INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "A": NEW DELHI

BEFORE

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 1809/Del/2021
Asstt. Year: 2018-19

Dy. Commissioner of Income Tax, Central Circle, Ghaziabad.	Vs.	Smt. Anjali Mittal, B-7, Ashok Nagar, Ghaziabad-201 001. PAN AIGPM4257R
(Appellant)		(Respondent)

Assessee by:	Shri Somil Agarwal, Adv. Shri Deepesh Garg, Adv.
Department by :	Shri Kanav Bali, Sr. DR
Date of Hearing :	20.03.2023
Date of pronouncement :	06.04.2023

O R D E R

PER ASTHA CHANDRA, JM

This appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)–Kanpur-4, **("CIT(A)")** dated 20.09.2021 pertaining to the Assessment Year **("AY")** 2018-19.

2. The Revenue has taken the following grounds:-

"1. On facts and circumstances of the case and in. law, the Ld. CIT(A) erred in restricting the addition to the tune of Rs. l4,93,596/- as the Ld. CIT(A) has appreciated the fact that the investment in the purchase of new property was not made by the assessee herself but was made by the other family members.

2. *On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of surrendered income of Rs, 1,00,00,000/- as the surrendered was made by the son of assessee, voluntarily and alter due consultation with the assessee, and the surrendered was based on the difference of stock and unexplained cash found during the course of survey proceedings.*

3. *On facts and circumstances of the case and in law, the CIT(A) failed to allude to the relevant facts & circumstances and misread the facts to arrive at the conclusion."*

3. The assessee is an individual engaged in the business of purchase and sale of gold, silver and diamond jewellery in the name & style M/s. Pushpanjali Jewels. Survey under section 133A of the Income Tax Act, 1961 **(the "Act")** was conducted at her business premises on 30.05.2018. During the course of survey, the stock was got valued by an approved valuer who valued the stock at Rs. 5,57,34,223/- as against the value as per books at Rs. 4,63,31,680/-. During survey, statement of Shri Himanshu Mittal, Son of the assessee was recorded. He surrendered an amount of Rs. 1 crore as undisclosed income for the previous year relevant to AY 2018-19.

4. For AY 2018-19 the assessee e-filed her return on 31.10.2018 declaring income of Rs. 23,44,850/-. The case was selected for scrutiny. Statutory notices along with questionnaire were issued and complied with. The assessee submitted written reply and supporting documents before the Ld. Assessing Officer **("AO")** who completed the assessment on total income of Rs. 1,52,39,610/- including therein addition of Rs. 28,94,757/- on account of denial of exemption under section 54F claimed by the assessee and addition of Rs. 1 crore under section 69A of the Act being the amount surrendered by Shri Himanshu Mittal, son of the assessee during the course of survey.

5. The assessee appealed before the Ld. CIT(A).

6. The Ld. CIT(A) applied the provisions of section 54F(1)(b) of the Act, and computed the exempt value of capital gain at Rs. 14,93,596/- as against the assessee's claim of Rs. 28,94,757/- by recording his findings in para 6.4 to 6.8 as under:-

"6.4 I have carefully perused the observation of the AO in the matter of disallowance of claim of exemption u/s 54F of .IT Act of Rs. 28,94,757/-. The AO observes that in the matter of claim of exemption u/s 54F, the payments towards new property have been made by SH. Sharad Chand Mittal (HUF), SH. Sharad Chand Mittal in his individual capacity and Sh. Himanshu Mittal along with the appellant, however the same is required to be made out of sales of the old property on which capital gain is derived. On the other hand, the AR submits that, the facts of the case are that the assessee had sold old property for a consideration of Rs. 58,50,000/- and computed LTCG of Rs. 28,94,757/- which was claimed exempt u/s 54F because assessee purchased a property on 19.09.2018. These facts are not in dispute since appellant purchased the property in her name and made the payment of Rs. 9,05,478/- from her account and the balance payment of Rs. 20,49,765/- was made by her husband on individual capacity and on the capacity of Karta of HUF and her son for purchase of new property. The AR submits that the disallowance of capital gain of Rs. 28,94,757/- is patently wrong since the new property has been purchased and the investment has been made in the name of the appellant. The appellant also submits that as per the provisions of section 54F of IT Act there is provision that the new asset should be purchased in the name of the appellant and the same has been done therefore underlying condition of benefit of exemption is duly fulfilled.

6.5 From the facts of the case, it has been found that the appellant had sold immovable property on 03.03.2018 at Rs. 58,50,000/- and for computation of capital gain, she claimed Indexed Cost of Acquisition of Rs 29, 55,243/-, thus capital gain has been computed at Rs. 28,94,757/-. Further the appellant purchased a residential property vide sale deed dated 19.09.2018 and the payments for the same are made as under:

Date	Amount	Remarks
17.10.2012	3, 28,000/-	Ch No 281071 by Sharad Chand Mittal HUF (Karta is Husband)
17.10.2012	4,21,000/-	Ch No 281070 by Sharad Chand Mittal HUF (Karta is Husband)
09.01.2013	4, 21,000/-	Ch No 15141 by Sh Sharad Chand Mittal (Husband)
18.01.2013	3,28,000/-	Ch No 285804 by Sh. Himanshu Mittal (Son)
19. 10.2016	6, 00, 000/-	Ch. No 106321 by Sh. Himanshu Mittal (Son)
21.05.2018	9,05,478/-	Ch No. 830172 by Smt. Anjali Mittal (Assessee)

From the above it is clear that the total payment of Rs. 30,03,478/- has been made which includes cost of new asset of Rs. 28,31,600/- as per sale deed dt. 19.09.2018 and stamp duty. These payments for purchase of property have been made by Sh. Sharad Chand Mittal (HUF), Sh. Sharad Chand Mittal and Sh. Himanshu Mittal along with the appellant.

6.6 The appellant has relied on the decision of CIT vs Kapil Kumar Agarwal, (2016) 66 taxmann.com 191 (Punjab & Haryana) in which it has been observed that the assessee has to purchase or construct a house property during the period specified under Section 54F of the Act in order to get benefit there under. Section 54F of the Act nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilized for the purchase or construction of a house property No provision has 'been made by the statute that in order to avail benefit of Section 54F of the Act, the assessee has to utilize the amount received by him on sale of original capital asset for the purposes of meeting the cost of the new asset. Once that is so, the assessee was entitled for benefit under section 54F of the Act. Further reliance has been placed on the following decisions

Neelam Handa vs. 1TO; 1TA No. 384/Del/2016; (ITAT-Delhi)

ITO vs K.C Gopalan; (1999) 107 Taxman 591 (Ker)

Sunil Sachdeva vs. ACIT; ITA No. 4179/Del/2011 (ITAT Delhi)

From the careful perusal of the above judicial pronouncements, it can be seen that there is no limitation that only the sales proceeds of the original asset should be used for the purchase of the new asset to avail the benefit of exemption u/s 54F of IT Act. Therefore the benefit of exemption available u/s 54F of IT Act is allowed to the appellant.

6.7 The provisions of section 54F of IT Act are produced as under:

54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessed 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 assessed 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 –

(a) the assesses, -

b) owns more than one residential house, other than the new asset on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head " income from house property".

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.

From the above provisions, it is clear that since the cost of new asset i.e. Rs. 28,31,600/- is less than net sales consideration of old asset i.e. Rs. 58,50,000/-, the provisions of section 54F(1)(b) of IT Act shall apply and thus the exempt value of capital gain shall be computed as under:

*Capital Gain * Cost of new asset / Net sale consideration of old asset*

*= 28,94,757 * 28,31,600 / 58,50,000*

= 14,01,161/-

Therefore the taxable amount of capital gain is Rs. 14,93,596/- {Rs. 28,94,757 (-) Rs. 14,01,161/-}.

6.8 In the light of these observations, relief of Rs. 14,01,161/- is allowed and the disallowance of Rs. 28,94,757/- is restricted to Rs. 14,93,596/-. The grounds of appeal of the appellant relating to this disallowance of claim of exemption of Rs. 28,94,757/- u/s 54F of IT Act are disposed off accordingly."

6.1 Further, the Ld. CIT(A) deleted the addition of Rs. 1 crore made by the Ld. AO on account of difference in valuation of stock and excess cash found during search and supported by the surrender of the said amount by the son of assessee by recording his observations in para 7.3 to 7.6 and findings in para 7.7 to 7.9. We reproduce his findings below:

"7.7 I have carefully perused the submission of the appellant, there is force in the submission of the appellant that there is no difference in the quantity of stock as shown by the appellant in her books and as identify by Government approved valuer, the only difference in on the value and the reason of the same is that on the date of survey, I.e. on 30.05.2018 the government approved valuer took the value of Gold, Silver & Diamond as on tire prevalent prices, however the appellant valued her dosing stock in accordance to Accounting Standard- II. In the sworn statement the son of the appellant explained the reason of this difference. He also explained the reason of shortage of cash of Rs. 78,553/- in cash in hand as per books maintained in laptop and reason of physical cash found in the premises of Rs. 4,80,450/-,

7.8 In this regard it is observed that this has been directed by Hon'ble CBDT vide circular F. No. 236/2/2003-IT (lnv.) dt. 10.03.2003 that the confessions of additional income during the course of search and seizure and survey operations must be backed by credible evidences. Further vide circular F. Mo. 286/98/2013-!T (lnv. II) dt 18.12.2014 it has been directed that there should be no coercion to admit the undisclosed income during searches/ surveys and the admissions should be backed by credible evidences. The appellant has relied on various judicial pronouncements as produced above, to make a claim that the disclosure by the son of the appellant was not backed by credible evidences and hence she should not be forced to pay taxes on Rs, 1,00,00,000/-.

7.9 In the light of above observations, the addition of Rs. 1,00,00,000/- on account of difference on valuation of stock and the excess cash as claimed by the AO is hereby deleted and relief is allowed to the appellant."

7. The Revenue is aggrieved and is before the Tribunal. All the grounds relate thereto.

8. Regarding ground No. 1 the Ld. DR drew our attention to para 3.1 of the Ld. AO's order and submitted that the assessee has only paid Rs. 9,05,478/- on 21.05.2018 towards purchase of the new property and rest of the payment has been made by the outsiders, the modality of which has not been dealt with by the Ld. AO. He did not agree with the findings of the Ld. CIT(A) that meeting the cost of the new property by the other family members is in accordance with law.

8.1 The Ld. AR on the other hand relied on Ld. CIT(A)'s order and detailed submissions made before him which are incorporated by the Ld. CIT(A) in his order. He submitted that payment towards purchase of the new property

is made by the husband of the assessee and her son. Nothing has been paid by any outsider. He placed reliance on the decision of Hon'ble Punjab & Haryana High Court in CIT vs. Kapil Kumar Agarwal & Ors. (2016) 382 ITR 56 (P&H) and the decision of Delhi Bench of the Tribunal in Mr. Sunil Sachdeva vs. ACIT in ITA No. 4179/Del/2011 rendered on 15.01.2013 in support of his argument that no one to one co-relation is essential between the capital gain arising out of the sale of the old property and utilisation thereof for purchase of new residential property in order to claim the benefit of exemption under section 54F of the Act.

9. We have considered the rival submissions and perused the records. Perusal of the assessment order reveals that the Ld. AO negatived the assessee's claim of exemption under section 54F for the reason that the entire payment towards purchase of the new property was not made by the assessee alone. Other family members namely, her husband, his HUF and son of the assessee also made payments towards purchase of the new property; that the assesee did not utilise the sale consideration of the old property towards purchase of the new property. This contention of the Ld. AO was assailed by the Ld. AR before the Ld. CIT(A) by arguing that the long term capital gain arising out of sale of the old property was claimed as exempt under section 54F as the assessee purchased the new property in her name and paid Rs. 9,05,478/- from her account and rest of the payment was made by her family members. Once the new property is purchased and investment is made in the name of the assessee, the condition precedent for claiming exemption under section 54F stands fulfilled. The Ld. CIT(A) accepted the above contention of the assessee and rightly so as there is legal backing. It is held by Hon'ble Bombay High Court in Prakash Vs. ITO 173 Taxman 311 (Bom) that for qualifying for the exemption under section 54F it is necessary and obligatory to have the investment made in residential house in the name of the assessee only. This criteria has been fulfilled in the case of the assessee. Moreover, Hon'ble Punjab & Haryana High Court has held in the case of Kapil Kumar Agarwal (supra) that section 54F nowhere envisages that the sale consideration obtained by the assessee from original

capital asset is mandatorily required to be utilised for purposes of meeting cost of new asset. Therefore, where investment made by the assessee, although not entirely sourced from capital gain, but was within stipulated time and more than capital gain earned by him, the assessee was entitled to exemption under section 54F. The assessee brought on record evidence to show that the family members paid the amounts from their respective bank accounts to meet the cost of the new property purchased by the assessee. It may not be out of place to mention that the decision of Delhi Bench of the Tribunal rendered in Kapil Kumar Agarwal vs. ACIT reported in (2014) 63 SOT 22 (Del-Trib) (URO) has been affirmed by the Hon'ble P&H High Court in Revenue's appeal in Kapil Kumar Agarwal's case (supra). In Sunil Sachdeva's case (supra) Delhi Bench of the Tribunal also held that section 54F does not require one to one co-relation between capital gain arising out of transfer of long term capital asset and utilisation thereof for purchase /construction of residential house. Therefore, the argument of the Ld. DR and objection of the Ld. AO that sale consideration obtained from the old property has not been utilised by the assessee has no legal basis and cannot be a hindrance to the assessee for claiming exemption under section 54F of the Act. The Ld. CIT(A) observed that cost of new property i.e. Rs. 28,31,600/- was less than net sale consideration of old property i.e Rs. 58,50,000/-, the provisions of section 54F(1)(b) applied to the case of the assessee and computed exempt value of capital gain at Rs. 14,93,596/- as against Rs. 28,94,757/- taken by the Ld. AO. This has not been disputed by either side. For the reasons aforesaid, we reject ground No. 1 of the Revenue.

10. Ground No. 2 relates to surrender of Rs. 1 crore by the son of the assessee during the course of survey which has been deleted by the Ld. CIT(A). Drawing our attention to para 4.1 of the Ld. AO's order, the Ld. DR submitted that the son of the assessee had made the surrender of the impugned amount of Rs. 1 crore voluntarily and without any coercion and that the statement given during survey has substantial evidentiary value. Surrender was made on 30.05.2018 and the assessee retracted on

05.01.2021. The retraction, according to Ld. DR made after sufficient lapse of time is not acceptable. Moreover, the impugned addition is made on the basis of difference of stock and unexplained cash found during survey. The Ld. AR supported the order of the Ld. CIT(A). He pointed out that during survey the assessee was not present. She was hospitalized and the surrender was made by her son. Relying on the decision of the Hon'ble Supreme Court in CIT vs. S. Khader Khan Son (2013) 352 ITR 480 (SC), the Ld. AR submitted that the statement recorded during survey cannot be taken as evidence.

11. We have carefully considered the rival submissions and perused the record. The case of the assessee during assessment and appellate proceedings was that no difference was found in the quantity of stock. The difference of stock mentioned by the Ld. AO was only due to the fact that the approved valuer valued the stock on the basis of market price whereas the assessee had valued the closing stock as per accounting policy, namely cost or realisable value whichever is lower which method the assessee had followed year after year consistently. Since it is not a case where excess stock in quantity was found in survey, difference on account of valuation cannot form the basis of any addition. The assessee had produced before the Ld. AO all the bills which constituted the stock as on the date of survey which has not been considered and reliance was placed on the value adopted by the approved valuer as prevailing on the date of survey. This approach is not correct.

12. Before the Ld. CIT(A) the assessee challenged the authority of the son to the impugned surrender without her written authority and in her absence when she was hospitalised and her son too was under influence of medication. Copy of discharge summary of the assessee and medical prescription of her son was brought on record. During survey it was brought to the notice of the survey team that the assessee who actively looks after the affairs of business was not available owing to her ill-health and was admitted in hospital. On such facts and circumstances of the case, it can not be said that the surrender was voluntary and after due consultation

with the assessee. Hon'ble Supreme Court has held in Khader Khan Son's case (supra) that section 133A does not empower any Income Tax authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot by itself be made the basis for addition. Moreover, the Ld. CIT(A) considered the statement of the son of the assessee recorded during survey and noticed that he had explained that the shortage in cash and cash found at the time of survey was due to the fact that all the entries in the account books were not written up to date. To our mind, the delay in retraction by the assessee as pointed out by the Ld. AO cannot be of much significance when admittedly the assessee did not declare the surrendered amount in the return filed by her on 31.10.2018 just after a few months of the survey. This is also indicative of the fact that the surrender was not voluntary and with the consent of the assessee. The CBDT circulars mentioned by the Ld. CIT(A) in para 7-8 of his appellate order emphasise that there should be no coercion to admit undisclosed income and that admissions should be backed by credible evidence. Facts reveal that during survey, element of coercion cannot be ruled out and credible evidence to support the surrender was also lacking. We, therefore, concur with the findings of the Ld. CIT(A) and reject ground No. 2.

13. Ground No. 3 is of general nature not requiring adjudication.

14. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 6th April, 2023.

sd/-	**sd/-**
(SHAMIM YAHYA) **ACCOUNTANT MEMBER**	**(ASTHA CHANDRA)** **JUDICIAL MEMBER**

Dated: 06/04/2023

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	