

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 5900/DEL/2015
Assessment Year: 2012-13

ACIT, CIRCLE-50(1), NEW DELHI	Vs.	AKSHAY SOBTI, 3B/7, NEA OLD RAJINDER NAGAR, NEW DELHI - 110 060 (PAN: ATYPS9496B)
(Appellant)		(Respondent)

ITA No. 5901/DEL/2015
Assessment Year: 2012-13

ACIT, CIRCLE-50(1), NEW DELHI	Vs.	PRADEEP SOBTI, 3B/7, NEA OLD RAJINDER NAGAR, NEW DELHI - 110 060 (PAN: ABXPS9866N)
(Appellant)		(Respondent)

Department by	Smt. Naina Soin Kapil, Sr. DR
Assessee by	Sh. Salil Kapoor, Adv. & Sh. Shivansh Pandya, Adv.

ORDER

PER H.S. SIHU, JM

These 02 appeals are filed by the Revenue against the common Order passed by the Ld. CIT(A)-17, New Delhi relating to

assessment year 2012-13 in respect of different assesses. Since common issues involved in these appeals, except the difference in figures, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with the facts of ITA No. 5901/Del/2015 (AY 2012-13)- ACIT VS. PRADEEP SOBTI and the decision thereof will apply *mutatis mutandis* to other appeal i.e. ITA No. 5900/De/2015 (AY 2012-13)- ACIT VS. AKSHAY SOBTI. However, grounds of both the two appeals are reproduced hereunder:-

ITA NO. 5900/DEL/2015 (AY 2012-13)

- i) The Ld. CIT(A) has erred in deleting the addition of Rs. 4,01,93,262/- and Rs. 50,00,000/- on account of exemption u/s. 54 and 54EC of the Act treating the said house as being 'Constructed by the assessee and not considering the facts that the assessee has entered into buyer seller purchase agreement on 10.2.2006, thereby purchasing the said house on 10.2.2006 only.
- ii) The Ld. CIT(A) has erred in deleting the addition of Rs. 50,00,000/- on account of

exemption u/s. 54EC of the Act without considering the date of purchase of REC bonds.

- iii) The Ld. CIT(A) has erred in deleting the addition of Rs. 14,07,474/- without considering the facts that as per para 8(v) in lease deed of M/s DT Cinema, the assessee has received maintenance charges as income in disguise.
- iv) The appellant craves leave to add, alter or amend any / all the grounds of appeal before or during the course of hearing of the appeal.

ITA NO. 5901/DEL/2015 (AY 2012-13)

- i) The Ld. CIT(A) has erred in deleting the addition of Rs. 4,00,97,217/- and Rs. 50,00,000/- on account of exemption u/s. 54 and 54EC of the Act treating the said house as being 'Constructed by the assessee and not considering the facts that the assessee has entered into buyer seller purchase agreement

on 10.2.2006, thereby purchasing the said house on 10.2.2006 only.

- ii) The Ld. CIT(A) has erred in deleting the addition of Rs. 50,00,000/- on account of exemption u/s. 54EC of the Act without considering the date of purchase of REC bonds.
- iii) The Ld. CIT(A) has erred in deleting the addition of Rs. 14,07,474/- without considering the facts that as per para 8(v) in lease deed of M/s DT Cinema, the assessee has received maintenance charges as income in disguise.
- iv) The appellant craves leave to add, alter or amend any / all the grounds of appeal before or during the course of hearing of the appeal.

2. The brief facts of the case are that the assessee company filed its return on 31.10.2012 declaring an income of Rs. 8,05,34,659/-. The case of the assessee was selected for scrutiny under CASS. Notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") was duly served upon the assessee. Subsequently, notice u/s. 142(1) of the Act alongwith questionnaire was issued on 26.8.2014. In

compliance to notices, the AR of the assessee attended the hearing from time to time and furnished the written submissions and required details as called for. The Assessee is an individual. The assessee declared income from house property, income from capital gain and income from other sources. During the course of hearing the AR of the assessee submitted necessary details which have been examined and placed on records. Books of accounts have been verified on test check basis and returned back. Thereafter, the AO after seeking various explanations, framed the assessment u/s. 143(3) of the Act at Rs. 12,70,39,341/- by making disallowance of deduction under section 54 on the ground that the assessee entered into an agreement dated 10.2.2006 and therefore the date of agreement be treated as the date of acquisition and which falls beyond the period of one year prior to the date of transfer prescribed under section 54 of the Income Tax Act, following the judgment of Hon'ble Delhi High Court in the case of Gulshan Malik vs. CIT in ITA No. 55 of 2014 and CIT vs. RL Sood (2008) 109 taxman 227/245 ITR 727 (Delhi). Thereafter, AO made the disallowance of Rs. 50,00,000/- u/s. 54 of the Act as against the deduction claimed by the assessee amounting to Rs. 1,00,00,000/- following the decision of the ITAT, Jaipur Bench in ACIT Circle-2 vs. Sh. Raj Kumar Jain Sons HUF, January 31, 2012 as p the details in

the impugned assessment order dated 4.2.2015. Further, AO observed that AO made the addition of Rs. 14,07,474/- in the rental income of above said amount on the grounds that the assessee has received Rs. 2010672/- from the tenant M/s DT Cinema Ltd. as per the calculations given in the impugned assessment orders dated 4.2.2015 and allowing deduction therefrom of 30% on account of statutory deduction under section 24(a) of the Income Tax Act resulting into the net addition of Rs. 14,07,474/- Z(Rs. 20,10,672/- less 30% Rs. 603202/-). Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 21.08.2015, has deleted the additions in dispute and allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

3. Ld. CIT(DR) relied upon the order of the Assessing Officer and reiterated the contentions raised in the grounds of appeal and stated AO made the disallowance of deduction under section 54 was made on the ground that the assessee entered into an agreement dated 10.2.2006 and therefore the date of agreement be treated as the date of acquisition and which falls beyond the period of one year prior to the date of transfer prescribed under section 54 of the Income Tax Act, following the judgment of Hon'ble Delhi High Court in the case of Gulshan Malik vs. CIT in ITA No. 55 of 2014

and CIT vs. RL Sood (2008) 109 taxman 227/245 ITR 727 (Delhi), which does not need any interference. She further stated that AO made the disallowance of Rs. 50,00,000/- u/s. 54 of the Act as against the deduction claimed by the assessee amounting to Rs. 1,00,00,000/- following the decision of the ITAT, Jaipur Bench in ACIT Circle-2 vs. Sh. Raj Kumar Jain Sons HUF, January 31, 2012 as per the details in the impugned assessment order dated 4.2.2015, hence, requested to cancel the order of the Ld. CIT(A) on the issue in dispute. She further stated that AO has rightly observed that addition of Rs. 14,07,474/- in the rental income because the assessee has received Rs. 2010672/- from the tenant M/s DT Cinema Ltd. as per the calculations given in the impugned assessment orders dated 4.2.2015 and allowing deduction therefrom of 30% on account of statutory deduction under section 24(a) of the Income Tax Act resulting into the net addition of Rs.14,07,474/- (Rs. 20,10,672/- less 30% Rs. 603202/-). In view of above, she requested to cancel the order of the Ld. CIT(A) and allow the revenue's appeal.

4. On the other hand, Ld. Counsel for the assessee has relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference. In

support of his contention, he filed the synopsis of arguments on behalf of the assessee, which read as under:-

"1. INTRODUCTION

1.1. The Assessee filed his return of income for Assessment Year ('AY') 2012-13 on 01.08.2012 at a total income of Rs. 2,75,04,910/-. The Assessee's case was selected for scrutiny by issuance of notice u/s 143(2) of the Act, and after seeking multiple clarifications / explanations, the assessment was framed u/s 143(3) by making disallowance of claim u/s 54 of the Act at Rs. 4,01,93,262/-, disallowance of claim u/s 54EC of the Act at Rs. 50,00,000/- and addition of Rs. 14,07,474/- towards purported amounts received from M/s DT Cinemas Ltd.

1.2. Aggrieved by the said order, the Assessee preferred an appeal before the Commissioner of Income-tax (Appeals) (hereinafter referred to as 'CIT(A)') whereby vide order dated 21.08.2015, the appeal of the assessee was allowed and the additions made by the Assessing Officer ('AO') were deleted.

1.3. *The Revenue did not accept the above-referred order of the CIT(A) and instead preferred an appeal before this Hon'ble Tribunal, seeking restoration of the additions made in the assessment order.*

2. *FACTUAL BACKGROUND*

2.1. *With regard to the above additions, the Assessee wishes to bring to the attention of this Hon'ble Tribunal the following facts, as under:*

2.2. *The Assessee had acquired a property at Jor Bagh during Financial Year ('FY') 2002- 03, which was subsequently sold during the subject AY on 21.12.2011 for a sum of Rs. 8 Crores.*

2.3. *As the said property was a long-term capital asset, the Assessee claimed benefit of indexation whereby the indexed cost of acquisition was arrived at Rs. 83,34,698/- resulting in capital gains of Rs. 7,16,65,302/-. Against the same, the Assessee claimed exemption u/s 54 of the Act of Rs. 3,00,86,525/- towards the amounts paid to M/s DLF towards construction of house at DLF Magnolias Golf Links, and a further sum of Rs. 1,01,06,737/-*

towards bank charges and cost of improvement on the same. It may also be stated at this juncture that the above amounts were paid to M/s DLF in pursuance of an agreement dated 10.02.2006.

2.4. Further, the Assessee, on 31.01.2012 also purchased eligible bonds u/s 54EC of the Act worth Rs. 50,00,000/-, and further, on 31.05.2012, also purchased additional eligible bonds u/s 54EC of the Act worth Rs. 50,00,000/-.

2.5. It may also be stated here that during the relevant year, the Assessee had received a sum of Rs. 64,64,112/- from M/s D.T. Cinemas, in terms of lease deed dated 29.10.2004, which amounts were duly offered to tax. However, the AO observed that the terms of the lease deed require payment of Rs. 12/- per sq. ft. as maintenance charges, and the said amounts were proportionally added to the income of the Assessee, despite Assessee's explanation that such amounts were never received by it, and in fact, were paid directly to the Mall Management Company.

3. CLAIM U/S 54 OF THE ACT IS ALLOWABLE

3.1. *With regard to the said claim, the Assessee first wishes to draw the attention of this Hon'ble Tribunal to the provisions of section 54 of the Act, as under:*

"54. (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as 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, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say-

(i) *If the amount of capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*

(ii) *..."*

3.2. *In terms of the said provision, an assessee, in order to avail of the exemption u/s 54, is required to purchase a new asset one year before or within two years after the date of sale of the original asset, or construct a new asset within a period of three years after the date of transfer of original asset. It is the contention of the Assessee herein that by virtue of the agreement dated 10.02.2006, the Assessee had contracted with M/s DLF for construction bare residential house, which*

thereafter the Assessee undertook to get completed and furnished with all the necessary amenities, which was offered only as on 31.10.2013, possession of which was duly taken and is not disputed, and this period is within three years of sale of the original asset.

3.3. However, the AO has contended that the present is a case of purchase of new asset, which purchase, as per the AO, was carried out on 10.02.2006, which is the date of entering into the agreement with M/s DLF, and therefore, the period mandated for purchase u/s 54 of the Act (one year before or within two years of sale) was alleged to have been violated, thereby disentitling the Assessee to claim the subject exemption.

3.4. In this regard, the Assessee, at the outset wishes to contend that the present is a case of construction and not purchase. In support of this proposition, the Assessee places reliance on the Circular No. 672 dated 16.12.1993 whereby it has been clarified that schemes of allotment and construction of flats / houses similar to that

mentioned in Circular No. 471, dated 15.10.1986 will be treated as cases of construction of new asset and not purchase.

3.5. In this regard, the findings of CIT(A) are relevant, which read as under:

"In the instant case, since the appellant entered into an agreement for construction of a bare shell of a house by periodic payment of instalments and he had to carry the internal fit-outs to make it liveable as per Annexure-V of the agreement with the Builder Company, within Six months from the date of certificate of occupation from the competent Authorities, this is to be treated as the case of construction. Further, the construction has been completed within three years of the sale of original asset, which is accepted by the Assessing Officer, the relief under section 54 is genuinely claimed by him and therefore, disallowance made under section 54 amounting to ... may be deleted"

3.6. Assessee also places reliance on the decision of the Hon'ble Delhi High Court in the case of CIT v.

Smt. Brinda Kumari [2002] 253 ITR 343 (Delhi), wherein it was observed as under:

"4. We find substance in the assessee's stand. The Tribunal has, inter alia, recorded a positive finding in the following terms:

"In the present case on the facts there is no dispute that the late Maharani advanced a sum of Rs. 5,25,000 for the specific purpose of construction offlats for her on third floor of the Akash Deep Building. The Akash Deep Building was constructed after demolishing 9, Hailey Road, which was sold by late Maharani to Ansal & Sehgal Properties (P.) Ltd. If therefore, the latter constructed the flats on behalf of the late Maharani with the funds advanced by her, there appears to be no difficulty in treating the construction as the construction made by her. "
In view of the afore said findings, which are factual, no question of law arises... "

3.7. The Assessee also wishes to place reliance on a decision of the Delhi Bench of this Hon'ble Tribunal in the case of ACIT v. Vineet Kumar Kapila [ITA/ 6868/ DEL/ 2015], wherein the facts of the

case and the finding of the Hon'ble Tribunal were recorded thus:

"2. ... During the assessment proceedings the AO also noticed that the assessee has entered into an 'Apartment Buyer Agreement' with M/s Standard Farms Pvt. Ltd. and Tata Housing Development Co. Ltd. on 27/08/2010. In this regard on consideration of facts and submission of the assessee, the AO was of the view that the impugned acquisition on new property by the assessee through 'Apartment Buyer Agreement', amounted to "purchase " of new house...

7. After perusing the aforesaid finding as well as the case laws and CBDT Circular discussed therein, we are of the view that booking of flat with the builder has to be treated as construction of flat by the assessee and hence period of three years would apply for construction of new house from the date of transfer of long term capital asset. Therefore, the Ld. CIT(A) has rightly allowed the exemption u/s 54 of the Act, because in the present case also the flat

booked with the builder by the assessee has to be considered as a case of construction of flat... ”

3.8. Therefore, the Assessee submits that it cannot be denied that the Assessee has constructed the new asset, within the meaning thereof under section 54, and therefore, the consequent timelines would necessarily follow.

3.9. The Assessee submits that once it is accepted that it is a case of construction of new asset, the only objection of the AO remaining is that the construction of the same was commenced before the sale of the original asset. In this regard, the Assessee wishes to draw the attention of this Hon'ble Tribunal to the clear language of section 54 of the Act, which makes it clear that in case of construction, no requirement exists for the date of commencement of the construction, and it is only the date of completion of construction that is relevant, which is admittedly within 3 years in the case of the Assessee.

3.10. In this regard, the Assessee places reliance on an early decision of the Hon'ble High Court of

Karnataka in the case of CIT v. J.R. Subramanya Bhat, reported as [1987] 165 ITR 571, involving an identical issue. The facts of the case were that the assessee therein had sold the original asset on 09.02.1977, whereas construction of the new asset was commenced sometime around March 1976 and completed in March 1977. The AO disallowed the claim u/s 54, inter alia, on the ground that the construction activity was commenced before the sale of the original asset. The Hon'ble High Court, while dismissing the appeal of the Revenue, had the occasion to observe as under:

"6. So too the next conclusion reached by the Tribunal. The date of the sale of the old building was 9-2-1977. The completion of construction of the new building was in March 1977 although the commencement of the construction started in 1976. It is immaterial as the Tribunal, in our opinion, has rightly observed about the date of commencement of the construction of new building. Since the assessee has constructed the building within two

years from the date of sale of the old building, he was entitled to relief under section 54. "

3.11. The Assessee also wishes to place reliance on a decision of the Hon'ble High Court of Allahabad in the case of CIT v. U.K. Kapoor, reported as [1998] 234 ITR 753 (Allahabad). In the said case, the facts were as follows: assessee therein sold a residential house on 10.07.1963, whereas construction of the new asset was commenced on 10.03.1963. The claim for deduction u/s 54 of the Act was rejected by the concerned AO on the ground that construction of the new asset was commenced before sale / transfer of the original asset. In its decision, the Hon'ble High Court of Allahabad, while approving the above-cited decision of the Hon'ble High Court of Karnataka, observed as under:

"In the case before the Karnataka High Court, the date of the sale of the old building was February 9, 1977. The completion of the construction of the new building was in March, 1977, although the commencement of construction started in 1976. On these facts, the Karnataka High Court held that it

was immaterial that the construction of the new building was started before the sale of the old building. We fully agree with the view taken by the Karnataka High Court. The Appellate Tribunal was right in holding that capital gains arising from the sale of the Golf Link house to the extent it got invested in the construction of the Surya Nagar house, will be exempted under section 54 of the Act. "

3.12. The finding of the Hon'ble Tribunal in the order under appeal in the above referred case has also been reproduced in the judgment, as under:

"A perusal of the above provision will show that it does not lay down that the construction of any house must be begun after the sale of the old residential house and that the sale proceeds of the old residential house must be used for the construction of the new residential house. We are, therefore, of the opinion that the assessee complied with the requirement of section 54 in respect of the construction of the house at 64, Surya Nagar, Agra, and that he is entitled to the exemption out of the

capital gains from the sale of the house at Golf Link to the extent of the cost of construction of the house at 64, Surya Nagar, Agra. We, therefore, direct the Income-tax Officer to modify the assessment accordingly. ”

3.13. The above referred two decisions of the Hon'ble High Court of Karnataka and the Hon'ble High Court of Allahabad were concurred with by the Hon'ble Delhi High Court (jurisdictional) in the decision of CIT v. Bharti Mishra, reported as [2014] 265 CTR 374 (Delhi), albeit in the context of section 54F of the Act. The relevant observations of the Hon'ble Court are reproduced hereunder:

"13. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that the construction must begin after the date of sale of the original / old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said subsection in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original / capital asset

would not be utilised in the construction of the new capital asset, i.e., residential asset, is ill- founded and misconceived....

14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in the form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted... ”

.14. Lastly, reference may also be made to a recent decision of Delhi Bench of this Hon'ble Tribunal in the case of Tarun Jalali v. DDIT (ITA/2376/Del/2014] wherein it has been observed as under:

"5. ... Accordingly, respectfully following the ratio laid down by the Hon'ble Delhi High Court and the Hon 'ble Karnataka High Court as aforementioned, we are of the view that provisions of section 54F do not prescribe any condition as to the date of commencement of construction of new house property, meaning thereby that the construction of

house property may be commenced even before the date of transfer of original asset... ”

3.15. In view of the above-cited position of law and interpretation of section 54 of the Act, the Assessee wishes to contend that firstly, the acquisition of house from M/s DLF is a case of construction of house and not purchase of a house, secondly, the Assessee submits that the fact that the construction was commenced earlier would not have any bearing on the allowability of the claim under section 54 of the Act.

4. CLAIM U/S 54EC IS ALLOWABLE

4.1. The relevant facts regarding this claim are that against the capital gains arising out of sale of the residential house on 21.12.2011, as detailed above, the Assessee purchased eligible bonds of the Rural Electrification Corporation ('REC') worth Rs. 50 Lakhs on

31.01.2012 vide No. 0900848, and worth Rs. 50 Lakhs on 31.05.2012 vide No. 0912416.

4.2. Before addressing the merits of the instant claim, the Assessee first wishes to draw the

attention of this Hon'ble Tribunal to the amendment brought into section 54EC of the Act by way of the Finance Act, 2014, whereby a second proviso was inserted in the said section, which reads as under:

"Provided further that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer or one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees. "

4.3. The Notes on Clauses appended to the Finance Act, 2014 explain the proviso, which, to the extent relevant, read as under:

"Clause 23 of the Bill seeks to amend section 54EC of the Income-tax Act relating to capital gain not to be charged on investment in certain bonds. The existing provisions contained in sub-section (1) of section 54EC provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has within a period of six months

invested the whole or part of capital gains in long-term specified asset, the proportionate capital gains so invested in the long-term specified asset out of total capital gain shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

It is proposed to insert a proviso below first proviso in said sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees... ”

4.4. The Assessee further wishes to bring to the attention of this Hon'ble Tribunal the Memorandum explaining the provisions of the Finance Act, 2014 issued by the Central Board of Direct Taxes ('CBDT' or 'the Board'), which to the extent relevant, provides as under:

"The existing provisions contained in sub-section (I) of section 54 EC of the Act provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has, at any time within a period of six months, invested the whole or any part of capital gains in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

However, the wordings of the proviso have created an ambiguity. As a result the capital gains arising during the year after the month of September were invested in the specified asset in such a manner so as to split the investment in two years i.e., one within the year and second in the next year but before the expiry of six months. This resulted in the claim for relief of one crore rupees as against the intended limit for relief of fifty lakh rupees.

Accordingly, it is proposed to insert a proviso in sub-section (I) so as to provide that the investment

made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years. ”

4.5. The purport and meaning of the above amendment qua the claim of Rs. 1 Crore u/s 54EC was examined by the Hon'ble Madras High Court in the case of CIT v. C. Jaichander, reported as [2015] 370 ITR 579 (Madras), wherein, after referring to the provisions of the Finance Act, 2014 and above-referred notes on clauses and the memorandum issued by the Board, it was held as under:

"10. The legislature has chosen to remove the ambiguity in the proviso to Section 54EC(1) of the Act by inserting a second proviso with effect from

1.4.2015. The memorandum explaining the provisions in the Finance (No.2) Bill, 2014 also states that the same will be applicable from 1.4.2015 in relation to assessment year 2015-16 and the subsequent years. The intention of the legislature probably appears to be that this amendment should be for the assessment year 2015-2016 to avoid unwanted litigations of the previous years. Even otherwise, we do not wish to read anything more into the first proviso to Section 54EC(1) of the Act, as it stood in relation to the assessees.

11. In any event, from a reading of Section 54EC(1) and the first proviso, it is clear that the time limit for investment is six months from the date of transfer and even if such investment falls under two financial years, the benefit claimed by the assessee cannot be denied. It would have made a difference, if the restriction on the investment in bonds to Rs.50,00,000/- is incorporated in Section 54EC(1) of the Act itself. However, the ambiguity has been removed by the legislature with effect

from 1.4.2015 in relation to the assessment year 2015- 16 and the subsequent years.”

4.6. The above decision was subsequently applied by the Hon’ble Madras High Court in the case of CIT v. Coromandel Industries Ltd., reported as [2015] 370 ITR 586 (Madras), wherein the facts were that a capital asset (land) was sold for Rs. 1,13,74,000/- on which capital gains were declared at Rs. 1,09,98,256/-, out of which a sum of Rs. 1 Crore was claimed as a deduction under section 54EC of the Act, by purchase of REC bonds worth Rs. 50 Lakhs each on 31.03.2009 and 30.04.2009. While dismissing the appeal of the Revenue, the High Court affirmed its earlier above-cited decision and dismissed the appeal by the Revenue.

4.7. The aforesaid decision of the Madras High Court has also, inter alia, been referred to and followed, inter alia, in the following decisions:

- ACIT v. Ajay Kalia (ITA/6907/Del/2015; order dated September 2017)*
- Bharkumar M Jain (HUF) v. ACIT (ITA/169 & 170 / Mum/2015; order dated 07.09.2016);*

- *Ms. Lilavati M. Sayani v. ITO (2014) 151 ITD 659 (Mum.);*
- *Shri Vivek Jairazbhoy v. CIT (ITA No. 236/Bang/2012; order dated 14.12.2012)*
- *Tulika Devi Dayal v. JCIT (2018) 89 taxmann.com 442*

4.8. In view of the above position of law, the Assessee submits that subject ground of appeal may kindly be decided in favour of the Assessee and against the Revenue.

5. WRONG ADDITION OF PURPORTED RENTAL AMOUNTS RECEIVED FROM M/S DT CINEMAS

5.1. The Assessee submits that the instant addition is completely devoid of any factual basis and has been made by the AO based solely on conjectures and surmises.

5.2. The Assessee submits that the AO has placed reliance on the clause 8(v) of the lease deed, which has been reproduced in the assessment order, whereunder the lessee was required to pay monthly maintenance charges at the prescribed rate (Rs.

12/- per sq. ft. per month) and has observed that the presence of this clause in the rent agreement was sufficient to make the addition of the amount arrived at in terms of the stated rate.

However, the AO failed to consider in the proper perspective the complete terms of the lease deed whereby clause 1 (c) of the lease deed was not considered in the right context which recorded that the maintenance tasks were handed over by the lessor (Assessee) to M/s DLF Services Ltd. and therefore no question arose of the Assessee receiving such amounts.

The AO also failed to consider in the right spirit the confirmation letter dated 29.01.2015 received from the lessee, i.e. M/s DLF Utilities Ltd., which stated as under:

"This is confirmed that We, M/s DLF Utilities Limited, have made payment of rent under the lease agreement to the owners (i.e. M/s Akshay Sobti, Pradeep Sobti and Seema Sobti) as per the TDS certificates already issued to them and no other payment has

been made to them on any account whatsoever under above mentioned lease agreement. Further, this is clarify that the during FY 2011-12, maintenance of said property are done by ourselves and not paid any charges to M/s Akshay Sobti, Pradeep Sobti and Seema Sobti on account of that.”

5.5 Despite the above-stated clear confirmation from the lessee, the AO proceeded to disregard the same and make the subject addition, despite the Assessee never having even received the said amounts. In view of this, it is submitted that the subject addition is liable to be deleted.

5.6 Without prejudice to the above, the Assessee submits that the AO also appears to have formed a misplaced view that as deduction of maintenance expenses is not permitted for the purposes of computation of income chargeable to tax under the head of 'house property', the maintenance amounts can be taxed. However, the AO has completely overlooked that the

amounts still need to represent the Assessee's income, which is not even the case of the AO herein. Therefore, in this view of the matter, even if these amounts had been received by the Assessee (though denied), no addition thereof could have been validly made." +

5. Ld. counsel for the assessee also in support of his contention, has filed a Paper Book of compilation of cases i.e. copy of Circular 672 issued by the Central Board of Direct Taxes (1994) 205 ITR (St.) 47; CIT vs. Smt. Brindra Kumari (2002) 253 ITR 343 (Del.); ACIT vs. Vineet Kumar Kapila ITA /6868/Del/2015; CIT vs. JR Subramanya Bhat (1987) 165 ITR 571 (Karnataka); CIT vs. HK Kapoor (1998) 234 ITR 753 (Allahabad); CIT vs. Bharti Mishra (2014) 265 CTR 374 (Delhi); Tarun Jalali vs. DDIT ITA/2376/Del/2014; CIT vs. C. Jaichander (2015) 370 ITR 579 (Madras) and ACIT vs. Ajay Kalia ITA/6907/DEL/2015.

6. We have heard both the parties and perused the records, Paper Book filed by the assessee; submissions of both the parties, case laws cited by the Ld. counsel for the assessee and especially the impugned order passed by the Ld. CIT(A). With regard to ground no. 1 relating to disallowance of deduction u/s. 54 of the Act is concerned, we find that the assessee declared long term

capital Rs.12,33,36,714/- from the sale of property at 146, 2nd floor with terrace Jorbagh, New Delhi on 21.12.2011 on which he claimed deduction u/s 54 amounting to Rs.4,00,97,217/-. However, the AO disallowed the claim on the grounds that the assessee had entered into an agreement dated 10.02.2006 and therefore the date of agreement be treated as the date of acquisition, which falls beyond the period of one year prior to the date of transfer prescribed under section 54 of the Income-tax Act, owing the judgment of Honorable Delhi High Court in the case of Gulshan Malik Vs. in ITA no. 55 of 2014 and CIT vs R.L.Sood [2008] 109 taxman 227/245 ITR 727 Delhi), he disallowed the claim of the assessee. According to Assessing officer, the assessee could have purchased a house property between 28.12.2010 to 28.10.2011 in order to claim deduction under section 54. Since the assessee invested in the residential House property namely DLF Magnolia way back in F.Y. 2005-06 which is clearly outside the time period mentioned in section 54 of the Income-tax Act, it does not fit in case of exemption under section 54 of the Act. The Assessing officer placed reliance on the judgement of Honorable High Court at Delhi in the case of Gulshan Malik Vs. CIT in ITA no. 55 of 2014 and CIT vs R. L. Sood [2008] 109 taxman 227/245 ITR 727 (Delhi). However, the assessee submitted that in order to avail the benefit

under section 54 of Income-tax Act he is required to purchase a residential house property either one year before or within two year after the date of transfer of original asset; or within a period of three years after that date he is required to construct a residential house. We note that it has been clarified by the CBDT in Circular No.672 dated 16.12.1993 in which it has been made clear that the earlier circular No. 471 dated 15.10.1986 in which it was stated that acquisition of flat through allotment by DDA has to be treated as a construction of flat would apply to co-operative societies and other institutions. The builder would fall in the category of other institutions as held by Mumbai Bench of Tribunal in the case Smt. Sunder Kaur Sujan Singh Gadh and therefore booking of the flat with the builder has to be treated as construction of flat by the assessee. Thus, in the present case, the period of three years would apply for construction of new from the date of transfer of the original asset. The above circulars are binding on revenue authorities under s. 119 of the Act. He referred the decision rendered by Honorable High Court of Bombay in the case of Mrs. Hilla J. B. Wadia (216 ITR 376), wherein the Honorable High Court has held that it is a case of "Construction". Reliance was placed on the judgment of Honorable Karnataka High Court in the case of CIT Vs. J.R. Subramanya Bhatt (1887) 165 ITR 571 (Karn), wherein it

has been held at it is immaterial whether the construction of the new house was started before the date of transfer, it should be completed after the date of transfer of the original house. In the present case, he had booked a semi finished flat with the builder, namely DLF Universal Limited in the residential group housing complex named as Magnolias DLF Golf Links) and as per agreement, he was to make payment in installments and the builder was to construct the unfinished bare shell of flat for finishing by the buyers on their own to make it live-able (having specifications set out in Annexure-V) as per clause 10.1 of the said agreement. It is also noted that Builder Company offered vide letter dated 30.12.2011 that the Occupation certificate has been received from the Competent Authorities and the six months period for completing the interiors, in terms of agreement shall commence from 01.01.2012 and is to be completed before 30.06.2012. Builder Company's letter dated 20.03.2012 and 20.01.2012 offered to finalise the details of interiors and extended the time for completion of interior to 30.09.2012 and finally possession was granted on 30.10.2013. It has therefore to be considered as a case of construction of new residential house and not purchase of a flat. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be

taken as a case of construction of the residential flat and not as a purchase of a residential flat. Therefore, he had time window of three years period available to him commencing from 21.12.2011 till 21.12.2014 to construct a house property. Having come to this conclusion that it is case of construction it is now to be seen if the assessee fulfils the conditions laid down under s. 54(1) of the Act. In the instant case, the assessee has occupied the house property during 2013 vide letter dated 30.10.2013 offering occupation of House property. Further, the assessee has claimed the deduction on amount invested till the due date of filing of return under section 139(1) of the Income Tax Act. Further, the reliance placed by the Assessing officer on the judgment of Honorable Delhi High Court in the case of Gulshan Malik Vs. CIT in ITA no. 55 of 2014 is not relevant to the facts of the case under appeal, since the issue involved in the case of Gulshan Malik was pertaining to the period of holding of an asset for the purpose of establishing whether resultant gain is long term capital gain or is short term capital gain. It was held a right or interest in an immovable property can accrue only by way of an agreement embodying consensus ad idem as against the confirmation letter that does confer any right to claim title. Similarly in the case of CIT vs. R.L.Sood [2008] 109 man 227/245 ITR 727 (Delhi), the Honorable High Court has declined request of the

revenue to call for reference on the proposed question. It has further been clarified at realizing the practical difficulties faced by the assessee in such situations, the CBDT issued a circular No. 471, dt. 15th Oct, . 1986. The relief extending instructions of the CBDT, in wake of realization of practical difficulties faced by the assessees, by way of circular extending relief to even marginally non compliant assessees in its literal sense of hyper technicalities, cannot be used as a tool to interpreted instructions of the board or decision of the law Courts, to deny the very relief to the otherwise compliant assessees. In a recent reference to Honorable Delhi High Court, in the case of CIT vs Kuldeep Singh, the Honorable Court has observed and discussed various decision of the other Honorable High Courts and Honorable Supreme Court; as follows;

- A. CIT Andhra Pradesh vs. T. N. Aravinda Reddy (1979) 4 SCC 721;
- B. Civil Appeal nos. 5899-5900/2014 titled Sh Sanjeev Lai etc etc vs. CIT Chandigarh & Anr decided on 01/07/2014, 2014 (8) SCALE 432
- C. Reference was made to the decision of Supreme court in CIT vs J.H. Gotla [1985] 156 ITR 323 (SC).
- D. Moreover in CIT vs Bharati C Kothari (2000) 244ITR 352

In the instant case, since the assessee entered into an agreement for construction of a bare shell of a house by periodic payment of installments and he had to carry the internal fit-outs to make it live-able as per Annexure-V of the agreement with the Builder Company, within Six months from the date of certificate of occupation from the competent Authorities, this is to be treated as the case of construction. Further, the construction has been completed within three years of the sale of original asset, which is accepted by the Assessing Officer, the relief under section 54 is genuinely claimed by him and therefore, disallowance made under section 54 amounting to Rs. 4,00,97,217/- needs to be deleted. It is clear that the facts of the present case that it was a case of construction of flat and not purchase of flat as held by the AO. Since, the case pertains to construction, benefit of section 54 of the Act are available to assessee. In view of above, the booking of bare shell of a flat is a construction of house property and not purchase, therefore, the date of completion of construction is to be looked into which is as per provision of section 54 of the I.T. Act., therefore, the Ld. CIT(A), has rightly directed the AO to allow benefit to the assessee as claimed u/s.54 of the I.T. Act, which does not require any interference on our part, hence, we uphold the action of the Id.

CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

6.1 As regards ground no. 2 which relates to disallowance of deduction u/s.54EC to the extent of Rs.50,00,000/- is concerned, we find that the AO had restricted the deduction claimed u/s.54EC to Rs. 50,00,000/- as against the deduction claimed by the appellant amounting to Rs. 1,00,00,000/- following the decision of the Honorable Income tax Appellate Tribunal, Jaipur Bench in the case of ACIT Circle-2 vs. Shri Raj Kumar Jain & Sons HUF, January 31 2012. However, the assessee submitted that the Assessing Officer has strangely and obliquely stopped short of making observation / mention of the very recent Judgment of Honorable High Court of Madras dated December 16, 2014 in case of Commissioner of Income tax Vs. Coromandal Industries Limited placed before him for the reason best known to him only. This is to be understood that the restriction of Rs. 50,00,000/- in a financial year was placed for evenly distributing the invest into the capital gains bonds on continued basis throughout the year. Therefore, the alternative was put into operation were in the capital gain bonds are available on tap throughout the year without stopping but the limit of investment has been capped to Rs. 50,00,000/- per assessee per financial year. This has resulted in even distribution of benefit to

public at large. Had the intention of the legislation was cap the total investment to Rs. 50,00,000/-, the amendment in statute would have prescribed the limit on deduction allowed under the section 54EC and not on investment allowed under section 54EC. Therefore, the interpretation of ITAT, Jaipur Bench in ACIT Circle-2 vs. Shri Raj Kumar Jain & Sons HUF, is misplaced, in total disregard to judgment of the higher authority (i.e. Honorable Madras High Court) which has elaborately discussed the issue involved, ambiguity of law and the provisions of latest amendments made to section 54EC by the Finance Act 2014 including the Notes on clauses – Finance Bill 2014 and Memorandum : Explaining the provisions in the Finance (No. 2) Bill, 2014; placing restriction on "lent to Rs. 50 lakhs with effect from 01.04.2015 by inserting a second proviso, assessing officer has totally ignored his reply in as much as reliance placed on the judgment of the Honorable Madras High Court. The Honorable High of Madras has held as under:-

“The legislature has chosen to remove the ambiguity in the proviso to Section 54EC(1) of Act by inserting a second proviso with effect from 1.4.2015. The memorandum explaining the provisions in the Finance (No.2) Bill, 2014 also states that the same will applicable from 1.4.2015 in relation to assessment year 2015-16

and the subsequent years. The intention of the legislature probably appears to be that this amendment should be for the assessment year 2015-2016 to avoid unwanted litigations of the previous years. Even otherwise, we do not wish to read anything more into the first proviso to Section 54EC (1) of the Act, as it stood in relation to the assessees.

The Honorable High court has further observed and underlined as under;

"In any event, from a reading of Section 54EC(1) and the first proviso, it is clear that the time limit for investment is six months from the date of transfer and even if such investment falls under two financial years, the benefit claimed by the appellant cannot be denied. It would have made a difference, if the restriction on the investment in bonds to Rs.50,00,000/- is incorporated in Section 54EC(1) of the Act itself. However, the ambiguity has been removed by the legislature with effect from 1.4.2015 in relation to the assessment year 2015-16 and the subsequent years.

For the foregoing reasons, we find no infirmity in the orders passed by the Tribunal warranting interference

by this Court. The substantial questions of law are answered against the Revenue and these appeals are dismissed."

6.2 After going through the facts and circumstances of the case, we find that the judgement of the Hon'ble Madras High Court is applicable on the facts of the present case. Therefore, following the decision of Hon'ble High Court, Ld. CIT(A) has rightly allowed the ground of the, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

6.3 As regards ground no. 3 which relates to deletion of addition of Rs. 14,07,474/- made on account of rental income received from D.T. Cinemas is concerned. We find that the Assessing Officer had made addition in the rental income on the ground that the assessee had received 20,10,672/- from the tenant M/S D.T. Cinema Ltd. as per the calculation given in the impugned assessment orders dated 04.02.2015 and allowing deduction there from of 30% on account of statutory deduction under section 24(a) of the Income-tax Act resulting into the net addition of Rs. 14,07,474/-, however, the assessee submitted that the Assessing officer has miserably failed to arriving at any Annual value of the property under section 23(1)(a) and 23(1)(a) of the Income tax Act. The Assessing Officer has erred

in treating the clubbed up Income as composite rent under the head 'Income from House Property' and in the process has failed to segregate composite rent into the rent of the premises taxable under the head 'Income from House Property' and taxable income of maintenance/service charges received by the appellant for provisioning of services under the head 'Income from business & Profession'. The Assessing Officer has misplaced reliance on the judgment of Honorable Delhi High Court in the case of CIT vs. H.G. Gupta & Sons [1984] 149 ITR 253 (Delhi) and Honorable High Court at Calcutta in the case of Indian City Properties vs. CIT [1965] 55 ITR 262 (Cal). The facts and rationale of both the Honorable high Courts in the respective judgment are totally different footings and facts, which are not relevant to the instant appeal. The cases pertain to the allowability of certain deductions on income from House property. Whereas, in the instant case, the Assessing Officer as presumed that the assessee is in receipt of certain amount towards the provisioning of certain services which have not been disclosed which is patently false and based on his own conjecture and surmises, and without fully appreciating records and explanations placed before him. Further, the Assessing Officer has not made any inquiry or undertaken any exercise to prove the evidences / confirmations placed before him to be incorrect or false.

He had in his written submissions dated 29.01.2015 stated that he had only received the monthly rental of the premises as per details attached with the bank statement and had further supported, by means of a confirmation from the tenants namely DLF Utilities Limited which reads as under;

"This is confirmed that We, M/S DLF utilities Limited, have made payment of rent under the lease agreement to the owners (i.e. Akshay Sobti, Pradeep Sobti and Seema Sobti) as per TDS certificates already issued to them and no other payment has been made to them on any account whatsoever under the above mentioned lease agreement. Further this is clarify that during the FY 2011-12. Maintenance of the said property are done by ourselves ana not paid any charges to M/S Akshay Sobti, Pradeep Sobti and Seema Sobti on account of that".

The reconciliation of rent received with the entries in the bank accounts have already been placed on the file of the department, which has been ignored by the Assessing officer. The Assessing officer has not placed on record even an iota of evidence as to receipt of any amount on account of maintenance by the appellant despite having examined the books of account and other details to support his assertion that the appellant has received any maintenance charges from the tenant despite having placed a

confirmation from the tenant to the effect that no maintenance charges have been paid by them. The observation of the Assessing Officer in paragraph 4 is contrary as to the fact that the :

"The appellant has not shown any proof that the charge is not received by him. As per the para 1(c) of the said deed nowhere mentions that the maintenance charge is not taken by the lessor (assessee). It is case of receiving the maintenance charges from the M/S D T Cinema and then paying to mall Management Company of the maintenance work. Even the appellant has not shown any proof with regard to this that he has not been receiving any maintenance charge. While in the said deed at para no. 8 (v) it is clearly mentioned that the assessee is receiving maintenance charge along with the rent in advance."

6.3.1 Keeping in view of the facts and circumstances of the case as explained above, we find that no maintenance charges were received by the assessee as confirmed by the tenant. This fact also gets confirmed from perusal of the bank statement, TDS certificate and details reflected in Form 26AS. Since, no maintenance charges were received or receivable by the assessee, hence, Ld. CIT(A) has rightly directed the AO to delete the addition in dispute, which does not need any interference on our part, therefore, we uphold the

action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

7. In the result, both the 02 appeals filed by the Revenue stand dismissed.

Order pronounced on 10-05-2019.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:10/05/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

AR, ITAT, New Delhi