

IN THE ITAT DELHI BENCH 'G'

Sunil Sachdeva

v.

Assistant Commissioner of Income-tax, Circle-2, Gurgaon*

A.D. JAIN, JUDICIAL MEMBER
AND SHAMIM YAHYA, ACCOUNTANT MEMBER
IT APPEAL NO. 4179 (DELHI) OF 2011
[ASSESSMENT YEAR 2008-09]
JANUARY 15, 2013

ORDER

Shamim Yahya, Accountant Member - This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), Panchkula dated 26.8.2011 pertaining to assessment year 2008-09.

2. The grounds raised read as under:-

1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income-tax (Appeals), Panchkula ("the CIT(A)") erred in law in upholding the action of the assessing officer in denying the appellant's claim for exemption of Rs.1,22,23,250 under Section 54F of the Income-tax Act, 1961 ("the Act").
 - 1.1 That on the facts and in the circumstances of the case, the CIT(A) erred in law holding that the action of the appellant in issuing verbal directions to the bank to transfer unutilized net consideration arising from the sale of shares of Capital Advertising Private Limited ("CAPL") to the Special Capital Gains Account did not, in law, constitute "deposit" on such date of such net consideration in the Special Capital Gains Account as required by Section 54F(4) of the Act.
 - 1.2 That on the facts and in the circumstances of the case, the CIT(A) erred in law in holding that non-furnishing of proof of deposit of net consideration on 30.7.2008 in the Special Capital Gains Account was fatal to the claim of the appellant for exemption under Section 54F(4) of the Act.
 - 1.3 That, without prejudice, on the facts and in the circumstances of the case, the CIT(A) failed to appreciate that the unutilized net consideration arising from sale of shares of CAPL having being considered by the assessing officer as deposited in the Special Capital Gains Account on 31.07.2008, i.e., before date stipulated under Section 139(1) for filing of return of income, the exemption claimed under section 54F of the Act was admissible in law.
- 2.** That on the facts and in the circumstances of the case, the CIT(A) erred in law in enhancing the assessment by withdrawing the appellant's claim for exemption of Rs.55,70,800 under Section 54F of the Act.

2.1 That on the facts and in the circumstances of the case, the CIT(A) erred in denying exemption of RS.55,70,800 under Section 54F of the Act on the ground that the said amount had been paid by CAPL (and not by the appellant) to the builder towards construction of residential property of the appellant.

2.2 That on the facts and in the circumstances of the case, the CIT(A) failed to appreciate that the appellant had duly repaid the aforesaid amount of RS.55,70,800 to CAPL, which CAPL had originally paid to the builder towards construction of residential property of the appellant on behalf of the appellant.

2.3 That on the facts and in the circumstances of the case, the CIT(A) erred in failing to appreciate that Section 54F(1) of the Act did not contemplate one to one correlation between the proceeds/consideration arising on sale of long term capital asset and utilization thereof for the purchase/construction of residential property.

The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.

3. In this case during the course of assessment proceedings, Assessing Officer noticed that assessee sold shares of M/s Capital Advertising Pvt. Ltd. for a sale consideration of Rs. 5,62,87,500/-. Assessee claimed deduction of Rs. 1,22,23,250/- u/s. 54F of the I.T. Act. The assessee has invested Rs. 1,22,23,250/- on 31.7.2008 in the special gain account maintained with the Syndicate Bank. The claim of the assessee u/s. 54F of the Act was rejected by the Assessing Officer on the following reasons:-

- (a) Deposit in the special gains account scheme was made after filing the return of income.
- (b) Return of income filed u/s. 139(1) was not accompanied by proof of deposit.
- (c) The amount was not utilized as per provision of section 54F(1).

Accordingly, the claim of deduction of Rs. 1,22,23,250/- was disallowed and added to the total income of the assessee.

4. Before the Ld. Commissioner of Income Tax (A), assessee's submissions were as under:-

"During the course of appellate proceedings, the counsel for the appellant filed written submissions which is reproduced as under:-

"On 20.9.2007, the appellant sold certain shares held by him in Capital Advertising Private Limited (CAPL), for Rs. 5,62,87,500/-, which resulted in capital gains of Rs. 5,50,93,628. Out of the aforesaid of capital gains, the appellant offered Rs. 1,19,52,809 to tax under Section 45 of the Act. As regards the balance amount of capital gains the appellant claimed exemption, as follows:

<i>S.No.</i>	<i>Particulars</i>	<i>Amount</i>
1	Exemption under Section 54EC of the Act, being investment in notified bonds	Rs. 50,00,000

2	Exemption under Section 54F(1) of the Act, being amount utilized for purchase/ construction of a residential House	Rs. 2,60,41,875
3	Exemption under Section 54F(4) of the Act, being unutilized net consideration deposited in Special Capital Gains Account	Rs. 1,22,23,250

In order to avail the exemption in respect of the sum of Rs. 1,22,23,250 (point No.3 in the table above) under Section 54F(4) of the Act, the appellant on 30.07.2008, issued instructions to the Syndicate Bank, Hauz Khas Branch, New Delhi to transfer the aforesaid amount of RS.1,22,23,250 from the Savings Bank Account maintained by the appellant in the aforesaid branch (bearing account no. 90492010070924) to the Special Capital Gains Account maintained in the same branch of the same bank (bearing account no. 90492110000077). The aforesaid Bank, in this regard, has issued a certificate, dated, 15.12.2010, confirming receipt of instructions from the appellant on 30.07.2008, for transfer/deposit of funds to the Special Capital Gains Account.

The appellant having issued the necessary instruction to the aforesaid Bank, in which both the accounts (*i.e.*, Savings Bank Account as well as Special Capital Gains Account) were maintained, for transfer/deposit of the capital gains of Rs.1,22,23,250, in the Special Capital Gain Account, on 30.07.2008, the appellant proceeded to file his return of income on the same date *i.e.*, 30.07.2008, wherein it claimed exemption of the aforesaid deposit of Rs. 1,22,23,250 under Section 54F(4) of the Act.

The instructions were, however, acted upon and effected by the Syndicate Bank only on 31.07.2008.

Vide the impugned order, the assessing officer denied exemption of long term capital gains tax in respect of the aforesaid amount claimed under section 54F(4) of the Act, on the ground that the deposit in question had been made on 31.07.2008, *i.e.* after the date of filing of return of income by the appellant and that the return of income was not accompanied by the certificate of deposit as required under that section.

The assessing officer further observed, that exemption under section 54F of the Act is available only if the amount deposited in the Special Capital Gains Account is utilized within a period of three years for construction/purchase of a residential house. The assessing officer alleged that the appellant had failed to furnish evidence to demonstrate that the amount deposited as aforesaid (with respect to which exemption under section 54F read with section 45 of the Act was being claimed), had been utilized for construction/purchase of residential house within the period specified in that section.

It is most respectfully submitted, that the action of the assessing officer in denying exemption under Section 54F(4) of the Act to the appellant is not based on proper appreciation of facts and the position in law and calls for being deleted, for the reasons elaborated hereunder:

Section 54F(1) of the Act exempts taxable capital gains arising on transfer of a long-term capital asset, other than the residential house property, where the amount of net sale consideration is utilized by the assessee to:

- (a) purchase a residential house within one year before or within 2 years after the date of transfer of the original asset; or
- (b) construct a residential house within three years after the date of transfer of the original asset.

Where, however, an assessee is unable to utilize the net sale consideration received on the transfer of the long term capital asset before the date of filing the return, sub-section (4) of section 54F provides that exemption from the capital gains tax under Section 45 of the Act would still be available, provided that the assessee deposits the unutilized/ unappropriated consideration in the Special Capital Gains Account and the amounts so deposited shall be deemed to be cost of the new asset.

Receipt of instructions by Syndicate Bank constituted deposit

The Capital Gains Account Scheme, 1988 ("the Scheme"), has been notified vide GSR 725(E), dated 22.06.1988. the Scheme broadly provides that an assessee intending to avail benefit, inter alia, under section 54F of the Act may deposit the amount in a prescribed account with the prescribed banks defined as "deposit office".

Non-furnishing of evidence of deposit with the return of income

As regards the contention of the assessing officer that the evidence of deposit was not filed along with the return of income, it would be pertinent to note for the assessment year under consideration, the return of income was filed in electronic form. The return in electronic mode does not permit filing of any document/annexure therewith (Refer Instructions to the Return Form) and accordingly the appellant was prevented by law to file the certificate of deposit along with the return of income. The evidence of deposit was thus filed by the appellant during the course of the assessment proceedings.

Without prejudice, it is respectfully submitted, that the Courts have repeatedly held that the claim for deduction/exemption under the Act cannot be denied merely because the return of income was not accompanied by the prescribed document/certificate. The Courts have held that such requirement is only directory and filing of necessary document/certificate in the assessment proceedings would be in compliance with law.

In this regard is invited to the following decisions:

CIT v. Gupta Fabs. [274 ITR 620 \(P&H\)](#)

CIT v. Berger Paints (India) Ltd. [254 ITR 503](#)

CIT v. Hardeodas Agarwalla Trust [198 ITR 511](#)

In view of the above, it is the respectful submission of the appellant that assuming for the sake of argument that the requirement of filing certificate of deposit along with the return, in terms of provisions of Section 54F(4) of the Act, was not satisfied, so long as the certificate of deposit was available with the assessing officer during the course of assessment proceedings, the fact that the same had not been furnished along with the return would not militate against availability of benefit of exemption under section 54F(4) of the Act.

It is, therefore, respectfully submitted that the denial of exemption under Section 54F(4) of the Act on the above ground was contrary to law.

Manner of utilization could not have been the basis for denial of exemption in the assessment year under consideration.

In the assessment order, the assessing officer has alleged that the appellant failed to furnish any evidence of utilization of the aforesaid amount deposited under the scheme, for the purposes of purchase/construction of residential house. On that basis, too, the assessing officer held that the claim of the appellant for exemption under Section 54F of the Act was not acceptable.

It is further respectfully submitted, that the appellant from time to time paid the sum, deposited in the Special Capital Gains Account, to DLF Hotels & Apartments Private Limited towards the cost of fit-outs as part of construction of Apartment No. MG704A in 'The Magnolias', DLF Golf Links, DLF City, Gurgaon. Since the amount deposited in the Special Capital Gains Account has been utilized by the appellant within the period of 3 years, for the purposes of construction of the above residential house, the exemption under section 54F of the Act was not hit by the proviso to that section. The assessing officer, therefore, erred in denying exemption under that section to the appellant on the above ground.

It is further submitted, without prejudice, that the assessing officer, in the first place erred in going into the question of utilization of the net consideration deposited by the appellant in the Special Capital Gains Account during the assessment proceedings for the assessment year under consideration. The assessing officer glossed over the provisions of proviso to sub-section (4) of section 54F of the Act. The said proviso reads as under:

"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 assessee 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

Admittedly, in the case of the present appellant, the asset in question, being shares held by the appellant in CAPL were transferred by the appellant a 20.09.2007. The period of 3 years from the said date accordingly expired 19.09.2010. The said date fell in the previous year 2010-11 (relevant to the assessment year 2011-12) and not in the previous year relevant to the assessment year under consideration and, therefore, denial of exemption under section 54F(4) of the Act for the assessment year under consideration was uncalled for.

In view of the above, the denial of exemption under section 54F of the Act by the Assessing Officer in respect of the aforesaid amount of Rs. 1,22,23,250/-, it is most respectfully submitted, is without basis and consequently calls for being deleted."

4.1 Considering the aforesaid submissions, Ld. Commissioner of Income Tax (A) observed that capital gain of Rs. 5,50,93,628/- has arisen to the assessee from the transfer of long term asset other than residential house i.e. shares of M/s Capital Advertising Pvt. Ltd. on 20.9.2007. Out of this amount the assessee claimed exemption u/s. 54F(1) of Rs. 2,60,41,875/- on account of investment in house in Flat No. 704-A, Magnolias, DLF, Gurgaon. Ld. Commissioner of Income Tax (A) further observed that out of this amount assessee is not eligible u/s. 54F(1) on payment of Rs. 55,70,800/- by M/s Capital Advertising Pvt. Ltd. and not by the assessee. Ld. Commissioner of Income Tax (A) gave the assessee an opportunity to explain why the deduction should not be disallowed. Assessee submitted that section 54F does not require one to one correlation between capital gain arising out of transfer of long term capital assets and utilization thereof for purchase / construction of residential house. Ld. Commissioner of Income Tax (A) further referred to the provisions of section 54F(1), he held that keeping in view the fact that payment was not made by the company namely M/s Capital Advertising Pvt. Ltd., the assessee is not entitled for exemption. Ld. Commissioner of Income Tax (A) further observed that investment in residential house was to be made by the assessee individual and not by the company in which assessee is one of the Directors. Since the assessee has failed to invest Rs. 55,70,800/- in individual capacity, he does not qualify for deduction u/s. 54F. Accordingly, he held that exemption to the extent of Rs. 55,70,800/- is not available to the assessee.

4.2 Ld. Commissioner of Income Tax (A) noted that as far as exemption u/s. 54F(4) on the amount of Rs. 1,22,23,250/- on account of investment in special gain account is concerned, the date on which the cheque is received by the deposit office is to be treated as the date of deposit in view of para 5(6) of the Capital Gain Account Scheme, 1988. Keeping in view of the said provisions, Ld. Commissioner of Income Tax (A) held that the assessee's plea that issue of verbal directions to the bank amounted to issue of

cheque has no merit. He held that verbal directions to the bank do not amount to issue of cheque/deposit. Ld. Commissioner of Income Tax (A) further referred to the provisions of section 54F(4), he observed that assessee has failed to deposit in capital gain scheme before furnishing of return on 31.7.2008. therefore, he held that the assessee has failed to comply with the prerequisite conditions of section 54F(4):-

- (i) The amount of net consideration not utilized for purchase of house not deposited in bank in capital gain scheme before filing return of income.
- (ii) Return is not accompanied by proof of deposit.

Accordingly, Ld. Commissioner of Income Tax (A) held that exemption is denied u/s. 54F(1) to the extent of Rs. 55,70,800/- on account of investment in house property and u/s. 54F(4) to the extent of Rs. 1,22,23,250/- on account of investment in Special Capital Gains Account after filing of return. Hence, this resulted in an enhancement of Rs. 55,70,800/-.

5. Against the above order the Assessee is in appeal before us.

6. We have heard the rival contentions in light of the material produced and precedent relied upon. We can gainfully refer the provisions of section 54F, which read as under:-

"[Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (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 within a period of three years after that date constructed, a residential house (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,—

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[***] "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 assessee for furnishing the return of income under subsection (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 subsection (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."

6.1 We find that in this case the assessee has been denied benefit of exemption u/s. 54F on the amount of Rs. 1,22,23,250/- on account of investment in special capital gain account after filing of return. In this regard, it is the submissions of the assessee that in order to avail the exemption in respect of a sum of Rs. 1,22,23,250/- u/s. 54F(4) of the Act, the assessee on 30.7.2008 issued instruction to the Syndicate Bank, Hauz Khas, New Delhi to transfer the aforesaid amount of Rs. 1,22,23,250/- from the savings bank account maintained by the assessee in the aforesaid branch to the special capital gain account maintained with the same branch of the said bank. In this regard, assessee has furnished a certificate issued by the bank on 15.12.2010 wherein it has been confirmed that instruction has been received from the assessee on 30.7.2008 for transfer / deposits of funds to the special capital gain account. It has further been claimed by the assessee that assessee having issued necessary instructions to the aforesaid bank in which both the accounts (i.e. savings bank account as well as special capital gain account) were maintained for transfer / deposits in the capital gain of Rs. 1,22,23,250/- in the special capital gain account on 30.7.2008, the assessee proceeded to file his return of income on the same date i.e. 30.7.2008 wherein it claimed that exemption of the aforesaid deposits of Rs. 1,22,23,250/- u/s. 54F(4) of the Act. The instructions of the assessee were acted upon the Syndicate Bank only on 31.7.2008. It has further been submitted that as regards the contention of the Assessing Officer that evidence of deposits was not filed alongwith the return of income, it would be pertinent to note that the assessment year under consideration the return of income was filed in electronic form. The return in electronic mode does not permit filing of any documents/ annexures therewith and accordingly, the assessee was prevented by law to file a certificate of

deposits alongwith return of income. It has been claimed that hence the evidence of deposits was filed by the assessee during the course of assessment proceedings. It has further been submitted that courts have repeatedly held that claim of deduction / exemption under the Act cannot be denied merely because of the return of income was not accompanied by the prescribed document / certificate. It has been claimed that courts have held that such requirements is only directory and filing of necessary documents / certificate in the assessment proceedings would be in compliance with law. The above submissions were not accepted by the Assessing Officer and the Ld. Commissioner of Income Tax (A) and the deduction for an amount of Rs. 1,22,23,250/- was denied to the assessee.

6.2 Upon careful consideration, we find that the assessee's submissions have considerable cogency. It is emanating from the submissions and records that assessee has given instruction on 30.7.2008 to the bank to transfer the amount from the savings bank account to the special capital gain account. This has been duly acknowledged by the bank and the bank has issued certificate in this regard. The bank had acted upon the instruction of the assessee on 31.7.2008. Hence, we find that assessee has duly complied with the requirements of law. Furthermore, we note that the return of income was furnished in electronic form. The return of electronic mode does not permit filing of any documents/ annexures therewith. Hence, it is apparent that assessee was prevented by sufficient cause in not filing the certificate of deposits alongwith return of income. The evidence of deposits was duly filed by the assessee during the course of assessment proceedings. We further take note of the fact that courts have repeatedly held that the claim of deduction/exemption under the Act merely because the return of income was not accompanied by the prescribed documents / certificate. The Courts have held that such requirement is only directory and filing of necessary document/certificate in the assessment proceedings would be in compliance with law. Accordingly, we hold that assessee's claim is perfectly cogent and accordingly, the disallowance of exemption u/s. 54F of the I.T. Act amounting to Rs. 1,22,23,250/- is without appropriate basis, consequently the same is deleted.

6.3 As regards another facet of addition in this case which has resulted from enhancement made by the Ld. Commissioner of Income Tax (A) by holding that assessee is not eligible for deduction u/s. 54F(1) on the payment of Rs. 55,70,800/-. This has been denied on the ground that the payment was made by M/s Capital Advertising Pvt. Ltd. wherein the assessee was Director and not by the assessee himself. In this regard, it is the assessee's claim that the assessee has duly made the arrangement for booking of the flat and necessary documentation were made by the assessee in his individual capacity. Only the payment of Rs. 55,70,800/- was done on behalf of the assessee by M/s Capital Advertising Pvt. Ltd. and subsequently, the assessee had duly reimbursed the company amount involved. We further agree with the assessee's contention that section 54F does not require one to one correlation between the capital gain arising out of transfer of long term capital asset and utilization thereof for purchase/construction of residential house. Under the circumstances, in our considered opinion, submissions of the assessee are quite cogent and enhancement by the Ld. Commissioner of Income Tax (A) on this account is not sustainable. Accordingly, we hold that exemption to the extent of Rs. 55,70,800/- cannot be denied on the facts

and circumstances of the case. Accordingly, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

7. In the result, the appeal filed by the assessee stands allowed.