, shop, etc. In other words, residential house is a building used as a place of abode in which people reside or dwell in contra-distinction to one which is used for commercial or business purposes. A farm house is also a residential house. Therefore, the ITO could not take the view that what was in existence could not be called as a residential house. Since a house is called residential house with reference to the purpose of its user, it may not be necessary that somebody should live in it continuously. It is enough if it was a house for residence. The description of the construction, which is not in dispute, shows that it was a

complete unit having a big hall, kithen, toilet and verandah notwithstanding the size of the swimming pool, which was also there. As rightly pointed out on behalf of the assessee, there was no prohibition regarding the construction of a residential house on agricultural land. Therefore, the assessee is entitled to the deduction claimed under s. 54F, there being no other aspect or objection from the side of the Department about the claiming of such deduction."

(v) Further, Hon'ble ITAT, Jaipur in the case of ACIT vs. Om Prakash Goyal [53 SOT 158 (JAIPUR ITAT) held that:

"Benefit of s. 54F cannot be denied on ground that land on which construction was done was agricultural in nature-All the conditions for claiming exemption u/s 54F have been found satisfied-It is established that assessee purchased a plot of land and then constructed a residential house on it- House constructed on agricultural land or on other land does not matter, but the fact that a house should be constructed-Therefore, order of CIT(A) confirmed-Revenue's appeal dismissed"

(vi) It may be mentioned that the provisions of section 54F mandates the construction of a residential house within the specified period. However, there is no condition that the building plan of the residential house constructed should be approved by the municipal corporation or any other competent authority. If any person constructs a house without approval of a building plan, he will be raising construction at his own risk and cost. In the instant case under consideration, it is an undisputed fact that the JMC approved the building plan of a commercial complex on the land under consideration. The essential requirement for claiming deduction u/s 54F is to see whether a residential house was constructed or not. The AO has not disputed the construction of a residential house by the appellant for which it claimed deduction u/s 54f of the Act. Therefore, in view of the above discussion

and the judicial pronouncements of Hon'ble ITAT, Jaipur, this ground of AO for rejection of claim of appellant u/s 54F does not hold good.

> AO (2)-The assessee is the owner of 1/8th portion of land only. Hence construction of 1st and 2nd floors on the entire area of land cannot be treated as in ownership of assessee.

(vii) The second ground on which the AO did not allow the deduction u/s 54F was that the appellant was the owner of only one portion of land. Hence first and second floor construction on the entire land cannot be treated in the ownership of the appellant. During appellant proceedings, it was submitted that the declaration in the Form of affidavit by the Co-owners of the land that the appellant was the absolute owner of the construction on the first and second floor which consisted of the residential unit of the appellant and thus the ownership of the said residential house vests completely with the appellant.

(viii) It may be mentioned that in the case of CIT vs. P.R. Seshadri [2010] 228 CTR 334 (KAR.), it has been held that:

> "though the land may be in the ownership of assessee's spouse, nevertheless the Tribunal had recorded a categorical finding that construction work was in progress during 21-4-1995 till 31-8-1996 and the wife of the assessee could have included the value of construction for mortgage purposes but that alone did not mean that construction was carried out by the wife of the assessee out of her own funds so as to deny the assessee the benefit of deduction under section 54F. There was no impediment in the assessee's claim for relief under section 54F, as the assessee had claimed relief to the extent of Rs. 20,96,008 as his contribution towards the cost of construction of the building and this amount would fall within the cost of the building"

(ix) Therefore, in view of the above decision of Hon'ble Karnataka High Court this ground of AO for rejection of claim of appellant u/s 54F does not hold good.

> AO(3)- The construction of the said floors started on 9.4.2008. However in the balance sheets as on 31.03.2008 and 2009, no asset in the form of plot of land was shown by the assessee. This proves that the assessee was not the owner of land on the date of construction, and hence not eligible for deduction us 54 in absence of right of ownership.

(x) The AO also observed that the construction of the said floors started on 9.4.2008 but in the balance sheets as on 31.03.2008 and 2009 of the appellant, no asset in the form of plot of land was shown and thus the appellant was not the owner of land on the date of construction, and hence not eligible for deduction u/s 54 in absence of right of ownership.

(xi) During appellate proceedings, a copy of the purchase deed dated 02.06.1990 of 1/8th share of the plot No. 3, New Colony, Jaipur has been filed which shows that the appellant purchased the property from Smt. Nilofar Begum for a consideration of Rs. 1,99,000/-. This clearly establish the ownership of the appellant over 1/8th share of the plot No. 3, New Colony, Jaipur. Therefore, this ground of AO for rejection of claim of the appellant u/s 54F does not hold good.

> AO(4) Date of construction is 9.04.2008, and the sale of plot of land is 22.10.2008. Thus the construction has started almost seven months before the sale of original asset, and as per the provisions of sec 54F the assessee is not eligible for deduction.

(xiii) It may be mentioned that as per provisions of section 54F of the Act for claiming deduction, a residential house property is to be constructed within a period of three years from the date of transfer of

any long term asset. It may be mentioned that in the case of CIT vs. H.K. Kapoor 150 CTR 128, it has been held by the Hon'ble Allahabad High Court that:

> "Perusal of the above provision will show that it does not lay down that the construction of any house must be begun after the sale of the old residential house and that the sale proceeds of the old residential house must be used for the construction of the new residential house. We are, therefore, of the opinion that the assessee complied with the requirement of the S. 54 in respect of the construction of the house at 64 Surya Nagar, Agra and that he is entitled to the exemption out of the capital gains from the sale of the house at Golf Link to the extent of the cost of construction of the house at 64, Surya Nagar, Agra. We, therefore, direct the ITO to modify the assessment accordingly."

> "The question for consideration is whether exemption on capital gains could be refused to the assessee simply on the ground that the construction of the Surya Nagar, Agra house had begun before the sale of the Golf Link house. Similar question came up for consideration before the Karnataka High Court in the case of CIT vs. J.R. Subramanya Bhat (1987) 64 CTR (Kar) 286: (1987) 165 ITR 571 (KAr) : TC 22R.219. In the case before the Karnataka High Court, the date of the sale of the old building was 9th Feb., 1997. The completion of the construction of the new building was in March, 1977, although the commencement of construction started in 1976. On these facts, the Karnataka High Court, held that it was immaterial that the construction of the new building was started before the sale of the old building. We fully agree with the view taken by the Karnataka High Court. The Tribunal was right in holding that capital gains arising from the sale of the Golf Link house to the extent it got invested in the construction of the Surya Nagar house, will be exempted under s. 54 of the Act."

(xiii) It may be mentioned that in the case of CIT vs. Bharti Mishra [2014] 41 taxmann.com 50 (Del), it has been held by the Hon'ble High Court of Delhi that:

13. For the satisfaction of the third condition, it is not stipulated or indicted in the Section that the construction must begin after the date of sale of the original old asset. There is no conditions or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original capital asset would not be utilized in the construction of the new capital asset, i.e, residential house, is ill-founded and misconceived. The requirement of sub-section (4) is that if consideration was not appropriated towards the purchase of the new asset one year before date of transfer of the original asset or it was not utilized for purchase or construction of the new asset before the date of filing of return under section 139 of the Act, the balance amount shall be deposited in an authorized bank account under a scheme notified by the Central Government. Further, only the amount which was utilized in construction or purchase of the new asset within the specified time frame stand exempt and not the entire consideration received.

14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in form of a residential house. Once an assessee falls within the ambit of a beneficial provisions, then the said provision should be liberally interpreted. The Supreme Court in CCE v. Favourite Industries, [2012] 7 SCC 153 has succinctly observed:-

"21.Furthermore, this Court in Associated Cement Companies Ltd. V. State of Bihar [(2004) 7 SCC 642], while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC p. 648, para 12).

"12 Literally éxemption' is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economy justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is

whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Paper Ltd. [(1990) 4 SCC 256 : 1990 SCC (Tax) 422] and Mangalore Chemicals and Fertilisers Ltd. v. Dy. CCT [1992 Supp (1) SCC 21] to which reference has been made earlier.)"

22. In G.P. Ceramics (P) Ltd. v. Dy. Commissioner, Trade Tax (2009) 2 SCC 90], this Court has held: (SCC pp. 101-02, para 29)

29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CIT v. DSM Group of Industries [(2005) 1 SCC 657] (SCC para 26); TISCO Ltd. v. State of Jharkhand [(2005) 1 SCC 272] (SCC paras 42-45); State Level Committee v. Morgardshammar India Ltd. [(1996) 1 SCC 108]; Novopan India Ltd. v. CCE & Customs [1994 Supp (3) SCC 606]; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala [(2007) 2 SCC 725] and Reiz Electrocontrols (P.) Ltd. v. CCE. [(2006) 6 SCC 213]

Therefore, in view of the above discussion, the objection of the AO that construction was started before the sale of asset is also not sustainable.

(xiv) In view of the above, discussion it is evident that none of the four objections of the AO for denying exemption u/s 54F is sustainable and thus it is held that the AO was not justified in denying exemption u/s 54F of the Act. Hence this ground of appeal is allowed."

The issue of entitlement of benefit of section 54F of the Act would depend upon the facts of each case. In the present case, the assessee is seeking exemption on the

ground that it has constructed a residential house. Such benefit of deduction is available if the assessee is in position to demonstrate that all conditions as envisaged in the provision of section 54F have been fulfilled. As per section 54F(1) there has to be a transfer of capital asset referred to as original asset, and such transfer gives rise to capital gain. For availing benefit of exemption from tax, the assessee is required to prove that it has purchased a residential house within one year before or two years after the transfer of the original asset or has within three years after the date of transfer constructed the residential house in India.

3.4. In the present case, there is no dispute so far construction of house is concerned. The objection of Assessing Officer are three-fold, firstly the assessee has 1/8th rights over the property on which the new asset is constructed; secondly, the construction started prior to transfer of original asset and thirdly the new asset can not be treated as residential house as same has been constructed on the commercial land. As per assessee by way of settlement amongst the co-owners, the assessee was given absolute rights over the new asset. Therefore, the assessee is entitled for exemption as claimed. It is further stated that law does not prohibit constructing a residential house on a commercial land. It is also argued that constructing a residential house in a commercial complex would not ipso facto alter the residential house into a commercial premises.

3.5. We find that the Revenue has not brought any material on record suggesting that on commercial land no residential house can be constructed. Even there is no material suggesting that any unauthorized construction by the assessee would debar it from claiming exemption u/s 54F. In the absence of such material, in our

considered view benefit of section 54F cannot be denied. Another objection of the AO is with regard to the fact that construction of residential house was started prior to transfer of original asset. This objection is also misplaced when the assessee is entitled to exemption u/s 54F if the residential house is purchased one year before the transfer of the original asset. Therefore, in our considered view merely because the construction was started prior to transfer of original asset, if same is completed within three years of transfer of original asset, would not come into way of entitlement of exemption. Another objection of the AO is that the assessee is having 1/8th share in the commercial land on which the new asset has been constructed. The explanation of the assessee is that by way of settlement the assessee was given absolute rights on the new asset. We are of the view that this claim of the assessee requires verification at the end of the AO. Therefore, we modify the finding of ld. CIT (A) to the extent that AO would verify from other co-owners about the factum of relinquishment of their rights into new asset. If the AO finds correctness into the claim of the assessee, he would allow the entire claim lest he would restrict the same to the extent of 1/8th of the cost of construction of new asset. Ground No. 1 of the revenue's appeal is partly allowed for statistical purpose in the terms indicated hereinbefore.

4. Apropos to Ground No. 2, ld. D/R could not point out the violation of Rule 46A by ld. CIT (A). Hence ground no. 2 of the Revenue's appeal is dismissed.

5. In the result, the appeal of the revenue is partly allowed for statistical purposes.

6. Now we take up the **Cross Objection No. 10/JP/2016** of the assessee. The effective ground of the assessee is in respect of confirming the action of the AO in issuing notice u/s 148/147 and re-opening of the assessment.

7. We have heard the rival submissions and gone through the orders of the authorities below. The ld. CIT (A) has rejected the ground of the assessee by observing in para 3.1.2. as under :-

> " 3.1.2. Determination :
>
> I have duly considered the submissions of the appellant, assessment order and the material placed on record. In this case assessament u/s 143(3) was made on 14.11.2011 determining total income at Rs. 9,00,540/-. The case was subsequently reopened u/s 147 of the Act and the assessment was completed on 29.10.2014 at a total income of Rs. 63,12,680/-. The appellant has challenged the reopening u/s 147 of the Act. In fact, the similar contentions were raised before the AO which were disposed off by the AO vide his speaking order dated 01.10.2014 which was annexed as Annexure-A to the assessment order dated 29.10.2014. I have duly considered the contentions of the appellant and the above order dated 01.10.2014 of the AO and it is observed that the AO has dealt with the all the objections of the appellant raised against reopening of the assessment u/s 147 of the Act. I agree with the order dated 01.10.2014 of the AO in this regard and consequently, it is held that the AO has rightly initiated reassessment proceedings u/s 147 of the Act. Therefore, this ground of appeal is rejected."

In view of the above reasoning given by ld. CIT (A), we affirm his order and dismiss the cross objection of the assessee.

8. In totality, the Appeal of the revenue is partly allowed for statistical purposes and cross objection of the assessee is dismissed.

Order is pronounced in the open court on 05.10.2017.

Sd/-	Sd/-
(भागचन्द)	(कुल भारत)
(BHAGCHAND)	(KUL BHARAT)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 05/10/2017.

Das/

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

1. The Appellant- The ITO, Ward-1(2), Jaipur.
2. The Respondent – Smt. Saroj Devi Agarwal, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 397/JP/2016 & CO 10/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar