

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH `A` : NEW DELHI)  
BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER AND  
SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.2756/Del./2011  
(Assessment Year : 2006-07 )**

**Shri B.M. Labroo,  
D-1/54, Vasant Vihar,  
New Delhi.  
(PAN/GIR No.AAAPL8061E)**

**Vs.**

**DCIT, Circle 24(1),  
New Delhi**

**(Appellant)**

**(Respondent)**

**Assessee by : Shri G.S. Grewal,  
Revenue by : Shri S.K. Upadhyay, Sr.DR**

**ORDER**

**PER U.B.S. BEDI, J.M.**

This appeal of the assessee is directed against the order passed by the CIT (A)-XXII, New Delhi, dated 28.01.2009, relevant to assessment year 2006-07, whereby confirmation of disallowance of Rs.14,62,362/- out of Rs.1,90,95,606/- claimed u/s 54 of the I.T. Act, 1961 from the long term capital gains has been challenged.

2. The facts indicate that during the previous year relevant to assessment year 2006-07, the assessee sold a residential property in Bangalore for Rs.4,00,00,000/- on 29.4.2005 and long term capital gains of Rs.3,95,38,545/- was arisen in the hands of the assessee.

2.1 The assessee made the following two investment in residential properties:

- (i) Rs.3,65,00,000/- paid to Triumph Estate Private Limited for construction of a residential property in Bangalore. The construction was to be completed by 31<sup>st</sup> March, 2008. The following payments were made:

<u>Date of payment</u>	<u>Amount (in Rs.)</u>
10.03.06	50,00,000/-
18.02.06	2,50,00,000/-
27.07.06	30,00,000/-
22.08.06	<u>35,00,000</u>
<u>Total:</u>	<u>3,65,00,000</u>

- (ii) Rs.1,90,95,606/- paid to Park View Apartments Private Limited for an apartment in their project named Park View City at Gurgaon, Haryana. The following payments were made:

21.10.05	1,53,74,172/-
31.08.05	20,00,000/-
29.09.06	2,59,072/-
19.06.07	<u>14,62,363/-</u>
<u>Total:</u>	<u>1,90,95,606/-</u>

2.2 The payment of Rs.3,65,00,000/- made to M/s Triumph Estate Private Limited for construction of residential property at Bangalore was claimed as deduction u/s 54 from the long term capital gain by the assessee while filing his income tax return.

2.3 The construction of property at Bangalore was to be completed within three years from the date of sale of the residential property at Bangalore on which the capital gain of Rs.3,95,38,545/- arose. However, while the assessment proceedings for assessment year 2006-07 were carrying on, the assessee was informed that due to reasons beyond the control of the builder, the construction would not be completed before the time limit to construct a residential house i.e., before 28.4.2008.

2.4 In the mean time, the assessee had taken the possession of the immovable property at Park View Apartments within three years from the date of sale of the residential property at Bangalore on which the capital gain of Rs.3,95,38,545/- arose.

2.5 Based on the opinion taken from an expert, the assessee suo moto approached the Assessing Officer vide letter dated 30.10.2008 and claimed that he may be allowed deduction from long term capital gain u/s 54 of the Act of Rs.1,90,95,606/- based on the residential property occupied in Gurgaon instead of Rs.3,65,00,000/- being the payment made to builder for a new Bangalore property. The assessee paid the differential income tax along with interest thereon and produced the challans before the Assessing Officer.

2.6 The Assessing Officer agreed to the claim of the assessee but restricted the claim to Rs.1,76,33,244/- as against Rs.1,90,95,606/-, difference being the payment of Rs.14,62,363/- made by the assessee after the date of filing the income tax return for assessment year 2006-07.”

2.7 Aggrieved by the order of Assessing Officer, the assessee took up the matter in appeal and filed written submissions before CIT(A), challenging such disallowance of Rs.14,62,262/- made by the Assessing Officer being arbitrary, unjustified and contrary to the law by raising following contentions:

- i) Sub-section (2) of section 54 of the Act requires an assessee to utilize the amount for the purchase or construction of the new asset before the due date of furnishing the return of income u/s 139 and deposit the unutilized amount of capital gain towards the purchase of the new asset, into a separate designated bank account.
- ii) The time limit for furnishing the return of income under sub-section (4) of section 139 is any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year, whichever is earlier. In the present appeal, the time limit under this sub-section expired on 31.3.2008.
- iii) The appellant has utilized the entire amount of Rs.1,90,95,606/- before 31.03.2008. The last payment was of Rs.14,62,363/- was made on 19.06.2007. There is no dispute with regard to payments made by the

appellant to the builder, in this transaction. Since no further amount was required to be utilized for purchase of the new asset, no further fund was required to be deposited in separate designated bank account and the appellant is entitled to claim deduction of Rs.1,90,95,606/-u/s 54 of the Act.

- iv) The Assessing Officer understood that the time limit is the due date for filing return under sub-section (1) of section 139 and extended time limit under section 139(4) would have no application. It is submitted that the contention of the Assessing Officer is not correct as the section 54 refers to complete section 139 and not to sub-section (1) only of section 139.
  - v) The appellant is placing reliance on judgment of Gauhati High Court in the case of CIT vs. Rajesh Kumar Jalan (2006) reported at 286 I.T.R. 274. In this case, the Hon'ble High Court has found that the assessee, who had made the deposit after u/s 139(4) but before the due date u/s 139(4) and had utilized such deposit within the prescribed time was eligible for deduction u/s 54 of the Act.”
3. The CIT(A) while considering, but not accepting the plea of the assessee has concluded to confirm the Assessing Officer's action.
4. Against the order of CIT(A), assessee is in further appeal and while reiterating the submissions as made before lower authorities, it was pleaded for deletion of the impugned disallowance made by the Assessing Officer and confirmed by the CIT(A). It was further submitted that the issue in relation to investment of long term capital gain having been made in new residential house within the time limit prescribed u/s 139(4) of the Act is eligible for deduction under relevant provision of law and this view is fully supported by not only the decision of the Hon'ble Gauhati High Court, but also of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Jagrati Aggarwal, 339 I.T.R. 610 (P&H) and ITAT, Delhi Bench, decision in the case of Shri Vipin Chandra in I.T.A. No.4958/Del./2011 in which this decision in the cases of DCIT vs. Manjula J. Shah, 318 I.T.R. 417 (Mum.)(SB), CIT vs. Rajesh Kumar Jain, 286 I.T.R. 274 (Gauh.)

and CIT vs. Jagriti Aggarwal, 339 I.T.R. 610 (P&H) have been followed, similarly in another case of 'G' Bench of ITAT, Delhi in the case of DCIT vs. Sapna Dimri, I.T.A. No.151/Del./2012 for assessment year 2008-09 dated 15.3.2012, these decisions were relied upon to conclude the issue in favour of the assessee. Since, new asset has been purchased within the time limit prescribed for filing of return u/s 139(4), therefore, it was urged for deleting the disallowance made by the Assessing Officer and confirmed by the CIT(A).

5. The Ld.Sr.DR. strongly pleaded that language of the relevant provision is very much clear and deduction u/s 54(2) can only be allowed to the assessee in case the deposits of the sale proceeds is invested in the new asset within the due time prescribed for filing return of income u/s 139(1) of the Act. In this case, neither the assessee has deposited the surplus in the capital gain scheme nor invested the entire amount in the new asset as prescribed. Therefore, Assessing Officer is justified in making the disallowance of Rs.14,62,362/- out of Rs.1,90,95,606/- claimed u/s 54 of the Act from long term capital gain. Therefore, action of the authorities below to make/confirm the disallowance is legally correct which should be further confirmed. It was urged for confirmation of the impugned disallowance.

6. We have heard both the sides and considered the material on record as well as case laws cited and find that during the previous year relevant to assessment year 2006-07, the assessee sold a residential property in Bangalore for Rs.4,00,00,000/- on 29.4.2005 and long term capital gains of Rs.3,95,38,545/- was arisen in the hands of the assessee and the assessee undisputably has made the following two investment in residential properties:

(a) Rs.3,65,00,000/- paid to Triumph Estate Private Limited for construction of a residential property in Bangalore. The construction was to be completed by 31<sup>st</sup> March, 2008. The following payments were made:

<u>Date of payment</u>	<u>Amount (in Rs.)</u>
10.03.07	50,00,000/-
18.02.07	2,50,00,000/-
27.07.07	30,00,000/-
22.08.07	<u>35,00,000</u>
<u>Total:</u>	<u>3,65,00,000</u>

(b) Rs.1,90,95,606/- paid to Park View Apartments Private Limited for an apartment in their project named Park View City at Gurgaon, Haryana. The following payments were made:

21.10.06	1,53,74,172/-
31.08.06	20,00,000/-
29.09.07	2,59,072/-
19.06.07	<u>14,62,363/-</u>
<u>Total:</u>	<u>1,90,95,606/-</u>

(c) The payment of Rs.3,65,00,000/- made to M/s Triumph Estate Private Limited for construction of residential property at Bangalore was claimed as deduction u/s 54 from the long term capital gain by the assessee while filing his income tax return.

(d) The construction of property at Bangalore was to be completed within three years from the date of sale of the residential property at Bangalore on which the capital gain of Rs.3,95,38,545/- arose. However, while the assessment proceedings for assessment year 2006-07 were carrying on, the assessee was informed that due to reasons beyond the control of the builder, the construction would not be completed before the time limit to construct a residential house i.e., before 28.4.2008.

(e) In the mean time, the assessee had taken the possession of the immovabale property at Park View Apartments within three years from the date of sale of the residential property at Bangalore on which the capital gain of Rs.3,95,38,545/- arose.

(f) Based on the opinion taken from an expert, the assessee suo moto approached the Assessing Officer vide letter dated 30.10.2008 and claimed that he may be allowed deduction from long term capital gain u/s 54 of the Act of Rs.1,90,95,606/- based on the residential property occupied in Gurgaon instead of Rs.3,65,00,000/- being the payment made to builder for a new Bangalore

property. The assessee paid the differential income tax along with interest thereon and produced the challans before the Assessing Officer.

(g) The Assessing Officer agreed to the claim of the assessee but restricted the claim to Rs.1,76,33,244/- as against Rs.1,90,95,606/-, difference being the payment of Rs.14,62,363/- made by the assessee after the date of filing the income tax return for assessment year 2006-07.

7. Since various courts and Benches of the ITAT, while considering this issue, have taken a view in favour of the assessee and in the case of ACIT vs. Smt. Sapna Dimri (supra), the exemption u/s 54 of the Act has been allowed under almost similar circumstances in favour of the assessee while following various precedent in which it was held in paras.9 & 10 of the order of the ITAT which reads as under:

“9. Now, coming to the cost of indexation, in the case of previous owner, the cost of acquisition is to be as on 1.4.1981, it will be illogical to apply the cost indexation with reference to the date on which the assessee became the owner of the property. Therefore, cost of indexation has to be with effect from 1.4.1981, the date on which the cost of acquisition was taken in the hands of the previous owner. In view of these facts, we do not find any infirmity in the decision of CIT(A). Our view is supported by the decision of Special Bench of ITAT in the case of DCIT vs. Manjula J. Shah (supra).

10. Now, coming to second issue, the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Miss Jagriti Aggarwal (supra) has held that sub-section (4) of section 139 provides the extension period of limitation as an exception to sub-section (1) of section 139 of the Act. Sub-section (1) was in relation to the time allowed to an assessee under sub-section (1) to file the return. Therefore, such provision was not an independent provisions, but relates to the time contemplated under sub-section (1) of section 139. Therefore, sub-section (4) has to be read along with sub-section (1). Therefore, the due date for furnishing the return of income under section 139(1) of the Act was subject to extended period provided under section 139(4) of the Act. Similar view was taken by Hon'ble Guwahati High Court in the case of Rajesh Kumar Jalan (supra). During the course of hearing the Ld.Sr.DR. could not cite a contrary decision to what has been held by the Hon'ble Guwahati High Court and Hon'ble Punjab & Haryana High Court. Respectfully following the decision of Hon'ble Punjab & Haryana High Court, it is held that since the assessee had invested in the new property within the time allowed under section 139(4) of the Act, the assessee will be entitled for exemption under section of the Act to the extent the amount invested in the new

property. Accordingly, we do not find any infirmity in the order of the CIT(A) allowing relief in respect of both the issues.”

8. Since, no contrary decision has been cited by Ld.Sr.DR or came to our notice, therefore, we, while following the precedents as relied upon by the Ld.Counsel for the assessee, accept the appeal of the assessee and direct the Assessing Officer to delete the impugned addition made by him and confirmed by Ld.CIT(A).

9. As a result, the appeal filed by the assessee gets allowed.

Order pronounced in open court on

Sd/-

**(S.V. MEHROTRA)**

**ACCOUNTANT MEMBER**

**Dated : June 11, 2012**

**SKB**

**Copy of the order forwarded to:-**

- 1. Appellant**
- 2. Respondent**
- 3. CIT**
- 4. CIT(A)-XXII, New Delhi.**
- 5. CIT(ITAT)**

Sd/-

**(U.B.S. BEDI)**

**JUDICIAL MEMBER**

**Deputy Registrar, ITAT**