

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 5829/DEL/2016 ( A.Y 2009-10)**

Sunil Miglani KJ-2, Kavi Nagar New Delhi <b>(APPELLANT)</b>	Vs	DCIT Central Circle Ghaziabad <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Vanshita Taneja, Adv</b>
<b>Respondent by</b>	<b>Sh. H. K. Choudhary CIT DR</b>

<b>Date of Hearing</b>	<b>19.02.2020</b>
<b>Date of Pronouncement</b>	<b>02.03.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 20/01/2016 passed by CIT(A)-IV, Kanpur, for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

*“1. That on the facts of the case and in law, the Commissioner of Income Tax (Appeal-IV), Kanpur erred to confirm the action of the assessing officer in taxing the long term capital gain that was further enhanced to 64,07,515/- in place of an amount of Rs. 30,17,456/- as declared in the return of income. The enhancement is made without applying judicious mind and the same is unjustified, unwarranted, illegal, bad in law and in any case without merits.*

2. *That on the facts of the case and in law, the Commissioner of Income Tax (Appeal-IV), Kanpur misdirected him to calculate and assess the long term capital gain on the sale of the property at Rs. 64,07,515/- thereby ignoring all together the investment made in the purchase of the new residential house as provided under section 54F(1)(a) of the Act. The long term capital gain enhanced is unjustified, unwarranted without following the provisions contained under section 54F(1)(a) of the Act and thus bad in law.”*

3. Return was filed on 31.07.2014 declaring income of Rs. 12,00,080/- against which assessment was completed on a total income of Rs. 42,17,536/- on 31.03.2015. The Assessing Officer made addition of Rs. 30,17,456/- for long term capital gain.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that for the addition made there had been no specific notice and the assessee did not get proper opportunity to explain the working of the long term capital gain. The assessee declared correct working of the capital gain for which exemption was claimed under Section 54F of the Act. During the year under consideration the assessee along with his wife sold two properties (each having  $\frac{1}{2}$  share) and the sale proceeds were invested in the purchase of residential house. The properties were sold for a total value of Rs.2,60,61,000/- while the stamp duty paid on a total value of Rs.4,71,91,000/-. The capital gain on the sale of the property was claimed as exempt by the assessee in view of the provisions contained in Section 54F(1)(b) of the Act. The Assessing Officer while not disputing the claim of the assessee for exemption u/s 54F(1)(b) of the Act in respect of investment of long term capital gain has calculated and worked out the addition of Rs.30,17,456/- to the income as per working considering the full value of consideration as per Section 50C while determining exemption. The assessee filed appeal before the

CIT(A), Ghaziabad. The Ld. AR further submitted that pending the disposal of the appeal filed before the CIT(A), Ghaziabad, a search was conducted on 19.02.2013 by the department at the business premises of the company and also at the residences of the directors. As a result of which the cases were centralized with the ACIT, and likewise, the appeal which was pending with CIT(A), Ghaziabad was transferred to the CIT(A), Kanpur. The CIT(A), Kanpur vide order dated 29.03.2016 whereby the capital gain assessed by the Assessing Officer at Rs.30,17,056/- was enhanced to the Rs.64,07,515/- as per calculations given in the order. The CIT(A) held that no exemption would be available since the assessee has suffered capital loss, even though capital gain is being charged to tax after application of Section 50C of the Act. The addition of long term capital gain was enhanced by the CIT(A), Kanpur from the assessed Long Term Capital Gain of Rs.30,17,456/- to Rs.64,07,515/-. The Ld. AR submitted that the issue under consideration is relating to working adopted for calculating the benefit of exemption available to the assessee under Section 54F(1)(b) of the Act. The only dispute with the Assessing Officer is with the working of the exemption as claimed u/s 54 of the Act. The assessee calculated exemption u/s 54 for the investment made by the adopting the figure of actual sale consideration received and the Learned Assessing Officer calculated the exemption u/s 54 of the investment made by adopting the figure of the sale consideration by invoking Section 50C of the Act. The CIT(A) has misdirected and enhanced the addition. The investment made in the purchase of new residential house, the essential criteria for allowing benefit of deduction u/s 54F(1)(b) of the Act was ignored. The Ld. AR submitted that Section 54F clearly states that if the cost of new asset is less than the net consideration in respect of the asset transferred, 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 u/s 54F. Nowhere does it mention consideration as per section 50C. The fiction u/s 50C is extended only to the aspect of computation of capital gains and the same does not extend to the charging section or the exemptions to the charging section. The legislature

consciously intended to apply the fiction under Section 50C only to the expression used in section 48 and not in any other place. Section 50C has no effect for calculating exemption u/s 54F. The long term capital gain exemption is admissible u/s 54F(1)(b) of the Act as per working provided by the assessee wherein total taxable gain is Rs.2,68,830/- only. Deeming fiction created in Section 50C is limited only to the extent and for the purpose of section 48 and this deeming fiction cannot be extended or interpreted as meant for the purpose of other provisions of the Act including Section 54F. The process of arriving at capital gains and exemptions are distinct and separate and one does not override the other. Section 54F is an exemption provisions and a complete code in itself and since it is a complete code in itself, computation of eligible exemption has to be worked out within its framework as far as possible and deeming fiction contained in any other provision cannot be brought into section 54F. Section 54F has to be applied only for the definite and limited purpose for which it is created. The Ld. AR submitted that it is not permissible to sub-join or track a fiction upon fiction. Thus, the Ld. AR submitted that as far as the exemption allowable u/s 54F, one has to strictly follow the provisions of the particular section and compute the exemption accordingly without imposing any section creating a legal fiction into the section. The Ld. AR relied upon the following decisions:

- i. Smt. Sabita Devi Agarwal vs. ITO, Ward-2(3), Siliguri [2019] 69 ITR(T) 231 (Kolkata – Trib.)
- ii. Anant Chetan Agarwal vs. CIT, [2018] 172 ITD 525 (Lucknow – Trib.)
- iii. ITO vs. Raj Kumar Parashar [2017] 167 ITD 237 (Jaipur – Trib.)
- iv. DCIT vs. Dr. Chalasani Mallikarjuna Rao (2016) 161 ITD 721 (Visakhapatnam Trib.)
- v. Nand Lal Sharma vs. ITO [2015] 40 ITR(T) 518 (Jaipur – Trib.)
- vi. Dhanveer Singh Gambhir vs. ITO, 3(2), Indore [2015] 56 taxmann.com 205 (Indore – Trib.)
- vii. Prakash Karnawat vs. ITO (2011) 16 taxmann.com 357 (Jaipur)
- viii. Gyan Chand Batra vs. ITO [2010] 6 ITR(T) 147 (Jaipur)
- ix. Raj Babbar vs. ITO (2013) 29 taxmann.com 11 (Mumbai Trib.)
- x. Commissioner of Income Tax vs. George Henderson and Co. Ltd. [1967] 66 ITR 622 (SC)
- xi. CIT vs. Smt. Nilofer I. Singh (2008) 309 ITR 233 (Delhi HC)

- xii. ITO vs. Manjit Singh [2010] 128 TTJ 82 (Chandigarh) (UO)
- xiii. CIT, Panji vs. V. S. Dempo Company Ltd. [2016] 387 ITR 354 (SC)
- xiv. CIT vs. ACE Builders (P.) Ltd. (2005) 281 ITR 210 (Bom. HC)
- xv. CIT vs. Assam Petroleum Industries (P.) Ltd. (2003) 262 ITR 587 (Gau. HC)

Besides this, the Ld. AR also submitted that in case of assessee's wife, the issue has been decided in favour of the wife by the Tribunal in ITA No. 2235/Del/2016 order dated 18.11.2019 (Anit Miglani vs. ITO). Thus, the Ld. AR submitted that the issue is squarely covered in favour of the assessee.

6. The Ld. AR further submitted that the case laws relied by the Assessing Officer is not applicable to the facts of the assessee's case as judgment states that Section 50C will be applicable to determine sale consideration for the purpose of computation of capital gain and not for purpose of exemption. The judgment is not in respect of applicability of Section 50C on exemption claimed on capital gain. The Ld. AR further submitted that the case laws relied by the CIT(A) only supports the case of the assessee whereby it is held that the deeming fiction created by virtue of Section 50C in determining the capital gain cannot be extended to Section 54F and the capital gains arising from the transfer of any long term capital assets for the purposes of Section 54F has to be worked out the applying section 48 without imposing Section 50C into it.

7. The Ld. DR relied upon the order of CIT(A) and submitted that the CIT(A) has taken the cognizance of the Hon'ble Karnataka High Court's decision in case of M/s. Gauuli Mahadevappa vs. ITO 259 CTR 579. The Ld. DR submitted that the enhancement is properly justified by the calculation given by the CIT(A) in the order.

8. We have heard both the parties and perused all the relevant materials available on records. It is pertinent to note that the Assessing Officer admitted the claim of the assessee for exemption u/s 54F(1)(b) in respect of investment on long term capital gain but instead of taking actual sale consideration

received, has adopted the figure of sale consideration by invoking Section 50C. This is not in accordance with the provision of Section 50C which has created a deeming fiction. Section 54F is an exemption provision and it has given its applicability in itself, therefore, Section 50C will not come under picture. The Long Term Capital Gain exemption is admissible u/s 54F(1)(b) of the Income Tax Act, 1961 wherein total taxable gain comes to Rs.2,68,830/- only as the investment made by the assessee adopting the figure of the actual sale consideration received in consequence with Section 54F of the Income Tax Act. Therefore, the CIT(A) while enhancing the addition has ignored the very effect of the provisions of Section 54F. Besides this, the CIT(A) while enhancement has not given any reasons as to why the enhancement is necessary and why the assessee is not justified in adopting the figure of the actual sale consideration received. Thus the Assessing Officer as well as CIT(A) failed to justify the stand by making addition of Rs.30,17,456/- in respect of long term capital gain without granting exemption u/s 54F of the Income Tax Act. It is pertinent to note that we have already taken a view in case of assessee's wife Smt. Anita Miglani (supra) wherein the same order of the CIT(A) was under challenge that the enhancement was not right. The facts of the present case that of assessee's case is identical, therefore, the appeal of the assessee is allowed.

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

**Order pronounced in the Open Court on 2nd March, 2020.**

**Sd/-**  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 02/03/2020  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	20.02.2020
Date on which the typed draft is placed before the dictating Member	20.02.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	02 .03.2020
Date on which the final order is uploaded on the website of ITAT	02 .03.2020
Date on which the file goes to the Bench Clerk	02 .03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	