

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.5114/DEL/2016
Assessment Year: 2013-14

Abodh Borar, H. No.99, Sector-9, Faridabad.	vs.	ITO, Ward-1(1), Faridabad.
TAN/PAN: AAQPB 2015A		
(Appellant)		(Respondent)

Appellant by:	Shri Ved Jain, Adv., Shri Ashish Goel, CA & Mrs. Surabhi Goyal, CA		
Respondent by:	Shri P.S. Jhuingaleng, Sr.D.R.		
Date of hearing:	12	09	2019
Date of pronouncement:	18	11	2019

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against impugned order dated 21.07.2016, passed by Ld. CIT (Appeals), Faridabad for the quantum of assessment passed u/s 143(3) for the A.Y. 2013-14. In the grounds of appeal, following grounds have been raised:-

"1.On the facts & circumstances of the case, the order passed by the Learned CIT (A)is bad, both in the eye of law and on the facts.

2. a) That having regard to facts and circumstances of the case, the Ld. CIT (A) has erred in law and facts in confirming the disallowance of deduction claimed u/s 54F of Rs.24,12,480/-& deduction u/s 54 of Rs.28,77,944/- without taking into consideration of the facts that the assessee had invested the

long term capital gain on purchase of residential plot and remain invested for more than three years.

b) That the Ld. CIT (A) had not considered the fact that the assessee has been allotted a residential plot by the builder, but due to possession of the plot was given by the builder after expiry of three years from date of capital gain hence it was not possible for the assessee to complete the construction before the time stipulated for claiming exemption u/s 54 and 54F of the Income Tax Act, 1961.

It is prayed that disallowance of deduction claimed u/s 54F of Rs.24,12,480/- & deduction u/s 54 of Rs.28,77,944/- is unjustified, unwarranted and bad in law, which is liable to be deleted, be deleted.

1. That the appellant begs leave and reserves the right to alter or add to the grounds of appeal.”

2. Facts in brief are that, the assessee is an individual and had filed her return of income of Rs.29,47,390/-. In the return the assessee has claimed an exemption of Rs.52,90,424/- on account of the capital gain arisen to her during the year under section 54 and 54F of the Act. The assessee had sold two properties, against which she had claimed deduction of Rs. 24,12,480/- u/s 54F; and deduction of Rs. 28,77,944/- u/s 54. The entire capital gain was invested in a residential plot in Omaxe Chandigarh Extension. Assessee has made payment of Rs. 54,36,000/- to Omaxe on various dates starting from 22.03.2011 to 23.06.2011. It was further stated that possession of plot was offered by the developer only on 11.09.2015. Assessing officer disallowed the same on the ground that the assessee has not completed the construction of the residential house within the period of 3

years so from the date when the capital gain has arisen to her.

3 The CIT (A) has confirmed the order of the Assessing Officer on same reasoning.

4. Before us, it was submitted by the AR of the assessee that the assessee has made an investment of Rs.54,36,000/- in acquiring a residential property at Chandigarh from Omaxe Chandigarh Extension Developers Pvt. Ltd. by 23.06.2011 as against exemption of Rs.52,90,424/- claimed by her. The assessee has filed copy of the allotment letter. The assessee also submitted the copy of agreement dated 05.06.2011 entered into by the assessee with the developer. As regard the construction he submitted that the same could not be done as the developer could not transfer the possession to the assessee despite there being a clear condition in the agreement that the possession will be given within a period of 18 months for the date of the allotment letter. Thus, the reason for delay in construction was beyond assessee's control. It was submitted by the Ld. AR that the total cost was Rs.63,03,005/- and the same stood paid and hence the assessee had discharged all her obligation. Further, there is no dispute about the fact that the assessee had made investment it is only because of the construction being not done within a period of 3 years, the benefit of section 54/54F has been denied. The Ld. AR placed reliance on the judgment of coordinate bench of the ITAT in the case of **Varun Seth vs.**

ACIT ITA No.1388/Del/2019 dated 14.05.2019, where on similar facts it was held that the assessee having utilized the amount in the acquisition of the land the intention of the statute as provided in section 54 has been stand satisfied as the delay in construction was by reason beyond the control of the assessee. The Ld. AR also relied upon the following judgment:

1. CIT vs. Sh. S. Sudhakar (HUF) in TC (A) No.692 of 2015 dated 25.08.2015
2. ITAT Chennai in the case of Smt. VA Tharabai vs. DCIT ITA No.1894 (MDS) of 2011 dated 12.01.2012.

5. In reply the Ld. DR placed reliance on the order passed by the AO and the CIT (A).

6. We have heard the rival submission and perused the relevant finding given in the impugned orders passed by the authorities below and the paper book filed by the assessee. The only issue in the appeal is the denial of deduction claimed by the assessee under section 54 and 54F of the Act. It is an undisputed fact that, *firstly*, the assessee has earned capital gain and has invested the same in purchase of a residential plot; *secondly*, the assessee has made a total investment of Rs.63,03,005/- which is more than the exemption of Rs.52,90,424/- claimed by her; and *lastly*, the assessee made this investment within the prescribed period. This payment was made to the developer Omaxe Chandigarh

Extension Developers Pvt. Ltd. Consequent to that, the developer issued allotment letter and also entered into an agreement dated 05.07.2011. As per the agreement the developer was supposed to hand over the possession of plot within 18 months from the date of allotment letter. However, the developer did not deliver the possession. Hence, the assessee could not complete the construction within the prescribed period of 3 years. This delay in construction was not attributable to the assessee. Thus, the AO and the CIT (A) have denied the exemption in view of the provision of section 54 and 54F of the Act. Further, the AO and the CIT (A) both have ignored the fact that the assessee has made a full payment to the developer and such payment was more than the amount of the deduction claimed by the assessee. Since, the delay was not on the part of the assessee but on the part of the developer and thus it was beyond the control of the assessee. In such circumstances, we are of the view that benefit of deduction cannot be denied to the assessee. Our view is supported by the judgment of coordinate bench of the ITAT in the case of Varun Seth vs. ACIT ITA No.1388/Del/2019 dated 14.05.2019, wherein it has been held as under:-

“9. The real issue in the present case is that new residential house has not been constructed within a period of three years from the date of the transfer of the residential property which resulted in the long-term capital gain. On this issue, the assessee’s contention has been that in spite of having made payment for the plot, the Jaypee (Developer) failed to offer possession and execute sale deed even up till the expiry of three

years from the date of sale of property by him, because of reasons beyond his control which cannot be disputed. This vital fact assumes great significance as assessee had taken all the steps to make the investment for the purchase of house, and also assessee had deposited ₹ 25,10,000/- in the capital gain account with PNB so as to construct the house. This unequivocally demonstrate that assessee really intended to construct the new residential house thereon. It was based on this bonafide intention assessee had claimed exemption under section 54 of the Act. Without the purchase of land, house could not have been constructed. The first step was to purchase the land, which was done. Thereafter the developer was to handover the plot, so that assessee could have constructed the house within time allowed of 2 years. However, no step could be put forward thereafter because possession of land was not given by the Developer, for reasons beyond the control of the assessee. If an assessee sells his house property and utilises the money for acquiring a plot for the construction of the house and if facts and circumstances point out that assessee intended to construct the house, which has been found so, then it is clear that he wants to avail exemption as provided under the law. Now if the developer after receiving the money could not fulfill the obligation within time, then can assessee be held responsible for not complying the law.

10. The Hon'ble Supreme Court in the case of Sanjeev Lal Vs. CIT [2014] 365 ITR 389 (SC) has laid down the purposive interpretation of section 54 to give a liberal approach to the assessee who clearly intended to claim benefit of section 54. Their Lordships held that section 54 is a beneficial provision and is to be construed keeping in view the intention of the Legislature to give relief in the matter of payment of tax on the long-term capital gain, relevant observation of their Lordships reads as under: -

“22. In addition to the fact that the term "transfer" has been defined under section 2(47) of the Act, even if looked at the provisions of section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after

the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long-term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under section 54 of the Act, the Legislature does not want him to be burdened with tax on the long-term capital gain and, therefore, relief has been given to him in respect of paying income-tax on the long-term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income-tax Act and it is also said that equity and tax are strangers to each other, still this court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of *Oxford University Press v. CIT* [2001] 3 SCC 359 this court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which sub-serve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. **Considering the afore stated observations and the principles with regard to the interpretation of statute pertaining to the tax laws, one can very well interpret the provisions of section 54 read with section 2(47) of the Act, i.e., the definition of "transfer", which would enable the appellants to get the benefit under section 54 of the Act."**

11. If we apply the law as clarified by the Hon'ble Apex Court, on the facts of the instant case, then we are of the opinion that the amount utilized by the assessee in the acquisition of land should be construed as amount invested in purchase/ construction of residential house. The intention of the statute as provided in section 54 has been fully satisfied by the assessee in the present

case. Thus, on the facts of the present case, we hold that the assessee is entitled for exemption under section 54 of the Act and AO is directed to allow the exemption us/ 54.”

7. Respectfully following the above decision which is applicable on the facts of the present case also, we hold that assessee is entitled to the exemption claimed by her and direct the AO to delete the disallowance.

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

Order pronounced in the open Court on 18th November, 2019.

Sd/-

[N.K. BILLAIYA]

[ACCOUNTANT MEMBER]

DATED: 18th November, 2019

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER