Exemption of LTCG cannot be denied on residential property acquired by other than sale deed

The ITAT, New Delhi in ***ACIT v. Sh. Sanjay Choudhary [ITA No.1274/Del/2020 dated January 23, 2023]*** has affirmed the decision of the Appellate Authority holding that the exemption claimed under Section 54F of the Income Tax Act, 1961 ("**the IT Act**") would be granted to the assessee on its residential properties and assessee cannot be said to have not 'Purchased' the properties for not having the sale deed executed in its favour. Held that, acquisition of the properties by the assessee otherwise then by the registered sale deeds fall in the ambit of word 'purchase'. Further held that, the nature and extent of construction like house, plot, cottage, farm house or villa are only indicative of the fact that property purchased is not a commercial property and is not an agricultural property.

Facts:

Sh. Sanjay Choudhary ("**the Respondent**") had filed the Return of Income ("**ROI**") for the Assessment Year ("**A.Y.**") 2013-14 declaring total income of INR 16,94,792/- and the assessment was completed as per Section 143(3) by the Revenue Department ("**the Appellant**") on March 28, 2016, computing the taxable capital gain at INR 1,23,01,476/-.

The Principal Commissioner of Income Tax ("**PCIT**") was of the view that the Respondent had made a wrong calculation of capital gains, primarily for reason that it considered the property to be not held for 36 months and accordingly vide order dated March 5, 2018 directed to withdraw the deduction claimed and granted to the Respondent and remanded the issue back to be examine afresh.

Thereafter, the Appellant concluded that the capital gain was a Long Term Capital Gain ("**LTCG**"), and disallowed the exemption claimed under Section 54F of the IT Act vide assessment order dated December 31, 2018, on the ground that the three properties which

the Respondent claimed to have purchased out of LTCG, were not covered for the ‘purchase’ under Section 54F of the IT Act. Further, initiated penalty proceedings under Section 271(1)(c) for furnishing inaccurate particulars of the income.

The Respondent preferred an appeal wherein, the Appellate Authority granted the benefit of Section 54F of the IT Act to the Respondent vide order dated January 29, 2020 (“**the Impugned Order**”).

Being aggrieved, this appeal has been filed by the Appellant, on the ground that, the Appellate Authority erred by not deleting the disallowance and considering the three properties acquired by the Respondent to be duly purchased, as they do not fall under the category of residential properties. Further contended that, the order passed by the PCIT was not appealed against, and hence became final as the Appellate Authority did not cancel or annul it.

Issue:

Whether exemption under Section 54F of the IT Act would be available for the properties purchased by the Respondent?

Held:

The ITAT, New Delhi in ***ITA No.1274/Del/2020*** held as under:

- Noted that, the Appellant had discredited the purchase of three properties on the basis of documents other than sale deeds.
- Observed that, the execution of the sale deed or any document of Conveyance in favour of vendee, only transfers the ‘legal title’ for the purpose of civil consequences. The ownership of a property is a bundle of interests and apart from the registered sale deed or any other document of conveyance, vendee can acquire interest in semblance of right of owner by documents like GPA or agreement to sell.

- Opined that, the acquisition of the three properties by the Respondent, other than through registered sale deeds, falls within the ambit of the word "purchase" used in Section 54/54F of the IT Act.
- Stated that, the Appellant did not doubt the payments made by the Respondent out of LTCG for the purchase of three properties, then for not having the sale deed executed in the Respondent's' favour does not mean that the Respondent did not 'purchase' the properties as per statutory compliance.
- Relied on the judgement of ITAT, Jaipur in ***ACIT V. Om Prakash Gyal [ITA NO. 647/JP/2011 dated February 2, 2012]*** wherein, it was held that only requirement for claiming exemption under Section 54F of the IT Act is construction of residential house and it does not matter that house constructed is on agricultural land.
- Held that, the three properties of the Respondent are considered as a residential property as nature and extent of construction or nomenclature like house, plot, cottage, farm house or villa are only indicative of the fact that property purchased is neither a commercial property nor is an agricultural property.
- Upheld the decision of the Appellate Authority.

Relevant Provisions:

Section 54F of the IT Act:

> *"Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.*
>
> *(1) Subject to the provisions of sub-section (4), where, in the case of an assessee 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 assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has*

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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 assessee,-

(i) 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.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the

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assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided *that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,-*

(i) the amount by which-

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid."

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