

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.472/Coch/2016 : Asst.Year 2007-2008

The Asst.Commissioner of Income-tax Central Circle 1 Ernakulam.	Vs.	Shri Tony J.Pulikkal Pulikkal House Opp : Medical Trust Hospital, Pallimukku Kochi – 682 016. <b>PAN : ACTPP3476A.</b>
(Appellant)		(Respondent)

CO No.02/Coch/2017 : Asst.Year 2007-2008

Shri Tony J.Pulikkal Pulikkal House Opp : Medical Trust Hospital, Pallimukku Kochi – 682 016.	Vs.	The Asst.Commissioner of Income-tax Central Circle 1 Ernakulam.
(Cross Objector)		(Respondent)

Revenue by : Sri. A.Dhanaraj, Sr.DR  
Assessee by : Smt.Preetha S.Nair

<b>Date of Hearing : 23.07.2018</b>	<b>Date of Pronouncement : 25.07.2018</b>
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**ORDER**

**Per Bench**

This appeal at the instance of the Revenue and the cross objection preferred by the assessee, are directed against the order of the CIT(A) dated 13.07.2016. The relevant assessment year is 2007-2008.

2. First we shall adjudicate the Revenue's appeal. In Revenue's appeal, two issues are raised –

(i) whether the assessee is entitled to deduction u/s 54F of the I.T.Act as regards investments made in a residential house up to the period mentioned u/s 139(1) or 139(4) of the I.T.Act;

(ii) whether the CIT(A) was justified in directing the Assessing Officer to treat 50 cents of land as land appurtenant to the residential house for grant of deduction u/s 54F of the I.T.Act.

3. Briefly stated the facts of the case are as follows:

3.1 The assessee, an individual, for the assessment year 2007-2008, filed return of income on 14.04.2010 in response to notice issued u/s 148 of the I.T.Act declaring total income of Rs.1,92,10,040. The assessee along with his brother was holding 79.72 cents of land. The said land jointly held by the assessee and his brother, was sold for a total consideration of Rs.15 crore, of which the assessee's share was Rs.7.5 crore (sale on 16.03.2007). The index cost of the acquisition of the said land was Rs.1,38,262 and the gains amounting to Rs.7,48,61,738 was claimed as exempt in the following manner:-

(i)	U/s 54EC by investing amounts in capital gains bonds	Rs.50,00,000
(ii)	Amount reinvested in 196.144 cents of land on 15.06.2007 for construction of house u/s 54F.	Rs.3,79,95,060
(iii)	Amount utilized for construction of house (house construction completed on 15.03.2010) – u/s 54F (out of this Rs.40,00,000/- was invested in Capital Gains Account Scheme on 07.01.2008)	Rs.81,41,120

3.2 While completing the assessment u/s 143(3) r.w.s.147 of the I.T.Act, the Assessing Officer allowed deduction u/s 54EC of the I.T.Act, but disallowed the entire claim of deduction u/s 54F of the I.T.Act by holding that the construction of the house was not completed within three years. On further appeal, the CIT(A) granted deduction u/s 54F to the extent of Rs.91,09,066. The details of which are as follows:-

(i)	Out of 196.144 cents of land purchased, only 5 cents of land was allowed as Appurtenant to building – Proportionate land cost allowed	Rs.9,68,548
(ii)	Cost of construction of house allowed	Rs.81,41,120
	Total	Rs.91,09,668

3.3 Aggrieved by the order of the CIT(A), both the assessee and the Revenue filed appeal to the Tribunal. The ITAT remanded the case to the Assessing Officer with the following directions :-

(i) The extent of 5 cents land allowed by the CIT(A) is not reasonable. The A.O. was directed to determine the area of land which is required for convenient enjoyment of the house having regard to the social status and profession etc. of the assessee and the locality.

(ii) The allowability of amount deposited in Capital Gains Account needs to be reconsidered in the light of the decision of apex court in *Prakash Nath Khanna & Anr v. CIT (2004) 266 ITR 1 (SC)*.

3.4 Subsequent to the ITAT order, fresh assessment order was passed by the A.O. on 13.01.2016. The Assessing Officer disallowed the entire claim of deduction u/s 54F of the I.T.Act. The Assessing Officer also rejected the assessee's alternative plea of deduction u/s 54B of the I.T.Act.

3.5 Aggrieved by the order of the Assessing Officer dated 13.01.2016, the assessee preferred appeal to the first appellate authority. The CIT(A) held that the only relevant issue for consideration of the Assessing Officer subsequent to remand by the ITAT is, as regards to extent of land which can be considered as the land appurtenant to for the claim of deduction u/s 54F. The CIT(A) concluded that the land appurtenant to for the purpose of deduction u/s 54F of the I.T.Act can be considered as 50 cents of land as reasonable having regard to the facts of the case.

4. Aggrieved by the order of the CIT(A), the Revenue has filed this present appeal raising following grounds:-

*"1. The CIT(A) has not appreciated that two issues were remitted to the Assessing Officer for fresh consideration by the ITAT. These issues are (1) The area of land that can be considered as "land appurtenant to the house" within section 54F and (2) The compliance of the assessee with section 54F(4) in the light of the Supreme Court's decision in Prakash Nath Khanna vs CIT [2004] 266 ITR 1(SC). In his order the CIT (A) has considered the first issue only and has not dealt with the latter issue.*

*2. The CIT(A) has failed to appreciate that as per sub section (4) to section 54F, if the sale consideration is not appropriated for the purchase of a house before the due date of filing the return, the same has to be deposited in a Capital Gains Accounts Scheme of a Bank before the date of filing the return u/s 139(1) and must be utilized as per this scheme; also the proof of such deposit must be filed with the return of income.*

*3. The CIT(A) has not appreciated that section 54F begins with the clause "Subject to the provisions of sub section (4)". Therefore subsection (4) is integral to the interpreting section 54F. The CIT(A) has not appreciated that the assessee has not complied with section 54F(4). The transaction took place on 16.03.2007. The assessee deposited only Rs.40 lakhs in the capital accounts scheme that too on 07.01.2008. (Long after the due date for filing the return of income, which was 31.07.2007). Again the construction of the house was not undertaken by drawing funds from this account as required. The assessee claims to have spent Rs.81,41,120/- on the house, the total amount deposited is only Rs.40 lakhs.*

4. *The CIT(A) has not appreciated that following the Hon. Supreme Court's decision in Prakash Nath Khanna, time limit mentioned in section 139(1) is sacrosanct.*

5. *The CIT(A) has not appreciated that since assessee did not comply with sub section (4) of 54F, the assessee became ineligible for deduction u/s 54F. Therefore the AO did not need to separately decide on the issue of area of land to allowable as "land appurtenant" u/s 54F.*

5. *The CIT(A) has erred in holding that 50 cents of land is to be treated as land appurtenant to a residential building of area 254.94 square meter. The determination made by CIT(A) is excessive even for moderate F.A.R."*

5. As regards the first issue whether the assessee is entitled to deduction u/s 54F of the I.T.Act as regards investments made in the residential house up to the period mentioned u/s 139(1) or 139(4) of the I.T.Act, the Tribunal in the recent order in the case of *ITO v. Late Shri K.Sasidharan [ITA No.56/Coch/2017 – order dated 10.07.2018]* by following the judicial pronouncements had held that the assessee is entitled to the claim of deduction u/s 54F for investments made up to the due date of filing of the return u/s 139(4) of the I.T.Act. The relevant finding of the Tribunal, which had followed the judgments of the Hon'ble Guwahati High Court in the case of *CIT v. Rajesh Kumar Jalan [206 CTR 361]*, Hon'ble Karnataka High Court in the case of *CIT v. Fatima Bai [32 DTR 243 ]*, and Hon'ble Punjab & Haryana High Court in the case of *CIT v. Jagriti Agarwal [339 ITR 610]*, reads as follows:-

*"8. We have heard the rival submissions and perused the material on record. The assessee sold the capital asset on 01/04/2005. Admittedly, the assessee filed the return of income on 18/07/2006 for the assessment year 2006-07. As per section 139(1) of the Act, the return of income for assessment year 2006-07 should have been filed on or before 31/07/2006. The assessee is said to have made investment in construction of new building on 22/01/2007. According to the Assessing Officer, the assessee should have made investment in the residential building before 31/07/2006. The Assessing Officer denied the exemption u/s.54F of the Act on the reason that the return filed within the extended time limit available of filing of return of income u/s. 139(4) cannot be considered.*

*8.1 The Karnataka High Court in the case of CIT vs. Fathima Bai (32 DTR 243), the Guwahati High Court in the case of CIT vs. Rajesh Kumar Jalan (206 CTR 361) held that the due date for the assessee to invest the amount of capital gains in purchase/construction of new residential asset or investment in capital gains scheme u/s. 54F of the Act refers to the "extended due date" u/s. 139(4) of the Act. So far as the time limit for assessee to invest in construction of residential building, the time limit available u/s. 139(4) is to be considered to that extent we are agreeing with the contention of the Ld. AR. However, during the intermediary period, i.e., after the sale of capital asset till the date of investment, the amount has to be deposited in an account in any such bank or institution as may be specified in and utilized in accordance with any scheme of Central Government notified in official gazette framed in this behalf and the assessee shall file proof for such deposit. The Assessing Officer in this case has rejected the claim of assessee that the assessee has not utilized the capital gains on transfer of capital asset in investment in residential building as specified in*

*section 54F(1) of the Act on the reason that the assessee has not filed the return of income within due date in terms of sec. 139(1) of the Act.*

*8.2 The Ld. DR made a plea that the assessee has not invested the capital gain in the capital gain accounts deposit scheme before the due date of filing of return of income u/s. 139(1) of the Act and the investment in the residential building was made after the due date of filing the return of income and hence, the assessee is not entitled for deduction u/s. 54F of the Act. The Ld. AR's contention is that the assessee has purchased the land with partially completed building on 22/01/2007 for the consideration of Rs.7.03 lakhs and additional expenses were incurred at Rs.12.36 lakhs to complete the project. Thus, the total investment is Rs.19.78 lakhs and hence, deduction u/s. 54F is to be granted.*

*8.3 In our opinion, the decision of the Karnataka High Court in the case of CIT vs. K. Ramachandra Rao (56 taxman.com 163) is applicable wherein it was held that as per sec. 54F(4), in the event of the assessee not investing the capital gains either in purchasing the residential building or in constructing a residential house within the period stipulated in sec. 54F(1), if the assessee wants the benefit of sec. 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words, if the assessee claims exemption from payment of income tax by retaining the cash then the said amount is to be invested in the said account notified by the Central Government on this behalf. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein i.e., section 139(4), then section 54F(4) is not all attracted and therefore, the contention that the assessee has not deposited the amount in the bank account as stipulated and therefore, he is not entitled to the benefit even though*

*he has invested the money in construction is also not correct. A similar view was taken by the Kerala High Court in the case of Dr. Xavier J. Pullikal vs. DCIT (104 DTR 134). In our opinion, the assessee could make investment in construction of new residential building within three years from the date of transfer of original asset to claim deduction u/s. 54F of the Act. Provisions of section 54F are beneficial provisions and are to be considered liberally.*

*8.4 In view of the above discussion, we are inclined to remit the issue to the file of the Assessing Officer to examine the fulfillment of the conditions u/s. 54F of the Act through intermediary period, i.e., from the date of transfer of the capital asset to the date of actual investment in construction of residential building. Accordingly the issue of allowability of deduction u/s. 54F is remitted to the file of the Assessing Officer with the direction to the assessee to prove the investment in the residential building as prescribed u/s. 54F of the Act before the due date of filing of return of income u/s. 139(4) of the I.T. Act, i.e., 31/03/2007. Accordingly, this issue is remitted to the file of the Assessing Officer for fresh consideration after giving adequate opportunity of hearing to the assessee. The appeal of the Revenue is partly allowed for statistical purposes."*

6. In view of the order of the Cochin Bench of the Tribunal (supra), we hold that the assessee is entitled to deduction u/s 54F of the I.T.Act as regards the investments made in a residential house up to the period mentioned u/s 139(4) of the I.T.Act. This ground of appeal of the Revenue is dismissed.

7. As regards the CIT(A)'s direction to the A.O. to treat 50 cents of land as land appurtenant to the residential house for

the grant of deduction u/s 54F of the I.T.Act, the relevant finding of the CIT(A) reads as follows:-

*"14. It is found that the house constructed by the assessee does not fall in the jurisdiction of Corporation or Municipality and, since it is within the limits of Gram Panchayat, usual requirement of land for constructing the house is much higher. Accordingly, it is held that upto 50 cents of land could be reasonable, having regard to the fact of the case. In view of this, the AO is directed to consider the cost of 50 cents of land for the purpose of deduction u/s 54F."*

8. In the instant case, the assessee after selling the original asset on 15.06.2007, had purchased land admeasuring 196.14 cents of land for construction of residential house on 15.06.2007. The CIT(A) in the first round of litigation had considered only the cost of 5 cents of land entitled to deduction u/s 54F of the I.T.Act. On further appeal by the assessee, the Tribunal restored the issue to the Assessing Officer. The Tribunal held that for the convenient enjoyment of the residential house and having regard to the social status of the assessee to the extent of land of 5 cents allowed by the CIT(A) was not reasonable. The CIT(A) in the second round of litigation, had considered 50 cents of land as land appurtenant to the residential house while granting deduction u/s 54F of the I.T.Act. The learned DR in the written submission had agreed that 50 cents of land taken as "land appurtenant thereto" was reasonable. Therefore, this issue raised by the Department is dismissed.

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9. In the course of hearing of the Cross Objection, the learned Counsel did not press for the ground raised therein, hence, the C.O. is dismissed as not pressed. It is ordered accordingly.

10. In the result, the Revenue's appeal and assessee's Cross Objection are dismissed.

Order pronounced on this 25<sup>th</sup> day of July, 2018.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 25<sup>th</sup> July, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT (Appeals)-IV, Kochi.
4. The Pr.CIT Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**