

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 5670/DEL/2019
Asstt. Yr: 2015-16**

DCIT, Circle-22(2), New Delhi.	<u>Vs</u>	Sandeep Hooda, 4, Factory Road, Safdarjung Enclave, New Delhi-110029
		PAN: AACPH5453J
APPELLANT		RESPONDENT
Assessee represented by	Dr. Rakesh Gupta, Adv.; & Shri Deepesh Garg, Adv.	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	06.02.2024	
Date of pronouncement	29.04.2024	

ORDER

PER M. BALAGANESH, AM:

The captioned appeal, preferred the Revenue, is directed against the order dated 04.04.2019 passed by the learned Commissioner of Income-tax (Appeals)-8, New Delhi, arising out of assessment order dated 27.12.2017, u/s 143(3) of the Income-tax Act, 1961, passed by the ACIT, Circle-22(2), New Delhi, pertaining to the assessment year 2015-16.

2. The Revenue has raised following grounds of appeal before us:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was right in allowing the assessee company deduction u / s 54 of the Income Tax Act, 1961 to the tune of Rs. 5,63,74,550/- without proper appreciating the facts and findings of AO."

"2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in extending the assessee company the benefit of section 54 of the Income Tax Act, 1961 on the ground that the residential house so claimed by the assessee was indeed fit for dwelling purpose when no basic amenities like proper water and electricity connection was available".

"3. Whether on the facts and circumstances of the case and in law, the LD. CIT(A) was right in extending the assessee company the benefit the section 54 of the Income Tax Act, 1961 when the so called residential house was just a makeshift/temporary arrangement made of plywood wall and plywood roof having genset for electrification and around 300 litre syntax for water usage/supply".

"4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in extending the assessee company the benefit of section 54 of the Income Tax Act, 1961 effectively on the purchase of agricultural land as against residential house mandated u / s 54 of the Income Tax Act, 1961".

"5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in law in ignoring the decision of the Hon'ble Punjab Haryana High Court judgement in the case of Dr. A.S. Atwal vs. Commissioner of Income tax (2005) 146 Taxman 171 while extending the benefit of section 54 of the Income Tax Act, 1961 to the assessee company, when the Hon'ble High Court categorically stated that "a house was one which could be used by the assessee for his residence and putting up of tin sheds for being used by somebody to reside without here being basic living amenities like bathroom, kitchen, electricity etc. would not pass the definition/test of "dwelling unit" or "a house"

6. The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal."

3. From the perusal of the above grounds we find that the only effective issue to be decided in this appeal is as to whether the assessee would be eligible for claiming deduction u/s 54 of the Income-tax Act, 1961, in the facts and circumstances of the instant case.

4. We have heard rival submissions and perused the material available on record. The return of income for A.Y. 2015-16 was filed by the assessee individual on 31.03.2016 declaring total income of Rs. 1,27,54,600/-. During the year under consideration the assessee sold a property for Rs. 6,88,00,000/-, on which he earned capital gain of Rs. 5,63,74,550/-. The assessee claimed deduction u/s 54 of the Act to the tune of Rs. 5,63,74,550/- in the return of income. The learned AO observed that in the instant case the property that was subject matter of transfer, was a residential property which was sold on 25.09.2014 in favour of Shri Kore for Rs. 6,88,00,000/-. The date of transfer being 25.09.2014, as per the provisions of Section 54 of the Act, the assessee in order to claim deduction u/s 54 of the Act, should have purchased a new residential property on or before 25.09.2016 or should have constructed a new residential property on or before 25.09.2017. In the opinion of the learned AO, this condition was not satisfied by the assessee. Learned AO observed that

assessee had only entered into an agreement to sell on 12.03.2015 with M/s Vera Edu Infra Pvt. Ltd. for purchase of 1.75 acres of agricultural land, on which he was desirous to construct a residential building. The learned AO observed that based on oral discussion with the learned AR of the assessee on the status of construction of the house, the house had not been constructed till 13.11.2017. Accordingly, vide order-sheet entry dated 13.11.2017, the assessee was asked to show cause as to why deduction claimed u/s 54 of the Act should not be disallowed as the construction of the house was not completed on or before 25.09.2017, as per the mandate of Section 54 of the Act. No reply was filed by the assessee on the appointed date. Learned AO on 27.11.2017 sought clarification from the learned AR of the assessee in the form of questions and answers, which are reproduced hereunder:

"Q.1 When the property 1/7 Shanti Niketan, New Delhi - 110002' was sold?"

A. September 25, 2014

Q.2 When did you purchase the new property 'Khewat No. 76, Khatoni No. 76, Village Bandhwari, Sohna, Distt. Gurgaon'?"

A. March 12, 2015

Q.3 What was the nature of property in Q.2?"

A. Agricultural land (suitable for construction of a residential house?"

Q.4 What is the present status of the property in Q.2?

A. As per assessee, there is a boundary wall, 1 bedroom accommodation, toilet (attached), and 1 guard room. Regarding electricity supply we are not aware of present situation. Regarding water connection, we are also not aware of current water connection status. Constructed area is approx. 150-200 sq. ft.

Q.5 When will you submit the final details with respect to Q.4? Assessee has been informed to give supporting pictures.

A. 30th November, 2017.

Q.6 Would you like to add anything more in the above statement?

A. No."

5. From the aforesaid replies given by the assessee, the learned AO concluded that learned AR of the assessee had confirmed that there was no electricity supply, water connection in the subject mentioned property for which deduction u/s 54 of the Act was claimed and even the approved map for construction of the house was not submitted by the assessee. Since learned AR kept on buying time from the learned AO for furnishing the requisite details, the Inspector along with Office Superintendent attached to the office of the learned AO was deputed to verify the actual construction carried out in the land situated at village Bandhawari, Sohna, Gurgaon. The Inspector reported that the area

was vast uninhabited and comprised of hilly terrain and could not identify the exact location of the land. The Inspector's report is reproduced hereunder:

*"INSPECTOR'S REPORT
(in the case of Sandeep Hooda)*

As directed, I, along with Shri. Tarkeshwar sah, OS went for enquiry of the land at Khewat No. 76, Khatoni No. 76, Village Bandhwari, Sohna, Gurgaon on 25.11.2017. On reaching the village Bandhwari, we met Sarpanch Lakhani (Mobile No. 9891475497) at his residence. On enquiry, he informed us that he was unable to identify the exact location of the land since the area was vast, uninhabited and comprise of hilly terrain. He also had given us the contact number of Patwari named Mr. Sawan (Mobile No. 9991160943), on contacting Mr. Sawan, he informed us that without Kila/Musti number, it is difficult to identify the exact location of the land.

*T. KHUP SUAN LIAN
Inspector*

*ACIT, Circle - 22(2)
New Delhi"*

6. Later, the learned AR was asked by the learned AO to arrange a visit of the site on 07.12.2017, which he agreed. Again on 07.12.2017 Inspector and Office Superintendent attached to the office of learned AO along with the learned AR visited the site and the Inspector furnished the following report:

*"INSPECTOR'S REPORT
(in the case of Shri. Sandeep Hooda)*

1. One makeshift guardroom (make plywood) of 7x6 feet. One cylinder and one gas stove along with some utensils were found in the guard room, on which guard Sh. Padam Singh prepares his daily food items.

2. *One similar room of plywood of 16 * 12 feet was also there, with toilet attached, in which some furniture was lying. Nobody lives there except than guard.*
3. *No electricity connection was there on the land. For electricity genset is used.*
4. *No water connection was found in the premises. Only source of water was found to be a syntax tank of approximate 300 litres.*
5. *All the above makeshift structures were constructed in a corner of the land. The rest of the land i.e. 1.75 acres was lying simply vacant.*
6. *Lastly, the land was not having a cemented boundary walls. On three sides it was encircled by barbed wires and cemented pillars."*

Office superintendent

Inspector

ACIT, Circle-22 (2)"

7. Based on the Inspector's report again the final show cause notice was issued to the assessee as to why deduction u/s 54 of the Act should not be denied. The learned AO observed that any residential house should have the following basic amenities such as boundary wall, kitchen, proper supply of water and electricity, sewerage, washroom etc. In this case, there was no permanent boundary wall. In fact the land was surrounded by barbed wires and cemented pillars which is generally used to keep animals away from the land. He observed that in the name of kitchen, there was a small table roughly of 6 sq. feet with a

gas stove, a 5 kg. gas cylinder and some utensils. No grocery items/ stocks are seen in and around the kitchen for day to day consumption. This temporary arrangement, which was meant for guard primarily is far from the definition of kitchen. Further, the learned AO noted that the assessee does not have the approved map for the constructed house. Learned AO relied on the judgment of Hon'ble Punjab & Haryana High Court in the case of Ashok Syal v. CIT in ITA no. 566 of 2005, which, according to him, squarely applied to the facts of the instant case before us. Accordingly, the learned AO denied deduction u/s 54 of the Act in the sum of Rs. 5,63,74,550/-.

8. The learned CIT(A) observed that the house is located in a rural area, where no particular norms for construction are prescribed by the local Authorities and assessee cannot be forced/expected to observe all those norms, which are particularly prescribed by Municipal Authorities for urban housing. He stated that assessee had produced a copy of certificate dated 29.08.2015 issued by the Sarpanch of the village, certifying that the assessee had constructed the house and lived occasionally there on that address. The assessee also produced a copy of the certificate issued by an Architect Shri Avinash Vaidya dated 11.09.2017 certifying that the assessee's house consisted of 2 rooms with toilet, kitchen and garden at the address specified by the assessee. Hence, he held that the

assessee had duly invested in the residential property, thereby making him eligible for deduction u/s 54 of the Act.

9. In our considered opinion, the learned AO had ensured that the concerned site where the property is situated had been visited physically by the Inspector and the Office Superintendent twice. In fact, one such visit was made physically to the site in the presence of Authorized representative of the assessee who appeared before the learned AO. The Inspector's report pursuant to the physical visit was duly reproduced by the learned AO in the assessment order which is also reproduced in this order hereinabove. Whether the residential house is situated in urban locality or in rural locality, the basic amenities such as boundary wall, kitchen, wash room, bed room, electricity connection, water connection, are all certainly required in order to have a proper habitation and dwelling thereon. From the aforesaid facts, it is evident that none of these basic amenities are present on the subject mentioned property for which deduction u/s 54 of the Act is claimed by the assessee. Though the assessee might be intending to construct a full fledged residential house on the agricultural land purchased by him, the aforesaid facts clearly bring out that such residential house, having the basic amenities was not constructed by the assessee on or before 25.09.2017 (i.e. three years from the date of transfer i.e. 25.09.2014). Even as late as on 7.12.2017, the Inspector of Income-tax along with Office

Superintendent attached to the office of the learned AO, together with the Authorized Representative of the assessee (who appeared before the learned AO), had physically visited the site and had confirmed the aforesaid facts that the alleged house did not even have the basic amenities listed herein above. Hence, we have no hesitation to hold that the assessee had not constructed the residential house within the prescribed time and in fact had not constructed a residential house at all on or before 25.09.2017 which could be construed as a residential house, habitable for its dwelling. Accordingly, deduction u/s 54 of the act had been rightly denied by the learned AO in the instant case. The various case laws cited by the learned AR before us are completely distinguishable on facts and do not apply at all in any manner to the facts prevailing in the instant case before us. Sarpanch's certificate dated 29.08.2015, purportedly relied upon by the learned CIT(A), was not placed on record before us. Even in this case the learned CIT(A) had only observed that the assessee had constructed the house and lives occasionally there on the address. Similarly, the Architect has given a certificate 11.09.2017 that the assessee's house consisted of 2 rooms with toilet, kitchen and garden. In our considered opinion, both these certificates, even though not placed before us either by the Revenue or by the assessee, do not carry any evidentiary value inasmuch as when there is a physical inspection carried out as late as on 07.12.2017, wherein photographs were also taken of the subject mentioned property, the basic amenities were not available in the

subject mentioned property. Hence, reliance on these two certificates of Sarpanch and Architect by the learned AR, in our considered opinion, is thoroughly misplaced. With these observations, the grounds raised by the Revenue are allowed.

10. In the result, appeal of the Revenue is allowed.

Order pronounced in open court on 29.04.2024.

Sd/-
(SHRI SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 29.04.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI