

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 4647/DEL/2019  
[Assessment Year: 2013-14]**

Rakesh Kumar Kalra  
A - 600, Sector - 46  
Noida, Gautam Budh Nagar  
Uttar Pradesh

**Vs.**

The Income tax Officer  
Ward - 47(3)  
New Delhi

PAN: AADPK 3694 F

[Appellant]

[Respondent]

**Date of Hearing : 02.01.2020  
Date of Pronouncement : 06.01.2020**

Assessee by : Shri Bhupinderjeet, Adv

Revenue by : Shri Surender Meena, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 16, New Delhi dated 19.03.2019 pertaining to Assessment Year 2013-14.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the assessment thereby denying benefit of section 54 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. Representative of both the sides were heard at length. Case records carefully perused.

4. Facts emanating from the assessment order show that the assessee filed his return of income on 28.09.2013 declaring total income of Rs. 8.90 lakhs. Return was selected for scrutiny assessment through CASS and, accordingly, statutory notices were issued and served upon the assessee. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has computed his income declaring capital gain as under:

Full value of consideration	Rs. 1,10,00,000/-
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Less : Expenditure on transfer	Rs. 1,05,000/-
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Less : Indexed cost acquisition	Rs. 18,50,000/-
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Less : Indexed cost of improvement	Rs. 40,00,000/-
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Capital gain	Rs. 50,45,000/-
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5. The assessee was asked to furnish the details of claim of deduction while calculating the capital gain from sale of property.

6. In his reply, the assessee stated that he, alongwith his brother who was the co-owner of the property, sold the property for a consideration of Rs. 2.20 crores, and accordingly, the assessee's share out of the sale consideration was Rs. 1.10 crores. It was explained that 1% was paid as commission to the commission agent as transfer expenses. It was further explained that the said property was purchased in the year 2001 for an amount of Rs. 18.50 lakhs and the assessee's share came to Rs. 9.25 lakhs which was indexed as per the provisions of law and indexed cost was taken at 18.50 lakhs. It was further explained that the said property was completed in F.Y. 2003 and total cost of construction was Rs. 43.50 lakhs. Taking his 50% share, cost of construction was taken at Rs. 21.73 lakhs and after indexation, it was at Rs. 40 lakhs.

7. The Assessing Officer asked the assessee to furnish details of expenses incurred towards completion of sold property amounting to Rs. 21.73 lakhs which was indexed at Rs. 43.50 lakhs.

8. The assessee furnished a documentary evidence in the form of a document from the Stamp Duty Valuation Authority showing the minimum cost of construction effective from 01.04.2002 which was Rs. 8000/- per sq. metre. Not satisfied with this evidence, the Assessing Officer again asked the assessee to substantiate the claim for cost of construction /improvement with supporting evidences.

9. On receiving no plausible reply, the Assessing Officer computed the capital gain from transfer of the property as under:

"In such circumstances cost of construction/improvement claimed by the assessee in his computation of capital gain is not fully allowable. However, it is observed from the sale deeds of properties that the property, when it was purchased has covered area of 60.14 sq, meter only and when it was sold it has covered area of 439.06 sq, meter, Therefore, this fact cannot be denied that the assessee has made construction after acquiring the above property. However, In absence of any supporting documentary evidences, cost of construction/Improvement Is taken as minimum cost of construction as per the Government rate, Covered area of sold property Is 439.56 sq, meter and minimum cost of construction

prevailing at the time of construction is Rs.8,000/- per sq, meter, Therefore, the cost of construction Is calculated as Rs.35,16,480/-, for whole of the property, Since assessee's share In the property was 50%, therefore, Rs.17,58,240/- is taken as cost of construction on part of the assessee In the year 2003, Thus indexed cost of construction / Improvement for the year under consideration comes out to be Rs.32,35,465/- which is allowed while calculating capital gain.

2:6 Therefore, in view of the above discussion, capital gain from transfer of the property during the year under consideration by the assessee is calculated as under:

Full value of consideration	Rs. 1,10,00,000/-
Less: Expenditure on transfer	Rs, 1,05,000/-
Less: Indexed cost acquisition	Rs. 18,50,000/--
Less: Indexed const, of improvement	Rs. 32,35.465/-
<b>Capital Gain</b>	<b>Rs, 58,09,535/-</b>

10. Proceeding further, the Assessing Officer sought explanation from the assessee for claim of exemption u/s 54 of the Act.

11. In his reply, the assessee submitted that he has purchased a property for Rs. 53 lakhs. Copy of purchase deed was furnished. The Assessing Officer, not convinced, further asked the assessee to justify its claim of exemption u/s 54 of the Act. The assessee replied that construction is going on, on the said plot. Accordingly, an Inspector was deputed by the Assessing Officer for physical verification and in his report, the Inspector submitted that construction is still going on and is not yet completed.

12. The Assessing Officer was of the firm belief that since the property was sold on 07.05.2012, the assessee should have completed the construction by 07.05.2015, and since no construction was completed within three years, the Assessing Officer denied exemption u/s 54 of the Act and made addition on long term capital gain at Rs. 58,09,535/-.

13. The assessee carried the matter before the Id. CIT(A) but without any success.

14. The first appellate authority dismissed the claim of the assessee for want of documentary evidence towards cost of improvement/ construction.

15. Before us, the ld. counsel for the assessee vehemently submitted that the assessee has already invested Rs. 64.74 lakhs towards cost of construction, which is much higher than the capital gain computed by the Assessing Officer at Rs. 58.09 lakhs. It is the say of the ld. counsel for the assessee that even if the computation of the Assessing Officer is accepted, then also, since the assessee has incurred more than the capital gains, he is eligible for exemption u/s 54 of the Act.

16. Per contra, the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that the assessee is supposed to complete the construction of the house within three years from the date of sale of property on which capital gain arose and since the assessee has failed to complete the construction he is not eligible for claim of exemption.

17. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee did invest Rs. 53 lakhs in purchase of land within the specified period. The Assessing Officer did not allow exemption to the assessee on the ground that residential house was not constructed within three years

of sale of house property and even at the end of the stipulated period of three years, the house was incomplete.

18. In our understanding of the law, when question of allowance of benefit of section 54 is required to be considered, it is envisaged in the statutory provision that the house to be constructed at that stage might be under construction and capital gain at that time not only appropriated or utilised. It is, therefore, not correct to insist that the assessee should establish that residential house is complete and then ask for benefit u/s 54 of the Act. What is required under the section is that the assessee should take steps to make investment in a residential house. Thus, emphasis is on the utilisation or investment of capital gain in construction of residential house.

19. Considering the facts of the present case, claim of the assessee is that he had invested full sale consideration, and over and above that, some more money and total investment is at Rs. 64.74 lakhs.

20. The Hon'ble High Court of Madhya Pradesh in the case of Smt. Shashi Varma 224 ITR 106 has held that while allowing exemption u/s 54 of the Act, investment for acquisition of flat under the Scheme of



DDA, where first instalment was paid, was much more than the capital gains, deduction is to be allowed as section 54 does not require that the construction of new house should necessarily be completed within two years where substantial investment is made in construction of house.

21. Requirement of section 54 of the Act is for the assessee to have either purchased a residential house, being a new asset, within the stipulated period or construct a residential house within a period of three years from the date of transfer. The section does not prescribe the completion of construction of residential house and the thrust is on the investment of net consideration received on sale of original asset and start of construction of a new residential house.

22. In our understanding of the facts and law, it is clear that for the Assessment Year in question, all that is required for the assessee to avail exemption contained in the section is to utilise the amount of capital gain for purchase and acquisition of new asset.

23. Since the assessee has claimed that he has invested Rs. 64,74,946/-, which is higher than the amount of capital gain computed

by the Assessing Officer, the assessee is very much eligible for claim of exemption u/s 54 of the Act.

24. However, since no documentary evidences have been furnished and only a claim has been made, we deem it fit to restore the issue to the file of the Assessing Officer. The assessee is directed to demonstrate that he has already invested Rs. 64,74,946/- towards construction of house and the Assessing Officer is directed to examine the documentary evidences and if found correct, allow benefit of section 54 of the Act. With the above directions, the grounds of appeal raised by the assessee are allowed for statistical purposes.

25. In the result, the appeal filed by the assessee in ITA No. 4647/DEL/2019 is treated as allowed for statistical purposes.

**The order is pronounced in the open court on 06.01.2020.**

**Sd/-**

**(BHAVNESH SAINI)  
JUDICIAL MEMBER**

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Dated: 06<sup>th</sup> January, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	
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