

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)

ITA No. 1231/Kol/2016
Assessment Year: 2012-13

Smt. Sabita Devi Agarwal.....**Appellant**
C/o Rateria Textile
Sevok Road
Siliguri - 734 001
[PAN : ACRPA 8404 D]

Vs.

Income Tax Officer, Ward-2(3), Siliguri.....**Respondent**

Appearances by:

Shri S.K. Tulsyan, Advocate, appeared on behalf of the assessee.

Shri Sankar Halder, JCIT Sr. D/R. & Ms. Bhoomija Verma, appearing on behalf of the Revenue.

Date of concluding the hearing : November 5th, 2018

Date of pronouncing the order : December , 2018

ORDER

Per S.S. Viswanethra Ravi, JM :-

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals) - Siliguri, (Id. CIT(A)) passed u/s. 250 of the Income Tax Act, 1961, (the 'Act'), dt. 11/04/2016, for the Assessment Year 2012-13.

2. The assessee is an individual and derives income from business, capital gains and other sources. During the year, the assessee sold two plots of land at P.S. Maligore, Dist. Darjeeling, bearing deed no. 12646, measuring 19 kathas for Rs.95,00,000/- and another plot of land bearing deed no. 12464, measuring 1 katha, for Rs.5,00,000/-. The total sale consideration received on sale of these two plots was Rs.1,00,00,000/- (Rs.One Crore Only). The assessee claimed that there was a typographical error in the computation of income, inasmuch as, the purchase of a plot of land was wrongly reflected as purchase of flat. The Assessing Officer disbelieved him on the ground that the alleged mistake that was sought to be rectified was after issual of notice. The said plot of land was purchased for Rs.32,40,000/-. Enquiries made by the Assessing Officer through the inspector revealed that the plot of land is vacant. After considering the replies of the assessee along with evidence that she had entered into an agreement with M/s. Hill View Builders on 20/06/2014, for construction of phase one of her residential

house on this plot in Darjeeling and that she had already paid Rs.20,01,000/- to the said developer M/s. Hill View Builders, the Assessing Officer came to a conclusion that this agreement and payments cannot be believed for the reasons given in his order. He rejected the claim for deduction u/s 54F of the Act, for Rs.52,40,000/- made by the assessee.

He further held that the assessee's claim of exemption u/s 54F of the Act of Rs.20,00,000/-, for the deposit made by her in the Capital Gains Account Scheme (CGAS), the Assessing Officer held that the amount deposited was not by utilizing the sale consideration of the land sold and the said deposit was from borrowed funds. He found defects in the bank account opening forms with Canara Bank. He held that the specific purpose of withdrawal was not given and the assessee herself has withdrawn an amount of Rs.21 Lakhs/- on 16/06/2014. The assessee submitted that this amount so withdrawn which included interest of Rs.1Lakh/- was utilised for purchasing a residential flat at HIG Residency Uttorayon, Matigara, Siliguri. He found fault that the assessee had not invested an amount of Rs.20,00,000/-, for construction of houses on the plot of land in Darjeeling, instead she utilised this fund for purchase of another residential flat at Siliguri, for a total cost of Rs.60,00,000/- in the month of July, 2014. The Assessing Officer further held that the assessee was in possession of two residential house as on the date of transfer. The contention of the assessee that the residential flat owned by her at Flat MA 2-1-B, Building No.1, Garden Estates, Gurgaon, of which she had only 1/4th share was transferred long back on 09/09/2003, by way of a Registered General Power of Attorney and possession certificate and has only one house on date, was rejected. The Assessing Officer relied on the judgment of the Hon'ble Supreme Court in the case of *Suraj Lamp & Industries Pvt. Ltd. Versus State of Haryana & Another [2012] 340 ITR 1*, wherein it is held that by simply by giving a power of attorney, an asset does not stand transferred.

Further the Assessing Officer found that Section 50C of the Act, applies to this case and that the value as per the Registration Authority, stamp value is to be taken as the full value of consideration. He held that the deduction u/ 54F of the Act, cannot be worked out without applying Section 50C of the Act. He took the full value of consideration at Rs.1,20,87,661/-, u/s 50C of the Act, as against Rs.1 Crore/-, actually received by the assessee and computed the LTCG at Rs.68,71,421/-. Aggrieved the

assessee carried the matter in appeal without success. The Id. CIT(A) for the reasons given in his order confirmed the order of the Assessing Officer.

3. Further aggrieved the assessee is before us.
4. Before us, the Id. Counsel for the assessee submitted that
 - a) Investment in the plot is evidenced by registered documents and has to be considered as good evidence and cannot be rejected as an afterthought.
 - b) Evidence of the assessee having entered into a development agreement for construction of a house and of having paid the builder/developer Rs.20 Lakhs/-, cannot be rejected without investigation or collection of contrary evidence.
 - c) Borrowed money can be used for deposit in Capital Gain Account Scheme.
 - d) Value as per Section 50C of the Act, cannot be applied for computing deduction u/s 54F of the Act.

He relied on a number of case-law in support of each of the above contentions. Written submissions were also filed.

4.1. The Id. D/R, on the other hand, controverted the arguments of the Id. Counsel for the assessee. He relied on the order of the Assessing Officer as well as of the Id. CIT(A). The case law relied upon by the Id. CIT(A) as well as the assessment order were relied upon and were explained by the Id. D/R and he prayed that the order of the Id. CIT(A) be upheld.

5. After hearing both sides, considering the facts on record and perusing the orders of the authorities below as well as case law cited we hold as follows:-

6. The first issue that arises for our consideration is whether for the purpose of computation of deduction u/s 54F of the Act, the actual sale consideration has to be taken or the value adopted by the Stamp Valuation Authority (SVA) for the purpose of levy of stamp duty for registration as per Section 50C of the Act has to be taken.

We find that issue is covered in favour of the assessee by the decision of the Visakhapatnam Bench of the ITAT in the case of *DCIT, Circle-2(1), Vijayawada Vs. Dr. Chalasani Mallikarjuna Rao; I.T.A.No.206/Vizag/2013; Assessment Year 2007-08; order dt. 21/10/2016*, wherein it has been held as follows:-

"12. The question is whether the assessee needs to invest the net sale consideration as a result of transfer or the full value of consideration as defined u/s 50C of the Act. The full value of consideration as defined u/s 50C of the Act is a deeming consideration which is applicable for the purpose of computation of capital gain under the provisions of section 48 of the Act. The net sale consideration as a result of transfer of capital asset is a consideration received or accrued as a result of transfer. There is difference between net sale consideration and full value consideration. In our considered view, if the assessee invests net sale consideration for the purpose of purchase/construction of new residential house property, then he is eligible for exemption u/s 54 of the Act, even though the full value of consideration is more than the net sale consideration as a result of transfer. Deeming fiction as provided u/s 50C of the Act in respect of the words full value of consideration is to be applied only to section 48 of the Act and therefore meaning of full value of consideration as referred to in explanation to section 54F(1) of the Act is not governed by the meaning of the words full value of consideration as mentioned in section 50C of the Act as held by the coordinate bench of ITAT Jaipur in the case of Gyan Chand Batra Vs. ITO (2010) 6 ITR 147. The relevant portion of the order is extracted below:

From sub-s. (1) of s. 50C, it is clear that in case the consideration received is less than the value adopted by stamp valuation authority then the value so adopted is to be taken as full value of the consideration for the purposes of s. 48. Sec. 50C provides a deeming provision for considering the full value of consideration as the value adopted for stamp duty. In modern statutes, the expression 'deem' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction of a word or phrase, Thus the artificial meaning of full value of the consideration has been given in s. 50C for the purpose of s. 48. One is entitled to ascertain the purpose for creating a statutory fiction. After ascertaining the purpose, full effect must be to the statutory fiction and it should be carried to its logical conclusion and to that end, it be proper and even necessary to assume all those facts on which alone fiction can operate legislature in its wisdom has referred to s. 48 in s. 50C for adopting the same value market value. Hence, the deeming fiction as provided in s. 50C in respect of the word value of consideration' is to be applied only for s. 48. The words 'full value of consideration mentioned in other provisions of the Act are not governed by the meaning of full value consideration as contained in s. 50C. The natural meaning of full value of consideration refers to consideration specified in the sale deed. Hence, for the meaning of full value of consideration mentioned in different provisions of the Act except in s. 48, one will have to consider the value of consideration as specified in sale deed. —CIT vs. Smt. Nilofer I.

*Singh (2009) 22 (Del) 277; (2008) 14 DTR (Del) 108; (2009) 309 ITR 233 (Del) **relied on.***

(Para 7.1)

*In Explanation to s. 54F(1), it is mentioned that net consideration means the full value a 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. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning o words 'full value of consideration' as mentioned in s. 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-cl. (a) and (b) of s. 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable. Deeming provisions as mentioned in s. 50C will not be applicable to s. 54F so far as the meaning of full value of consideration is concerned as deeming provision mentioned in s. 50C is for specific asset and for the purpose of s. 48. Hence the assessee is entitled for deduction under s. 54F.—CIT vs. Ace Builders (P) Ltd. (2005) 195 CTR (Born) 1 . (2006) 281 ITR 210 (Born) and CIT vs. Assam Petroleum Industries (P) Ltd. (2003) 185 CTR (Gau) 71 : (2003) 262 ITR 587 (Gau) **applied.***

(Paras 7.3 to 7.5)

13. Considering the facts and circumstances of the case and also applying the ratio of the case laws discussed above, we are of the view that the assessee is eligible for exemption u/s 54 of the Act, if the net sale consideration is invested in construction or purchase of new residential house. In the present case on hand, the assessee has invested net sale consideration for construction of new residential house property. Though, the full value of consideration as defined u/s 50C of the Act is more than the net sale consideration as referred in section 54F(1) of the Act, once the net sale consideration has been fully applied under the provisions of section 54 of the Act, then the deeming consideration as defined u/s 50C of the Act cannot be brought into the assessee is eligible for exemption u/s

54 of the Act, therefore, the whole of the capital gain is not chargeable to tax even if the capital gain is computed by taking the value as per the provision of section 50C of the Act. Therefore, we direct the A.O. to allow the exemption u/s 54 of the Act."

6.1. The ld. D/R, relied on the decision of the Bangalore Bench of the ITAT in the case of *Shri Gouli Mahadevappa v. Income-tax Officer, Ward-2, Hospet [2011] 128 ITD 503 (Bang.)*.

6.2. The Jaipur Bench of the Tribunal in the case of *Prakash Karnawat v. Income-tax Officer, Ward 6(2), Jaipur; [2011] 16 taxmann.com 357 (Jaipur)*, adjudicate the issue in favour of the assessee. It considered the judgment of the Bangalore Bench of the Tribunal and at para 8 held as follows:-

"8. We find similar facts are involved in the present case. Assessee has received sale consideration of Rs. 40,00,000/- which has been invested in the Bonds in view of provisions of section 54EC. Therefore, assessee is entitled for deduction under section 54F. The provisions of section 50C are applicable for the purposes of section 48 and for the purpose of section 54F as held by the Tribunal in case of Gyan Chand Batra (supra). Findings of Tribunal have been reproduced somewhere above in this order which were taken in ITA No. 9/JP/2010 for assessment year 2006-07. Similar view has been expressed by the Bangalore Bench of the Tribunal in case of Gouli Mahadevappa (supra). Since entire amount of sale consideration has been invested in Bonds, therefore, in our view provisions of section 50C are not applicable as held by Jaipur Bench and Bangalore Bench. Respectfully following the decisions of the Tribunal, we hold that AO and ld. CIT (A) were not justified in invoking provisions of section 50C and alternatively the capital gain shown by assessee. Accordingly the addition made and sustained by the lower authorities is deleted."

In the case of *ITO vs. Raj Kumar Parashar [2017] 86 taxmann.com 78 (Jaipur-Trib)*, the Jaipur Bench of the Tribunal, under similar circumstances, held as follows:-

"11. On perusal of the above provisions, it is clear that where 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. What is therefore relevant is the investment of the net consideration in respect of the original asset which has been transferred and where the net consideration is fully invested in the new asset, the whole of the capital gains shall not be charged under section 45 of the Act. The net consideration for the purposes of section 54F has been defined as 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. In other words, the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset. In the instant case, undisputedly, the consideration which has accrued to the assessee as per the sale deed is Rs 24,60,000 and the whole of the said consideration has been invested in the capital gains accounts scheme for purchase of the new house property which is again not been disputed by the Revenue. The consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been received by or has accrued to the assessee. Rather, it

is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under section 48 of the Act. Therefore, in the instant case, the provisions of section 54F(1)(a) are complied with by the assessee and the assessee shall be eligible for deduction in respect of the whole of the capital gains so computed under section 45 read with section 48 and section 50C of the Act. The decisions of the Coordinate Benches as referred supra support the case of the assessee. The subject issue was not for consideration before the Hon'ble Karnataka High Court and hence, the same doesn't support the case of the revenue. We are therefore of the considered view that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration."

6.3. After perusing all these orders of different Benches of the Tribunal, we are of the considered view that the view taken, on this issue that the deeming fiction provided u/s 50C of the Act, in respect of the term "full value of consideration" is to be applied only to Section 48 of the Act. The meaning of "net consideration" as regards Section 54F(1) of the Act, is not governed by the meaning of "full value of consideration" as mentioned in Section 50C of the Act. Similar view was taken by the Mumbai 'B' Bench of the Tribunal in the case of *Raj Babbar v. Income-tax Officer - 11(1)(3), Mumbai [2013] 29 taxmann.com 11 (Mumbai - Trib.)*.

6.4 In the result, we direct the Assessing Officer not to adopt the deemed consideration arrived at u/s 50C of the Act, while computing the deduction of the assessee for the purpose of Section 54F of the Act and take into account only "net consideration" as held by different benches of the ITAT.

7. The second issue that arises for consideration is whether the revenue authorities were right in denying the claim of the assessee u/s 54F of the Act, on the ground that what was purchased was a plot of land and not a residential house.

7.1. The assessee purchased a residential plot and thereafter entered into an agreement dt. 20/06/2014 with M/s Hill View Developers for construction of phase I of the residential house at contract value of Rs.25,01,000/- . The assessee had also paid an amount of Rs.22,01,000/-, to the developer on various dates which are listed below:-

Date:	Amount:
20.06.204	51,000/-
14.02.2014	800,000/-
18.02.2015	500,000/-
19.02.2015	600,000/-
<u>26.02.2015</u>	<u>250,000/-</u>
Total	2,201,000/-

The assessee has produced the agreement with M/s Hill View Developers and proof of payment of Rs.22,01,000/- to the developer as evidence. M/s Hill View Developers have not been examined by the Assessing Officer. No enquiry was made nor efforts made to gather evidence to controvert the stand of the assessee. The evidence filed was not believed. The balance amount was to be paid at the time of handing over of the constructed house. The issue before us is whether on these facts, the assessee is eligible for the claim of deduction u/s 54F of the Act.

7.2. The Hon'ble Madhya Pradesh High Court in the case of *Sashi Verma vs. CIT, 1997 224 ITR 107 MP*, held as follows:-

"Section 54 of the Act of 1961 only says that within two years, the assessee should have constructed the house but that does not mean that the construction of house should necessarily be complete within two years. What it means is that the construction of house should be completed as far as possible within two years. In the modern days, it is not easy to construct a house within the time-limit of two years and under the Government schemes, construction takes years and years, Therefore, confining to two years' period for construction and handing over possession thereof is impossible and unworkable under Section 54 of the Act. If substantial investment is made in the construction of house, then it should be deemed that sufficient steps have been taken and this satisfies the requirements of Section 54. Therefore, the view taken by the Tribunal is not correct. Hence, we answer the question in favour of the assessee and against the Revenue."

7.3. The Hon'ble Karnataka High Court in the case of *Commissioner of Income-tax, Bangalore v. Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74 (Karnataka)*, under similar circumstances held as follows:-

"8. Section 54F of the Act is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the legislature, as could be discerned from the reading of the provision, would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three (3) years and/or make it habitable. The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and once it is established that consideration so received on transfer of his Long Term capital asset has invested in constructing a residential house, it would satisfy the ingredients of Section 54F. If the assessee is able to establish that he had invested the entire net consideration within the stipulated period, it would meet the requirement of Section 54F and as such, assessee would be entitled to get the benefit of Section 54F of the Act. Though such construction of building may not be

complete in all respect "that by itself would not disentitle the assessee to the benefit flowing from Section 54F". In fact, appellate Commissioner has not only taken note of the judgment of the co-ordinate bench of this Court in Sambandam's Udaykumar case (supra), but had also taken note of the judgment of High Court of Madras in the case of CIT v. Sardarmal Kothari[2008] 302 ITR 286, which was on similar facts as obtained in Sambandam Udaykumar's case (supra) and as such in the instant case, Appellate Commissioner allowed assessee's appeal noting that the appeal filed by the revenue against the order of High Court of Madras before Apex Court in CC Nos.3953-3954/2009 had been dismissed on 06.04.2009.

9. That apart, co-ordinate bench of this Court in Sambandam Udaykumar's case (supra) referred to supra has examined similar issue and has held that the words used in Section 54F are 'purchased' or 'constructed' and held that the condition precedent for claiming benefit under such provision is the capital gain realized from sale of a Long-Term capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. It has also been held that if the assessee has invested money in constructing the residential house, merely because the construction was not complete in all respects or such building is yet to be completed fully or the building not being in a fit condition for being occupied, would by itself not be a ground for the assessee to be denied the benefit under Section 54F of the Act. It has been held by the co-ordinate bench as under:

"The intention of the legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are 'purchased' or 'constructed'. For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of Section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under Section 54F of the Act".

10. We are in complete agreement with the ratio laid down by the co-ordinate bench of this Court. It has also been noticed by this Court that on the facts of the present case, assessee had produced material evidence before the First Appellate Authority to demonstrate that the construction was on the verge of completion by producing photographs and this aspect, though not noticed in detail, same came to be noticed by the Tribunal to reject the appeal of Revenue. It was also noticed by the Tribunal that construction of the building having been completed and same having been occupied by the assessee, is also a factor to dismiss the appeal of the revenue."

7.4. The Hon'ble Jurisdictional High Court on identical issue in the case of CIT vs. Bharti C Khotari [2001] 117 Taxman 538 (CAL.), has opined as follows:-

“7. If the assessee has invested sale proceeds in a house, which is being constructed by the third party for her, in our considered view, entitles the assessee for the benefit of the exemption under section 54(1). If the benefit is not given to the assessee, though she has invested the sale proceeds in the house which is being constructed for her, that view may not be in conformity with object behind the provisions. The purpose behind this exemption is that when assessee sells her residential house and if she purchases any new house or acquired the new house from that sale proceeds, the assessee is exempted from the capital gain tax.”

7.5. The sum and substance of the propositions laid down by the various High Courts is that, the claim of deduction u/s 54F of the Act is to be allowed if after selling a property, the assessee invests the sale consideration towards purchase of a residential property or for the construction of a residential property though the construction of the house property is not completed within the stipulated period of three years. This view is also supported by the Circular No. 667 issued by the CBDT. In this case the assessee has investment the net sale consideration in a plot of land and had advanced money to the builder for construction. This action as per the propositions of the Courts is sufficient compliance of Section 54F of the Act. Mere investment would be enough.

7.6. The Assessing Officer without any material holds the agreement entered into by the assessee with M/s. Hill View Builders as an afterthought. No investigation is done nor any material contrary to the evidence produced by the assessee is brought on record. Such an action of the Assessing Officer cannot be countenanced. The assessee in our view has discharged the burden of proof that lay on her. The onus shifted to the revenue and this burden is not discharged by the revenue. Thus, in view of the above discussion, we hold that the Assessing Officer was wrong in denying the claim of the assessee for deduction u/s 54F of the Act of Rs.52,40,000/-

8. The next issue is regarding the exemption u/s 54F of the Act, on the deposit made by the assessee in the Capital Gains Accounts Scheme. The Assessing Officer's finding is that the assessee had used borrowed funds for making investment in the capital gains accounts scheme. It is well settled that there is no such requirement of law that the very sale proceeds from sale of property should be utilized for making deposit in the Capital Gains Account Scheme in a bank.

8.1. The Hyderabad 'A' Bench of the Tribunal in the case of *Muneer Khan vs. ITO [2010] 41 SOT 504 (Hyd.)* has held as follows:-

"II. Section 54F, read with section 54, of the Income-tax Act, 1961 - Capital gains - Exemption in case of investment in residential units - Assessment year 2001-02 - Whether object of introduction of sections 54F and 54 is that assessee should make more investment in residential house, on sale of his old residential house or long-term capital asset and it is not necessary that same funds must be used in purchasing of new residential house, but fund should be available with assessee for investment in residential house - Held, yes - Whether since law permits utilization of capital gains within specified time, assessee may use such funds for other purpose and may find resource from other source for investment in time - Held, yes - Whether neither law nor any circular requires identity of amount received on sale and utilization for purpose of section 54F and other relevant provisions - Held, yes - Whether since money has no colour, all that is required is compliance with condition of investment within specified time for purpose of exemption under section 54F - Held, yes"

8.2. This proposition of law was followed by another Bench of the Tribunal in the case of *J.V. Krishna Rao vs. DCIT; [2012] 24 taxmann.com 104 (Hyd.)*.

8.3. The Hon'ble Kerala High Court in the case of *ITO vs. K.C. Gopalan [1999] 107 TAXMAN 591 (Ker.)*, has taken a similar view that it is not necessary that the very same consideration that is received on sale of property, as such, should be utilised for construction of new building.

8.4. The Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Kapil Kumar Agarwal [2016] 66 taxmann.com 191 (Punjab & Haryana)*, held that Section 54F nowhere envisages that sale consideration obtained by assessee from sale of original capital asset is mandatorily required to be utilized for purposes of meeting cost of new asset. It held that investment made by the assessee may be sourced other than entirely from the capital gains. The propositions laid down in these case-law, when applied to the facts of the case on hand, has to lead to a conclusion that this objection of the revenue authorities cannot be sustained.

9. The last issue is as to whether the assessee, at the time of claim of exemption u/s 54F of the Act was already in possession of two residential properties i.e., a house in Gurgaon and a pent house.

9.1. The assessee was owner of 1/4th share in a residential house in Gurgaon. The undisputed fact is that she transferred the above asset by way of registering a general power of attorney dt. 08/09/2003, supported by a possession affidavit of even date in favour of the purchaser. The registration of the sale of said property had not taken place. The Assessing Officer invoked the decision of the Hon'ble Apex Court in the case of *Suraj Lamp & Industries Ltd. vs. State of Haryana; 340 ITR 1 (SC)*, and held that registration of general power of attorney cannot convey the title nor does it tantamount to a valid mode of transfer of immovable property. The issue before us is whether the assessee still owns this house property.

The assessee relies on the following judgments:-

9.3. *Laxman Singh & Ors. V. Urmila Devi, ILR (2014) 3 Delhi 1649*

"17. In view of the above legal position, it would follow that the defendant admittedly as per the written statement was inducted in the suit property as a licensee. Shri Ganpat Ram has now died on 20.08.2010. Their license has been terminated. He cannot challenge the title of the licensor now at this stage after 14 years. The reliance of the defendant on the judgment of Suraj Lamps (supra) is clearly misplaced. Even otherwise, the judgment of the Hon'ble Supreme Court in Suraj Lamps (supra) has prospective effect and would not affect the transactions that have already been effected."(emphasis supplied)

9.4. *Ajit Singh Mann v. UOI, MANU/DE/2372/2017*

"10. As far as the objections with respect to the locus standi of the petitioners in W.P. (C) Nos. 7893/2014 & 7898/2014 are concerned, no doubt these petitioners claim the relief from this Court on the basis of an unregistered agreement of sell and General Power of Attorney. In these cases, the Court notices that these documents were executed almost three decades back. The judgment in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana MANU/SC/1222/2011 : (2012) 1 SCC 656 is clear that unregistered Power of Attorneys and such like conveyance documents, would have only prospective effect."(emphasis supplied)

10.1. From the above, it is clear that the judgment of the Hon'ble Supreme Court is prospective and does not affect transactions that have already taken place. As this transaction was executed in the year 2003 and possession was handed over, the judgment in the case of *Suraj Lamp & Industries Pvt. Ltd. (supra)* will not apply as the judgment has come in the year 2012.

10.2. Even otherwise, Section 2(47) of the Act, lays down that transfer would include a transaction allowing possession of an immovable property in part performance of a contract of a nature referred to in Section 53A of the transfer of property Act. In the case

on hand, part performance of a contract has taken place and possession has been handed over. Under these circumstances, the claim of the assessee that her 1/4th share in the house property in Gurgaon has been transferred, has to be accepted. Hence we hold that the assessee has only one house property as on the date of sale of the plots of land giving rise to long term capital gain. Hence this issue is decided in favour of the assessee.

11. In view of the above discussion, we are of the considered opinion that the assessee is entitled to deduction u/s 54F of the Act, on the "net sale consideration invested Rs.52,40,000/-. The Assessing Officer is directed to compute the long term capital gain accordingly.

12. In the result, appeal of the assessee is allowed.

Kolkata, the 19th day of December, 2018.

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Dated : 19.12.2018

{SC SPS}

Sd/-

[S.S. Viswanethra Ravi]

Judicial Member

Copy of the order forwarded to:

1. ***Smt. Sabita Devi Agarwal***

C/o Rateria Textile

Sevok Road

Siliguri - 734 001

2. ***Income Tax Officer, Ward-2(3), Siliguri***

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar

ITAT, Kolkata Benches