IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1154/DEL/2024
(Assessment Year: 2017-18)

Late Shri Ram Kishore Seth, (through Legal Heir, Smt. Rama Seth), ND-63, Pitampura, New Delhi – 110 034.	vs.	Income Tax Officer, New Delhi.
(PAN : EJIPS0799P)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
Shri Saksham Agarwal, CA
Ms. Shilpa Gupta, CA
REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 11.09.2025
Date of Order : 09.12.2025

O R D E R

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi ["Ld. CIT(A)", for short] dated 16.01.2024 for the Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeal :-

> "1. Capital Gains- 1) The Ld. CIT(A) has erred in not appreciating either the facts and in the circumstances of the case or the submissions of the applicant. He has further erred in passing an order which is bad in law and on facts. 2). The Ld. CIT(A) has erred in confirming the disallowance of exemption U/S 54/54F of the Income Tax Act amounting to Rs.1,22,45,121/- made by the Ld. Assessing Officer. 3). The Ld. CIT(A) has erred not appreciating the principle of residential house given in the case of Geeta Duggal vs CIT 357 ITR 353 by Hon'ble Delhi High Court.
>
> 2. Cash deposited into Bank Account :- Ld. CIT(A) has erred in confirming the addition of Rs.17,28,000/- in r/o cash deposited in the bank accounts during the demonetization by ignoring the submissions and evidence placed before the Ld. CIT(A) and Ld. Assessing Officer. The order of lower authorities being erroneous, illegal and arbitrary, the same may kindly be modified."

3. The assessee has also taken the following additional ground :-

> "3. Without prejudice, having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in confirming the action of Ld. AO in taxing the addition of Rs.17,28,000/- u/s 68 at the rate of 60% u/s 115BBE instead of applicable rate of 30% u/s 115BBE as applicable to the year under consideration."

4. Ld. AR submitted that since the above ground of appeal is purely legal, does not require fresh facts to be investigated and go to the root of the matter, the same may be admitted in view of the judgement of NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).

5. On the other hand, ld. DR for the Revenue has no objection of admitting the additional ground of appeal being purely legal issue.

6. In view of the reliance made by the ld. AR for the assessee on the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. (supra)

and issue being purely legal, we proceeded to admit the additional ground of appeal being a legal issue.

7. Brief facts of the case are, the case of the assessee was selected for scrutiny under CASS for limited scrutiny for cash deposits and capital gains on sale of property. Accordingly, notices u/s 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act) were issued and served on the assessee through ITBA portal. The main issues under consideration are, assessee claimed deduction u/s 54F and made cash deposits during the year under consideration.

8. During the assessment proceedings, the AO observed that assessee is owner of several house properties against which he has declared income from house properties and also claimed deductions u/s 24 of the Act. Further he observed that assessee had sold two properties and claimed deduction u/s 54F of Rs.1,22,45,121/-. The assessee was asked to explain the same. In response, it was submitted that he had not claimed any deduction in the sale of property at Karol Bagh and had only claimed on Pitam Pura House, which was a house constructed on a 300 sq. yard. He entered into a collaboration agreement with the builder, namely, Mr. Tarandeep Singh to demolish and build a new building as per the terms of the agreement. Accordingly, the builder will retain the second floor and 25% of the parking area, in compensation he will pay Rs.1.50 crores and

construct the rest of the portion of the building. Therefore, the sale consideration was determined at Rs.229,69,370/-. The assessee had claimed deduction u/s 54F by relying on the decision of Hon'ble Delhi High Court in the case of Gita Duggal (84 DTR 346). The AO observed that after amendment to the sections 54 and 54F, the expression used are 'a residential house in India'. Since the assessee owns several house properties/units at different places from where he earns income from house property. He observed that Hon'ble High Court observed the fact that several units are not an impediment to claim deduction u/s 54/54F, however, the provision of section 54F used the expression a residential house, therefore assessee is not eligible to claim the deduction u/s 54F of the Act.

9. Further AO noticed that the assessee had deposited Rs.17,28,000/- during demonetisation period. The assessee was asked to explain the same. The assessee had submitted a chart to show cash deposit trends during financial year 2015-16 and 2016-17 with the break up for the period before and after the demonetisation period, the same is reproduced at page 10 of the assessment order. He observed that there is no prior history of having cash in hand, therefore the assessee failed to explain the cash deposit made during demonetisation period. Accordingly, he proceeded to

make the addition u/s 69A of the Act and also invoked the provisions of section 115BBE of the Act to apply the prescribed rates of tax.

10. Aggrieved, the assessee preferred an appeal before NFAC, Delhi. The assessee has raised several grounds of appeal and filed submissions similar to the submissions made before AO. After considering the above submissions and findings of AO, he proceeded to sustain both the additions.

11. Aggrieved with the above order, the assessee is in appeal before us. At the time of hearing Ld AR of the assessee brought to our notice the relevant facts on record. He submitted that all that is in dispute with regard to deduction claimed u/s 54F is as to whether floors constructed by the builder on assessee's old house no. ND 63, Pitampura, New Delhi would constitute one residential house or more than one residential house and whether the assessee is eligible to claim the deduction. He further submitted as under :-

> "Case of the assessee is that assessee had one residential house no. ND 63 Pitampura, New Delhi which was demolished and 3 floors were constructed. According to the assessee, floors constructed would constitute nonetheless one residential house as Section 54 has used the term residential house and not the residential units.
>
> Identical issue was decided by Hon'ble Delhi High Cou11 in the case of CIT vs. Gita Duggal, 84 DTR 346 and by Jodhpur bench of Hon'ble Tribunal in the case of Mohd. Hassan vs. ACIT, Circle in ITA No. 74/Jodh/2020 dated 05.02.2024.

Further, the Ld. AO contended that appellant owned more than one house property, apart from the new asset on the date of transfer of original asset, based on assumption that the assessee earns income from multiple house properties.

This is recorded in para 4.2 at page 9 of the assessment order, and reiterated by Ld. CIT(I\) in para 6.6 at page 7 of the appellate order.

In this connection, it is submitted that the assessee owned:

l . A single residential house at Plot No. 8A/l3, Pusa Road, Karol bagh, New Delhi, originally a plot, converted into a residential house with a basement, ground, first, second and third floors; and

2. Another residential house at House No. ND-63 In Pitampura, Delhi for which the exemption u/s 54F has been claimed.

The assessee has let-out portions of these properties, and the rental income was duly reported under head house property. However, Ld. AO erroneously treated each floor of the residential houses as a separate residential property.

It is clarified that assessee did not own more than one residential property other than the new asset on the date of transfer. The Ld. AO's contention-s-that each floor constitutes a distinct residential house-is not correct.

PB 30-40 (35) is the copy of assessee's reply dated 15.01.2024, wherein it was submitted that assessee owned one residential house other than the new asset, asserting that multiple units within a building constitute one residential house.

In order to support the claim, reliance in placed on the case of Gita Duggal (supra) wherein the Court pointed out that there is nothing in these Sections which requires the residential house to be constructed in a particular manner. A person may construct a house according to his plans and requirements. He may arrange for his children or his family to stay there. He may construct a residence in such a manner that in case of a future need he may be able to dispose of, a part thereof as an independent house. Therefore,

physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. The SLP against this judgement was dismissed by Hon'ble Supreme Court in CIT vs. Gita Duggal, [20141 52 taxmann.com 246. There is no doubt that this decision was rendered in the context of "a residential house". I however, a distinction should be made between a residential unit and a residential house. The present requirement is to acquire "one residential house". It does not mean one floor. If the building is organically one, it shall still form one residential house. The assessee in the present case has entered into JDA with builder for construction of multiple floors in the residential house. Thus, vertical structuring of the building should not come in the way of considering the building as one residential house.

- Mohammadanif Sultanali Pradhan vs. The DCIT, ITA No.1797/Ahd./2018

In the light of above, it is humbly prayed that the assessee neither constructed nor owned more than one residential house, apart from the new asset, on the date of transfer. Your honour is respectfully requested to allow the assessee's appeal."

12. Further he relied on the decision of coordinate bench in Saroj Rani in ITA No 5472/Del/2024 dated 19.08.2025, ITAT Bombay bench decision in Nakul Aggrarwal ITA No.2551/Mum/2024 and decision of Hon'ble High Court of Delhi in the case of PCIT Vs Lata Goel dated 30.04.2025 (ITA 127/2025).

13. With regard to cash deposits, Ld AR submitted as under :-

"2. Inter-Bank Cash Withdrawals and deposits (Rs. 8,00,000/-): The assessee withdrew cash from one bank and subsequently deposited the same into another bank account. This transaction merely reflects transfer or funds between accounts held by assessee, and devoid of any unaccounted income. These details of such withdrawals and deposits are documented and verifiable.

PB 1-2 is the copy of working of cash deposits and withdrawals for the period 01.07.2016 to 31.12.2016, clearly reflecting the balance cash in hand and the source thereof, conclusively showing the origin and application of funds in question.

PB 3-26 are the statements of various bank accounts held by the assessee, evidencing the transactions of withdrawals and deposits, including the inter-bank transfer of Rs.8,00,000/-.

2. Cash Proceeds from Rent and Security deposit (Rs. 2,45,000/-): An amount of Rs. 2,45,000 was received in cash, comprising refundable security deposits ofRs.2,10,000 and rent proceeds Rs.35,000/- received in cash. These amounts are received pursuant to rent agreement dated 03.09.2016 for the property located at 8A/13G, WEA, Karol Bagh.

PB 28-29 is the computation of income of the assessee for AY 2017-18, wherein rent income from the aforesaid property has been duly offered under the head house property."

14. On the other hand, ld. DR of the Revenue submitted that the assessee was changing its stand before lower authorities on the issue of deduction claimed u/s 54/54F. He brought to our notice joint development agreement and submitted that the assessee had actually sold second floor and car parking and purchased more than one property. At the time of claiming deduction u/s 54F, he was holding more than one property, therefore he is not eligible to claim the deduction. Further he submitted that the cases relied by the assessee are distinguishable. With regard to cash deposits, he relied on the findings of lower authorities.

15. Considered the rival submissions and material placed on record. We observed that the assessee was declaring income from house property as under:

(i)	Karol Bagh UGF
(ii)	Karol Bagh First floor
(iii)	Karol Bagh IVth floor
(iv)	Pitampura first floor
(v)	Pitampura third floor

16. The issue before us is whether the assessee has more than one property other than the new property constructed. We observed that the assessee had entered into JV agreement with the joint developer on 11.10.2011 and as per the agreement, the developer had completed the project during the year under consideration, he had built three floors, he retained second floor with 25% of the parking area. The assessee retained first and third floor and completed the registration formalities during the year. It declared the sale proceeds and claimed the deduction u/s 54F. Considering the above facts on record, whether the assessee is eligible to claim deduction u/s 54/54F. We observed that the assessee was earning rental income from three independent units from Karol Bagh and new units constructed under joint development agreement. The issue is of the claim of deduction u/s 54/54F on the sale of portion of Pitampura building, wherein the assessee had retained two portions and sold one

portion as per JV. The real issue is whether the assessee is eligible to claim the deduction u/s 54 when he holds more than one residential independent units. The assessee claimed that the units in the same building should not be considered for deduction u/s 54, it should be treated as one house property by relying on the several decisions wherein it was held that the assessee may construct more than one unit according to its requirements, as long as it is one building irrespective of units, the deduction is available to the assessee. After considering the issue under consideration, we are of the view that the assessee can claim benefit u/s 54 only when he hold one house and the other house which was disposed off to acquire another residential unit. The cases relied by the assessee are relating to claim of deduction when the assessee acquires or construct house of several units on the same building, for which the courts have held that deduction is available to the assessee.

17. However, in the given case, the provisions of section is very clear that the assessee can have not more than one house, it means that the assessee can have one house plus another independent residential house to claim the deduction. The courts have held clearly that the residential house means it should contain room, hall and kitchen. Therefore, what is relevant to treat the independent residential house to mean are there should be common kitchen and number of units may vary. In the given case, the assessee

was earning rental income from three independent residential units which had three separate kitchens, from the building at Karol Bagh, it means that it had already three residential units. The eligibility to claim the benefit u/s 54/54F fails. The construction of new building at Pitampura is beyond the eligible units wherein the assessee at the time of sale of second floor to the developer, had more than one property, therefore the assessee is not eligible to claim deduction u/s 54 at the entry level itself. The case law relied are distinguishable to the facts in hand. Therefore, we are inclined to dismiss the ground raised in this regard.

18. With regard to cash deposits, we observed that the assessee had filed the bank statement in the form of paper book, we noticed that the assessee had deposited cash, which is out of cash withdrawals of Rs.8 lakhs and redeposited the same in the another account, there is traceability to the same. Further there is refundable security deposits from the rental properties and part portion of joint development agreement to the extent of Rs.6,83,000/- was deposited, which was ultimately part of sale consideration. Therefore, in our considered view, the assessee had enough source of cash to deposit during demonetisation period. Hence, we are inclined to allow the ground no.2 raised by the assessee.

19. With regard to additional ground raised by the assessee, we observed that the issue is relating to applicability of tax rates for addition u/s 69A of the

Act, since we already allowed the ground raised in favour of the assessee, this ground becomes infructuous, even otherwise, we observed that Hon'ble High court of Madras held in the case of SMILE Microfinance Limited (supra) that the provision of section 115BBE is applicable prospectively from AY 2018-19. Hence, the same is allowed as indicated above.

20. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 9th day of December, 2025.

Sd/-	sd/-
(ANUBHAV SHARMA)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 09.12.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI