

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And  
Shri B.R.R. Kumar, Accountant Member**

**ITA No. 2457/Del/2019  
Assessment Year: 2013-14**

Ravi Jain, FU-71, Pitampura, New Delhi. PAN: AAGPJ0442F. <b>(Appellant)</b>	<b>vs.</b>	ACIT, Circle 47(1), New Delhi <b>(Respondent)</b>
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<b>Appellant by</b>	None
<b>Respondent by</b>	Sh. Surender Pal, Sr. DR

<b>Date of Hearing</b>	03.06.2019
<b>Date of Pronouncement</b>	03.06.2019

**ORDER**

**Per B.R.R. Kumar, A.M.:**

The assessee filed appeal on 20.03.2019. Vide order sheet dated 09.05.2019, the case was adjourned to 03.06.2019 and the parties were accordingly informed. On the designated date of hearing, nobody attended on behalf of the assessee. Hence, the matter is being adjudicated on merits after taking into consideration the facts available on record.

The grounds raised in appeal read as under :

1. *The Ld. CIT(A) has erred both in law and in facts in circumstances of the case in disallowing the construction cost of Rs.24,35,431/- on the presumption that the same is allowable at the time of calculating capital gains as cost of improvement ignoring the fact that the expense of construction cost is allowable deduction u/s 54/54F of the Act if the same is done before the filling of return of income.*
2. *The Ld. CIT(A) has erred both in law and in facts of the case in making the above disallowance without providing any opportunity to the appellant to represent his case before himself.*
3. *The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with requirements of the provisions of Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*

The facts relevant for adjudication are that the assessee has sold a vacant plot at village Budhpur, Narela, Delhi on 16.08.2012 for a consideration of Rs.170,65,000/- and purchased three residential houses as per the details as under :

Sl. No	Name/address of plot as per sale deed	Date of purchase/ investment in property	Name of party of purchase	Sale consideration
1.	Property no. 421 (old) and new no. 521, Lahori Gate, Delhi	14-Dec-2012	Smt. Veena Gupta Smt. Kiran Arora	Rs. 24,50,000/-
2.	Property no. 420 Lahori Gate, Delhi	14-Dec-2012	Smt. Veena Gupta Smt. Kiran Arora	Rs. 24,50,000/-
3.	Property no. 419 Naya Bans, Khari Baoli, Delhi	13-Feb-2013	1. Sh. Tara Chand Garg	Rs. 45,00,000/-
<b>Total</b>				Rs. 94,00,000/-

The AO has rejected the deduction under section 54F claimed by the assessee on the grounds that the deduction was available only for one residential house and but not for three units. During the proceedings before the Id. CIT(A), the assessee submitted the details of acquisition of property subsequent to the sale of land detailed as under :

S.No.	Particulars	Amount (in Rs.)
1.	Purchase of unit at 419 Naya Bazar, Delhi	45,00,000/-
2.	Purchase of unit at 420 Naya Bazar Delhi	13,50,000/-
3.	Purchase of unit at 421 Naya Bazar Delhi	21,50,000/-
	<b>Add:</b>	
4.	Stamp Duty & Registration expenses	8,39,550/-
5.	Cost of construction expenses	24,35,431/-
	<b>Total (1+2+3+4+5)</b>	<b>11,274,981/-</b>

Before the Id. CIT(A), the assessee has taken various arguments pertaining to eligibility u/s. 54F which are as under : *There have been controversy between taxpayer and income tax department whenever taxpayer claims exemption under section 54 for investment made in multiple houses. Question that now arise whether the prefix 'a' used before the word residential house in sec 54/54F interpreted in singular or plural sense. To resolve the controversy, it may kindly be noted that a residential house is not defined anywhere and the same may comprise several residential units. Even if the assessee makes investment in purchase of different residential units which are located on different floors but are used as residential house, it cannot be considered as more than one residential house and where two adjacent flats are purchased and used by the assessee as a single residential house, both flats would be considered for claiming exemption notwithstanding the fact that they are converted into one*

*residential unit or not. The Hon'ble Delhi High Court judgment in case of CIT vs Gita Duggal 357 ITR 153(Del) (2013) which was approved by the Hon'ble Apex Court in CIT vs. Gita Duggal (2015) 228 Taxman 62 (SC) that there is no specific requirement in the law that house should be constructed in a particular manner and thus, if several units were used by assessee as single house, requirements laid down in section 54F will be satisfied.*

*1.6.4 Some of the recent judgments delivered by tax courts in context of this issue are as follows:*

*(a) In, CIT vs Gita Duggal case (supra) which was approved by the Hon'ble Apex Court in CIT vs. Gita Duggal (supra) emphatically deals with the acquisition of multiple houses and held that "the expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. Also, section 54/54F uses the expression "a residential house" and not "a residential unit". Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans, requirements and compulsions. A person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may*

*construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. The physical structuring of the new residential house, whether it is lateral or vertical, cannot come in the way of considering the building as a residential house. The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54/54F. It is neither expressly nor by necessary implication prohibited."*

*(b) In CIT v. Smt. Sunita Aggarwal (2006) 284 ITR 20 (Delhi), the fact was that the assessee had acquired four portions of property by four different sale deeds, but they all constituted one residential house, where she was residing with her husband and children. It was held that the benefit under section 54 of the Act would be available in respect of all the four portions.*

*1.6.3 Coming to the second objection of the AO that the appellant has acquired more than one property within a period of one year after the date of transfer of original asset in contravention of proviso (a)(ii) of sec 54F(1) of the Act and therefore the exemption available u/s 54 F was denied. In this connection, it is submitted that the following the judgment of jurisdiction Delhi High Court in the case of Gita Duggal (supra) and other authorities cited in para 2.2.4, the three residential units acquired by the appellant one after another constitute a residential house and therefore even if that house is acquired unit wise but such piecemeal acquisition in parts of bigger residential house, it cannot be said that assessee has purchased more than one residential house unless the other units purchased constitute a separate house. The view taken by the AO is against the well settled position of law that residential units having contiguity with each other being adjacent units are required to be considered as a single residential house. It is an undisputed fact on record that appellant has not purchased within one year after the date of transfer of original asset any other residential house. Therefore the action of the AO in denying the deduction u/s 54 F of the Act based on non-compliance of the above proviso is against the letter and spirit of law laid down by various authorities including the decision of the jurisdictional High Court in the case of Gita Duggal duly approved by the Hon'ble Apex Court (both supra).*

*1.6.4 Therefore in view of above it is prayed that exemption u/s 54 F as claimed in the revised computation filed before the AO be kindly allowed and action of the AO be quashed.”*

Vide the written submissions filed before the Tribunal, the assessee contended that the explanation “a” residential house used in the section should be understood in a sense that the building should be of residential in nature and “a” should not be understood to indicate a single number. It was contended that as long as the assessee acquires a building which may be constructed in such a manner as to consists of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of section should be taken to have been satisfied. He relied on Ananda Basappa, 309 ITR 329, KG. Rukminiamma 331 ITR 211 and the jurisdictional High Court judgment in the case of CIT vs. Geeta Dugal, 257 CTR 208 wherein multiple investments in units in the same residential complex were treated to qualify for deduction u/s. 54F. Thus, the argument of the assessee revolved around the fact that even multiple residential units should be treated as one house and deduction should be allowed.

The provisions of section 54 F are hereby reproduced which reads as under :

*54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(a). if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under [section 45](#) ;*

*(b). if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under [section 45](#):*

**Provided** that nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date any residential house, the income from which is chargeable under the head "income from house property", other than the new asset.

*Explanation.—For the purposes of this section,—*

*"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.*

*(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under [section 45](#) on the basis*

*of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.*

*(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.*

During the proceedings before the Id. CIT(A), the report of the Inspector was obtained to examine whether the construction on premises No. 419, 420 and 421 constitute a residential unit or not. The report of the Inspector is as under

**Inspector Report**

S.No.	Name and address of the party	Remarks
1	Property No. 421 (old) and new no. 521, Lahori Gate, Delhi.	The front of Premise No. 521, Lahori Gate, Delhi has a board with premise no. 521, Lahori Gate, Naya Bazar, Delhi. Further, for locating the premise no. 418 which is the back side of premise no. 521. Further, it is found that the opposite side of building with premise no. 418 is premise no. 423 (pictures attached). Further, on enquiring with the nearby people, it is known that both the premises nos. 419 and 420 are in the same building in which premise no. 521 is located.
2.	Property No. 420, Lahori Gate, Delhi	Therefore, it may be concluded that the Premise No. 521, Lahori Gate, Delhi, Premise No. 420, Lahori Gate, Delhi and Premise No. 419, Naya Bans, Khari Baoli, Delhi is a one single building with a common boundary wall. On physical verification, few pictures were taken from the mobile phone which are enclosed.
3.	Property No. 419, Naya Bans, Khari Baoli, Delhi	

In continuation to the enquiry conducted on 07.01.2019, I have again visited the following premises as directed for enquiry on 11.01,2019. The following are the findings:



S.No.	Name and address of the party	Remarks
1	Property No. 421 (old) and new no. 521, Lahori Gate, Delhi	<p>On today's enquiry, it is seen that the Premise with , Board No. 521, Lahori Gate, Delhi is a four storey Lahori Gate, Delhi building with one common entrance from the front having a single staircase for going to the above floors. Floors wise details are submitted below-</p> <p><b>Fourth Floor-</b> This floor consists of 4 rooms with one common kitchen space and one common bathroom in which two rooms are found vacant. Further, in the other two rooms one person named Sh. Kaiash was found to be present and on asking he informed that he is the labour of Sh. Ravi Jain and living in these two rooms since last 3-4 years with his family. The rent is not paid by him to anyone.</p> <p><b>Third Floor-</b> This floor consists of 5 rooms with one common kitchen space and one common bathroom in which three rooms are found vacant, Further, in one room one-person named Sh. Gopai was found to be present and on asking he informed that he is the staff j   of M/s Shree. Jaina Rice Private Limited and the rent j is not paid by him to anyone. The fifth room was found locked and when asked, the assessee informed that the said side of the building where the room is located has been sold by Sh. Ravi Jain to some Sh. Rakesh Jain. When asked for the proof of the same, he produced the copy of the sale deed which is enclosed with this report.</p> <p><b>Second Floor-</b> This floor consists of 6 rooms with one common kitchen space and one common bathroom in which four rooms are found vacant. Further, in one room one person named Sh. Mukesh was found to be present and on asking he informed that he is living on rent in the said room since last 5-6 months and rent of Rs. 10,000/- is paid to Sh. Ravi Jain for the same. The sixth room was found locked and when asked, the assessee informed that the said side of the building where the room is located has been sold by Sh..Ravi Jain to some Sh. Rakesh Jain as also mentioned in the description of third floor.</p> <p><b>First Floor-</b> This floor consists of 5 rooms with one common kitchen space and one common bathroom in which two rooms are found vacant. Further, the third</p>

		<p>room was found locked and the gate of the room was having a board names "Black Tiger Corporation" and "Amethus Commodities Pvt. Ltd". The fourth room was found locked with no boards attached to the gate and when asked to the assessee about the same, he informed that it is also given on rent. The fifth room was also found locked and when asked, the assessee Informed that the said side of the building where the room is located has been sold by Sh. Ravi Jain to some Sh. Rakesh Jain as also mentioned in the description of third floor.</p> <p>On physical verification, few pictures were taken from the mobile phone which are enclosed.</p>
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From the inquiry of the ACIT circle 47(1), it is clear that all three premises are in the same building with a common boundary wall, a single staircase for access and one common entrance.

We have also gone through the various judgments quoted by the assessee. The Hon'ble high court of Karnataka unequivocally held that the contention of the Revenue is that the phrase "a" residential house would mean one residential house and it does not appear to the correct understanding. The expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. The combined reading of ss. 54(1) and 54F of the IT Act discloses that, a non-residential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to s. 54 of the IT Act, lays down that if the assessee has already one

residential building, he is not entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building. When an HUF's residential house is sold, the capital gain should be invested for the purchase of only one residential house is an incorrect proposition. After all, the HUF property is held by the members as joint tenants. The members keeping in view the future needs in event of separation, purchase more than one residential building, it cannot be said that the benefit of exemption is to be denied under s. 54(1) of the IT Act. On facts, it is shown by the assessee that the apartments are situated side by side. The builder has also stated that he has effected modification of the flats to make it as one unit by opening the door in between two apartments. The fact that at the time when the Inspector inspected the premises, the flats were occupied by two different tenants is not the ground to hold that the apartment is not a one residential unit. The fact that the assessee could have purchased both the flats in one single sale deed or could have narrated the purchase of two premises as one unit in the sale deed is not the ground to hold that the assessee had no intention to purchase the two flats as one unit.

Hence, keeping in view the fact that primarily the assessee is eligible for deduction u/s. 54F and purchased the plots and constructed residential dwellings on those plots, we hereby hold that the assessee is eligible for the deduction and confirm the order of the Id. CIT(A) to that extent. At the same time, we are not in support of the decision of the Id. CIT(A) wherein the cost of the construction claimed by assessee has not been allowed and directed the same to be treated as cost of improvement. The decision of the Id. CIT(A) is contrary to the provisions of section 54F (1), wherein the capital gains can be utilized for either construction or purchase of house. Since in this case, the amount has been utilized for the construction of the house, the amount is eligible for deduction u/s 54F in accordance with law.

As a result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 03/06/ 2019.

Sd/-

**(H.S. Sidhu)**  
**Judicial member**

Sd/-

**(B.R.R. Kumar)**  
**Accountant Member**

Dated: 3 June, 2019

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