

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER  
AND  
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.181/PUN/2021

Assessment Year: 2015-16

Arunkumar Purshotamlal Khanna, Flat No.3123/3124, Clover Palisades, NIBM Road, Kondhwa, Pune- 411048. PAN : AGIPK3043K	Vs.	PCIT (Central), Pune.
Appellant		Respondent

Assessee by : Shri Nikhil S. Pathak  
Revenue by : Shri Naveen Gupta

Date of hearing : 14.06.2022  
Date of pronouncement : 06.07.2022

**ORDER**

**PER S. S. GODARA, JM:**

This assessee's appeal for assessment year 2015-16 arises against the Pr.CIT (Central), Pune's order dated 31.03.2021 passed in case no.ITBA/REV/F/REV5/2020-21/1032111768(1) involving proceedings u/s 263 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. The assessee's instant appeal challenges correctness of learned PCIT's section 263 revision directions issued to the Assessing Officer that his corresponding section 143(3) regular assessment dated 14.12.2017 framed an erroneous one so far as it causes prejudice to interest of the Revenue in accepting the former's section 54F deduction claim.

A few relevant facts may be noticed.

We note from the assessee's detailed paper books running into 232 pages that the he had derived his corresponding long term capital gains from sale/transfer of equity shares held in M/s. Emcure Pharmaceuticals Pvt. Ltd. and UTH Beverage Factory Pvt. Ltd.; as the case may be. His total long term capital gains came to be Rs.10,86,37,509/-. There is further no issue that this assessee *inter alia* purchased flat nos.3123 and 3124 in residential project "Clover Palisades" on 23<sup>rd</sup> June and 23<sup>rd</sup> July, 2014 from M/s Raj K. Bhansali (HUF) for Rs.2.60 crores and Rs.2.40 crores; followed by stamp duty and registration charges of Rs.15,90,100/- and Rs.14,70,100/-; respectively, coming to Rs.2,75,90,100/- and Rs.25,47,100/-, aggregating to Rs.53,06,200/-. He also claimed cost of alteration/modification of Rs.1,91,37,784/- and investment in

capital gains account scheme of Rs.1 crore; respectively. He therefore raised an aggregate section 54F deduction claim amounting to Rs.8,21,97,984/-. Suffice to say, the Assessing Officer accepted disallow the same in his section 143(3) regular assessment dated 14.12.2017 thereby not making any addition in returned income amounting to Rs.7,76,60,770/-.

3. The PCIT thereafter sought to invoke its 263 revision jurisdiction on the ground that the above stated regular assessment was an erroneous one causing prejudice interest of the Revenue. He issued his show cause dated 11.03.2021 to the assessee as follows :-

*“NOTICE FOR THE HEARING*

*M/s/Mr/Ms*

*Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 - Assessment Year 2015-16.*

*In this regard, a hearing in the matter is fixed on 18/03/2021 at 03:30 PM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)*

*Sub:- Show cause notice u/s 263 of the I T Act 1961 in the case of Shri Arunkumar Purushotamlal Khanna, for A.Y. 2015-16 - Reg.*

*\*\*\*\*\**

*Kindly refer to the above.*

*In the above mentioned case, on verification of case records for A.Y. 2015-16 it has been observed that the assessment order passed u/s 143(3) of the Income Tax Act 1961 dtd. 14.12.2017 is erroneous and prejudicial to the interest of the revenue.*

*Brief facts of the case are as under : -*

*The assessee is a share holder and Director of Emcure pharmaceuticals Pvt ltd. During the AY 2015-16, the assessee has sold his shares of Emcure Pharmaceuticals Pvt Ltd and UTH beverage factory Pvt. Ltd. The assessee has made a claims of deduction under section 54F of the Income Tax Act during the year of Rs 7,81,35,690/- and Rs 50,00,000/- under section 54 EC as against the net consideration received from the sale of shares. The total net consideration received out of sale shares is Rs 11,42,85,600/-. These claims were made in the return of income filed during the said year on 31/08/2015.*

*The case was subsequently selected in scrutiny via CASS for AY 2015-16 under Limited Scrutiny Category. The reason for selection of case in Scrutiny was to examine deductions claimed by assessee under the head capital gains. The AO has subsequently examined the claim of assessee during scrutiny proceedings on the issue of capital gains deduction under section 54EC and Section 54F of the act and has allowed the claim of the assessee. The assessment order under 143(3) of the income tax act 1961 was passed on 14/12/2017 allowing the claim of deduction under capital gains.*

*During the assessment proceedings the assessee gave a detailed explanation of the claim made by him of Rs 8,31,35,690/-. The claims have been made under section 54EC and Section 54F of the Act. The assessee has purchased NHAI bonds of Rs 50,00,000/- on 31/01/2015 and claimed deduction section 54EC of the Act. Further, the assessee has made a claim of Rs 7,81,35,690/- under section 54F of the act. This claim has been made by the assessee in respect of purchase of two houses by the assessee. The breakup of the claim made by the assessee under section 54F is as under:*

*Calculation of Exemption u/s 54F  
Cost of New House Purchased*

Particulars	Date of Purchase	Cost of Purchase	Stamp duty and Registration	Total
Flat # 3123, Clover Palisades	23.06.2014	26,000,000	1,590,100	27,590,100
Flat- # 3124, Clover Palisades	23.07.2014	24,000,000	1,470,100	25,470,100
Total				53,060,200
Add : Cost of Alterations / Modifications				19,137,784

Add : Capital Gain Scheme	10,000,000
Total Cost of New House	82,197,984

*Formula to claim Exemption u/s 54F*      *Cost of New House x Capital Gain*  
*Net Sale Consideration*

Cost of New House (a)	82,197,984
Capital Gain (b)	108,637,509
Net Sale Consideration (c)	114,285,600
Exemption u/s 54F(a x b)/c	78,135,690

*It can be seen from the above table that the assessee has made a claim in respect of two residential houses namely Flat No 3123, Clover Palisades and Flat No 3124, Clover Palisades. The assessee has also made a claim of cost of alterations and modifications made in these flats. This amount is to the tune of Rs 1,91,37,784/-. This amount has also been claimed by the assessee under section 54F of the Act. Further, the assessee has also kept an amount of Rs 1,00,00,000 under Capital gain scheme, and excluded the same from the total taxable capital gain.*

*From the above, it can be seen that the assessee has made a claim in respect of 3 issues. These are claims of deduction of flats under section 54F of the Act, Claim of Rs 1,91,37,784/- in respect of moderation and alterations of the house and claim of Rs 1,00,00,000 under Capital Gain Scheme. As can be seen from the above, the assessee has claimed section 54F deduction on 2 flats and has also added the cost of alteration under the claim of deduction under the said section. Apart from this, an extra Rs 1,00,00,000/- has also been claimed under the said section.*

*Section 54F of the Act refers to the deduction to be claimed by the individual or HUFs in respect of capital gain arising to the assessee if the said capital gain has been invested in the purchase of One Residential House in India within the stipulated time frame prescribed. The section 54F of the income tax act has undergone modification as on 01/04/2015 applicable from AY 2015-16. The section is reproduced below*

*“ In the case of an assessee being an individual or a HUF, if the capital gain arises from the transfer of any long-term capital asset, not being a residential house (original asset) and the assessee has within a period of 1 year before or 2 years after the date on which the transfer*

*took place purchased, or has within a period of 3 years after that date constructed, one residential house in India (new asset), the capital gain shall be dealt with in accordance with the following provisions of this section:*

- *if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45*
- *if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45. ”*

*As can be seen from the plain reading of the above section, the claim of deduction under section 54F of the Act is available for purchase of One Residential House In India. In the instant case the assessee has purchased two residential units in FY 2014-15. This can be seen from the submission made by the assessee during the assessment proceedings. The assessee purchased two flats in the building Clover Palisade ,NIBM Road, Pune. Both the flats were purchased from an individual as second sales. For this, the assessee entered in to two separate agreements which were duly registered by the assessee. These were having two separate agreements by which these two units have been purchased. The agreed amount has been paid in the financial year itself. Clearly the assessee has violated the provisions of section 54F of the act by making a claim of deduction from capital gain in respect of two separate units. The section expressly allows only one residential house to be claimed as a deduction. This is after the language of the section has been changed completely from “a residential house” to “One Residential House in India”.*

*Further the assessee has made a claim of alterations and modifications to the tune Rs 1.91 crores. The section 54F nowhere allows such type of claims of deduction in respect of modifications and alterations. The assessee in his defense has quoted numerous case laws before the assessing officer to justify his claim in the garb of making the house habitable. This has been made to further his claim in respect of cost of improvement of the house. However it is to be noted that section 54F allows deduction in respect of Purchase of One Residential House. Nowhere in the section of the act does the claim of the assessee finds justification. Further the assessee states that the house has been purchased from the builder in its submission dated 28<sup>th</sup> November 2017. This is not found to be factually correct. As per its own submission dated 04/10/2017, it is seen that the assessee has purchased both flats from one HUF of Shri Raj Kanaksen Bhansali. Alternatively the claim of the assessee could have been allowed if the assessee had*

constructed the residential house. However the assessee has purchased the flat/ house in the instant case.

Furthermore, the assessee has also claimed Rs 1,00,00,000/- under capital gain scheme. This claim is part of assessee's claim of deduction under section 54F of the Income Tax Act. However, the assessee has nowhere given any justification on record as to why this amount has been deposited in Capital Gains Scheme when the purchase transaction for both the flats has already been completed on 23/07/2014. Further, the builder has also granted the provisional NOC on 24<sup>th</sup> March 2014. In the registration agreements it is also clearly mentioned that the seller is in full receipt of amount agreed upon two parties for the purpose of transfer of the flats.

In view of all of the above mentioned issues, it is clearly noted that the assessee has violated the provisions of section 54F of the act by making a claim in respect of two flats and also made claims not permissible as per plain reading of section 54F of the Act. The assessee is entitled to claim the deduction in respect of one flat only which comes within the meaning of One residential house in India. Hence the allowable deduction under section 54F is worked out as under:

Net Sale Consideration sale of shares	:	Rs 11,42,85,600/-
Capital Gain	:	Rs 10,86,37,509/-
Residential House Property Flat 3123 (Being higher of two flat values)	:	Rs2,75,90,100
Exemption Under Section 54F	:	Rs 2,62,26,573/-
Exemption Under Section 54EC	:	Rs 50,00,000/-
Taxable Gain	:	Rs 7,74,10,936/-

The assessee has shown a capital gain of Rs 2,41,12,249/- in the return of income filed on 31/08/2015. Hence it can be seen that there is an underassessment to the tune of Rs 5,32,98,687/- The underassessment of the above mention amount along with 234B is worked out at Rs. 1,63,44,719/-.

5.0 Therefore, in my view the order dated 14/12/2017 passed by the AO for A.Y. 2015-16 accepting the total income returned by the assessee appears to be erroneous in so far as it is prejudicial to the interests of revenue. I, therefore, intend to set aside/ modify the assessment order within the meaning of sec 263 of the I.T. Act, 1961. An opportunity of being heard is therefore, given to you. You are requested to attend in person or through your authorized representative on 18.03.2021 at 3:30 PM in my office at Pune.

6.0 If you have authorized any representative to attend on your behalf, please ensure that the power of Attorney with proper court fee stamp is filed on or before the date of hearing. If you do not wish to attend in person or through your authorized representative, you may

*file written submission along with necessary evidence in support of your contention before the due date of hearing. Further, it may be noted that no adjournment will be provided and in case of non-appearance/non-submission of reply, order will be passed on merits.”*

4. Suffice to say, the assessee appears to have filed detailed submissions before the learned PCIT on 20<sup>th</sup>, 29<sup>th</sup> and 31<sup>st</sup> of March, 2021 contesting his section 263 revision proposal on all factual as well as legal aspects. The same stand rejected in the latter’s section 263 revision order under challenge as under :-

*“1.3 On verification of the case records, it is noticed that the assessee gave a detailed explanation of the claims made by him for Rs82,197,984/- to the AO during the assessment proceedings. These claims were made under Section 54EC and Section 54F of the Act. The assessee has purchased NHAI bonds of Rs 50,00,00,000/- on 31/01/2015 and claimed deduction Section 54EC of the Act. Further, the assessee has made a claim of Rs78,135,690/-under Section 54F of the Act. This claim was made by the assessee in respect of purchase of two houses by the assessee and the renovation etc. The breakup of the expenses incurred and the claims made by the assessee under Section 54F as per the submissions dated 28<sup>th</sup> Sept 2017, per ANNEXURE III are as under:*

*Calculation of Exemption u/s 54F  
Cost of New House Purchased*

Particulars	Date of Purchase	Cost of Purchase	Stamp duty and Registration	Total
Flat # 3123, Clover Palisades	23.06.2014	26,000,000	1,590,100	27,590,100
Flat- # 3124, Clover Palisades	23.07.2014	24,000,000	1,470,100	25,470,100
Total				53,060,200

Add : Cost of Alterations / Modifications	19,137,784
Add : Capital Gain Scheme	10,000,000
Total Cost of New House	82,197,984

*Formula to claim Exemption u/s 54F= Cost of New House x Capital Gain  
Net Sale Consideration*

Cost of New House (a)	82,197,984
Capital Gain (b)	108,637,509
Net Sale Consideration (c)	114,285,600
Exemption u/s 54F(a x b)/c	78,135,690

*1.4 It can be seen from the above table that the assessee has made a claim in respect of two residential houses namely Flat No 3123, Clover Palisades and Flat No 3124, Clover Palisades. The assessee has also made a claim of cost of alterations and modifications made in these flats. This amount is to the tune of Rs 1,91,37,784/-. This amount has also been claimed by the assessee under section 54F of the Act. Further, the assessee has also kept an amount of Rs 1,00,00,000 under Capital gain scheme, and excluded the same from the total taxable capital gain.*

*1.5 From the above, it can be seen that the assessee has made a claim in respect of 3 issues. These are claims of deduction of flats under section 54F of the Act, Claim of Rs 1,91,37,784/- in respect of moderation and alterations of the house and claim of Rs 1,00,00,000 under Capital Gain Scheme. As can be seen from the above, the assessee has claimed Section 54F deduction on two flats and has also added the cost of alteration under the claim of deduction under the said section. Apart from this, an extra Rs 1,00,00,000/- has also been claimed under the said Section.*

*2.0 Legal frame work of Sec 54F:*

*2.1 Section 54F of the Act refers to the deduction to be claimed by the individual or HUFs in respect of capital gain arising to the assessee if the said capital gain has been invested in the purchase of One Residential House in India within the stipulated time frame prescribed. The Section 54F of the income tax act has under gone modification as on 01/04/2015 applicable from AY 2015-16. The section is reproduced below*

*“ In the case of an assessee being an individual or a HUF, if the capital gain arises from the transfer of any long-term capital asset, not being a residential house (original asset) and the assessee has within a period of 1 year before or 2 years after the date on which the transfer took place purchased, or has within a period of 3 years after that date constructed, one residential house in India (new asset), the capital gain shall be dealt with in accordance with the following provisions of this section:*

- if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under Section 45*
- if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under Section 45.”*

### *3.0 Claim u/Sec 54F:*

*3.1 As can be seen from the plain reading of the above Section, the claim of deduction under Section 54F of the Act is available for purchase of One Residential House In India. In the instant case the assessee has purchased two residential units in FY 2014-15. This can be seen from the submission made by the assessee during the assessment proceedings. The assessee purchased two flats (Flat # 3123 & 3124) in the building Clover Palisade ,NIBM Road, Pune. Both the flats were purchased from an individual and not the builder, as a second sales. For this, the assessee entered in to two separate agreements which were duly registered by the assessee. These were having two separate agreements by which these two units have been purchased. The agreed amount has been paid in the financial year itself. Clearly, it looks like that the assessee has violated the provisions of Section 54F of the act by making a claim of deduction from capital gain in respect of two separate units. The Section expressly allows only one residential house to be claimed as a deduction. This is after the language of the Section has been changed completely from “a residential house” to “One Residential House in India” wef 01-04-2015.*

*3.2 Further the assessee has made a claim of alterations and modifications to the tune Rs 1.91 crores. The Section 54F nowhere allows such type of claims of deduction in respect of modifications and alterations. The assessee in his defense has quoted numerous case laws before the assessing officer to justify his claim in the garb of making the house habitable. This has been made to further his claim in respect of cost of improvement of the house. However it is to be noted that Section 54F allows deduction in respect of Purchase of One Residential House. Nowhere in the Section of the Act does the claim of the assessee*

finds justification. Further the assessee states that the house has been purchased from the builder in its submission dated 28<sup>th</sup> November 2017. This is not found to be factually correct. As per its own submission dated 04/10/2017, it is seen that the assessee has purchased both flats from one HUF of Shri Raj Kanaksen Bhansali. Alternatively the claim of the assessee could have been allowed if the assessee had constructed the residential house. However the assessee has purchased the flat/ house in the instant case.

3.3 Furthermore, the assessee has also claimed Rs 1,00,00,000/- under capital gain scheme. This claim is part of assessee's claim of deduction under Section 54F of the Income Tax Act. However, the assessee has nowhere given any justification on record as to why this amount has been deposited in Capital Gains Scheme when the purchase transaction for both the flats has already been completed on 23/07/2014. Further, the builder has also granted the provisional NOC on 24<sup>th</sup> March 2014. In the registration agreements it is also clearly mentioned that the seller is in full receipt of the amount agreed upon two parties for the purpose of transfer of the flats.

3.4 In view of all of the above mentioned issues, it is clearly noted that the assessee has violated the provisions of Section 54F of the Act by making a claim in respect of two flats and also made claims not permissible as per plain reading of Section 54F of the Act. The assessee is entitled to claim the deduction in respect of one flat only which comes within the meaning of One residential house in India. Hence the allowable deduction under Section 54F is worked out as under:

Net Sale Consideration sale of shares	:	Rs 11,42,85,600/-
Capital Gain	:	Rs 10,86,37,509/-
Residential House Property Flat 3123 (Being higher of two flat values)	:	Rs2,75,90,100
Exemption Under Section 54F	:	Rs 2,62,26,573/-
Exemption Under Section 54EC	:	Rs 50,00,000/-
Taxable Gain	:	Rs 7,74,10,936/-

3.5 The assessee has shown a capital gain of Rs 2,41,12,249/- in the return of income filed on 31/08/2015. Hence it can be seen that there is an underassessment to the tune of Rs 5,32,98,687/-, due to the wrong claim of the assessee u/Sec 54F of the Act.

3.6 Therefore, in my view the order dated 14/12/2017 passed by the AO for A.Y. 2015-16 accepting the total income returned by the assessee appears to be erroneous in so far as it is prejudicial to the interests of revenue. Accordingly, intending to set aside/ modify the impugned Order within the meaning of Section 263 of the I.T. Act, 1961, an opportunity of being heard was granted to the assessee to

*explain his point of view on the above discussed issues related to claim under Section 54F of the Act, by attending in person or through the authorized representative on 18.03.2021 at 3:30 PM in my office at Pune. Therefore, a show-cause notice dated 11.03.2021 detailing the above was issued to the assessee seeking the response to the above proposal while providing personal hearing to the assessee on 18.03.2021.*

*4.0 In response to the statutory notice, the A.R. of the assessee Shri AbhayAvachat, C.A., attended on 24.03.2021 and made submissions.*

*4.1 The relevant portion of submission of the assessee is as under:*

*“It is stated in the notice that on verification of the assessment record for A.Y.2015-16, there is a reason to believe that the order under Section 143(3) of the Act, dated December 14, 2017 passed by the Dy. Commissioner of Income Tax, Central Circle-2(1), Pune, is erroneous in so far as, it is prejudicial to the interest of revenue. Therefore, assessee intends to set aside/modify the assessment order within the meaning of Section of the Income Tax Act. An opportunity of being heard is offer to the assessee.*

*The aforesaid notice under Section 263 of the Income Tax Act, March 11, 2021 has made the following reasoning for the order u/s. 143(3) being erroneous:*

- 1. The deduction claimed under Section 54F for investment in two house properties against sale of capital assets is incorrect.*
- 2. Incorrect deduction for the amount of alteration / modification in the new house property has been claimed under Section 54F.*
- 3. The amount claimed as a deduction under Section 54EC for investment in capital bonds is incorrect.*

*At the outset the assessee states that provisions of 263 of the Act are inapplicable on the facts and in the circumstances of the case and in law. Provisions of Section 265 of the Act are not attracted in the instant case.*

*The income tax officer issued notices on the Assessee under the Section 142(1) of the Income-tax Act, 1961 and the show cause notice was also served on the assessee under the Act.*

*In response to the above-mentioned notices, the Assessee has made replies on 28<sup>th</sup> September 2017, 4<sup>th</sup> October 2017 and 13<sup>th</sup> November 2017 (copies are enclosed in Annexure I, II and III).*

*In these circumstances, provisions of Section 263 of the Income tax Act, 1961 do not attract. Therefore, the proceedings initiated under*

provisions of Section 263 of the Income tax Act, 1961 may, kindly, be dropped.

Without the prejudicial to the above contention, if it is decided to reopen the assessment provisions of Section 263 of the Income tax Act, 1961, (the Act) the same may be only for capital gains and exemption under Section 54F of the Act.

It is, therefore, once again requested to you to drop the proposed proceedings under Section 263 of the Act.”

4.2 During the first hearing, the AR made a claim that both the units were combined into one, by the assessee soon after purchase. And the same were renovated to make the same habitable for the assessee's family, by taking the permission of the builder. It was further claimed that the expenses incurred on the alterations/modifications were essentially incurred to furnish the flats. Furthermore, the AR clarified that the amount mentioned as investment in the Capital Gains Reserve account of Rs 1,00,00,000/-, was in effect used in the same year for the renovation of the flats only, after cancelling the deposit. Thus, according to him the total amount spent on renovation was Rs 2.88 crores, instead of Rs 1.91 crs, as stated in the Return of Income and also before the AO during the assessment proceedings, vide his submissions dated 28<sup>th</sup> Sept 2017, per Annexure III, where in, the assessee computed the claim u/s 54F as under on page 4:

“4. A complete working of the capital gain working and the exemption under section 54F of the Income Tax Act 1961 is enclosed as per Annexure III for your reference;”

“ANNEXURE III

Calculation of Exemption u/s 54F

Cost of New House Purchased

Particulars	Date of Purchase	Cost of Purchase	Stamp duty and Registration	Total
Flat # 3123, Clover Palisades	23.06.2014	26,000,000	1,590,100	27,590,100
Flat- # 3124, Clover Palisades	23.07.2014	24,000,000	1,470,100	25,470,100
Total				53,060,200
Add : Cost of Alterations / Modifications				19,137,784

Add : Capital Gain Scheme	10,000,000
Total Cost of New House	82,197,984

*Formula to claim Exemption u/s 54F= Cost of New House x Capital Gain  
Net Sale Consideration*

Cost of New House (a)	82,197,984
Capital Gain (b)	108,637,509
Net Sale Consideration (c)	114,285,600
Exemption u/s 54F(a x b)/c	78,135,690

#### 4.3 Details called for from the assessee.

4.3.1 Since, there is a contradiction between the present statement (where in, in response to the notice u/Section 263, the AR of the assessee in his response, had stated that the amount invested in Capital gains scheme was withdrawn and used for the renovation and modification), in contradistinction with the original claim in the Return of Income and also the submissions dt 28-09-2017, before the AO, (that the same was just invested in the Scheme and as such made a claim as illustrated supra), the AR was asked to establish and prove that the same was indeed spent for the renovation by producing the invoices and mode of payments.

4.3.2 Further, during the course of hearing, the AR was asked establish that both the units were capable of being combined and used as a single unit by producing the architectural plans etc and also to establish that the cost of alterations by producing the invoices etc, as the AR claimed by turned around from the submissions dated 28<sup>th</sup> Sept 2017 before the AO in the original proceedings.

4.3.3 Furthermore, the AR was asked to produce complete details of the expenditure incurred on the renovation costing Rs 1.91 crores approximately, as claimed originally.

4.4 To facilitate production of the above information the AR was given additional time upto 30<sup>th</sup> March 2021, by adjourning the hearing. On this day, the AR attended the proceedings and submitted further written submissions, the relevant extract of the same is reproduced hereunder:

“1. In the captioned matter, this refers to the Notice under section 263 of the Income Tax Act, 1961 for A.Y. 2015-16 hereby

*DIN / Notice No. ITBA/REV/F/REV1/2020- 21/1031420029(1) dated on March 11, 2021. The notice states that the assessment order passed in Assessee's case dated December 14, 2017 is erroneous & prejudicial to the interest of the revenue.*

*2. This refers to the hearing on March 24, 2021 before your honour which the Authorized Representative attended. A written submission dated March 24, 2021 was filed during the hearing. Further issues relating to assessment were discussed & certain additional information & documents have been asked for further submission. The date of compliance is March 30, 2021.*

*1. Accordingly the additional details / information regarding the issues is furnished as follows:*

*2. A copy of purchase deed of both flats on which deduction has been claimed under section 54F is enclosed in Annexure 1.*

*3. The details of expenses incurred by assessee on alteration and modification of flats including the copies of expenditure bills were enclosed during course of assessment.*

*4. The documents to support that that two flats were merged into single unit before use are enclosed in Annexure 2 which include drawings and design of the flat and a permission letter from builder.*

*5. Further the said merger was done after the purchase of flats. The assessee merged two flats into a single residential unit before it was used. The expenditure on its alteration was incurred to make the residential unit habitable.*

*6. In case your honour requires any additional information in the mater the assessee would be pleased to furnish the same on a specific hearing from you. ”*

#### *5.0 Analysis of the issues*

#### *5.1 Renovation/modification expenses to make the dwelling unit habitable:*

*5.1.1 Since the assessee has purchased the existing flats, which were already being used as residential units as a second sale from HUF of Mr R K Bansali(having got the allotment letter 17-09-2007 r/w confirmation Deed dt 28-06-2010), there will not be any further allowance towards modifications. Since the flats were already used and treated as dwelling units, the question of incurring any expenses under the head “to make the dwelling unit habitable”, does not arise. Hence, the claim of the assessee is beyond the scope of the provision Section 54F, as there is no such mention in the language of the said provision to allow any further expenses apart from the cost of one residential unit. Thus the claim of the assessee towards the*

*renovation/modification of the flats is clearly beyond the scope and is thus, inadmissible.*

*5.1.2 Without prejudice to the above, if the submissions made by the assessee dated 30-03-2021 are analysed, with reference to the information furnished during the assessment proceedings, which the assessee relied on even in its submissions dated 31-03-2021. It is very clear therefrom that in the IT Return filed and also in the original submissions vide letter dated 28-09-2017 and subsequent submissions filed before the AO, the assessee claimed the exemption u/Section 54F of the Act, showing the Cost of Alterations / Modifications as Rs191,37,744/- and the balance amount of Rs 1,00,00,000/- as having been invested in Capital Gains Deposit Scheme. Which was accepted by the AO in the assessment Order, without questioning the same.*

*5.1.3 Now, upon the same being proposed to be rectified/revised in the notice issued under Section 263 of the Act, the AR came with an explanation that the said amount of Rs 1,00,00,000 invested in the Capital Gains Scheme was withdrawn and also used for the modifications/renovation of the flats purchased. However, he has failed to furnish any evidence of what so ever, to establish the fact of using the same for renovation, even though specifically asked for during the course of the hearing on 24-03-2021. When specifically asked to produce the invoices along with payment proof for this one crore expenditure, the AR stated that the invoices and details of expenditure incurred are not readily available. Further, regarding the invoices of the expenditure of Rs. 1.91 Cr., it is stated in the subsequent submissions dated 30-03-2021 (in para 5), that the details were already furnished during the assessment proceedings and no new bills were in his possession. During the assessment proceedings the assessee claimed the expenses to be only Rs 1.91 crores approximately and the balance amount of Rs one crore was only kept in the Capital Gain Scheme. Hence, this statement of AR together with subsequent submissions dated 30-03-2021, make it clear that even the remaining one crore was also invested on repairs and renovation is an afterthought, just to avoid getting caught on wrong foot. This aspect needs to be thoroughly examined as the assessee changed its stand and also failed to substantiate the same.*

*5.1.4 Furthermore, if one examines the nature of expenditure out of the amount of expenses of Rs. 1.91 Cr. made in the original claim, it is seen that large portion of the above expenditure is on loose furniture, appliances, electronic gadgets and other loose luxurious items. In the presence of the AR the invoices and other records submitted during the original assessment proceedings, were also verified to find that major expenses out of Rs 1.91 crores was spent on furnishing the house with loose furniture and luxury items like TV's, Air-conditioners, Bed, Tables, Music, and entertainment systems, Movie projectors,*

*Refrigerators, Ovens etc, rather than the actual renovation of the flats.  
The list of some of the items readily identified on sample basis is listed below:*

Invoice Date	Vendor Name	Description	Amount
13.11.2014	RADIANCE Kitchen & More	Kitchen Appliances, Fridge, MicroWave Oven, Coffee Machine, SS Oven, Freezer etc	1147950
3.11.2014	ADP Engineering	VRF Unit, One Way/ Tow Way Casettee, Wall Mounted Split Air Conditioners	1358135
22.01.2015	Gianis Global	Dinning Tables/Chair	381600
02.11.2014	Giani'sEnvogue	High Sofa/Dinning Chair	171360
13.11.2014	Gianis Global	Sofa Sets & Table & Chair	564800
12.12.2014	Themes Furnishing & Linen	Mattress & Pillow	188709
12.12.2014	Themes Furnishing & Linen	Bedsheets	25483
24.12.2014	Themes Furnishing & Linen	Curtains	683718
24.12.2014	Themes Furnishing & Linen	Curtains	24820
24.12.2014	Themes Furnishing & Linen	Blinds Curtains	144273
31.12.2014	Themes Furnishing & Linen	Curtains, Motors	381713
31.12.2014	Themes Furnishing & Linen	Curtains, Motors	93919
23.01.2015	Themes Furnishing & Linen	Curtains	14716
24.12.2014	Themes Furnishing & Linen	Mattress	11000
28.02.2015	Themes Furnishing & Linen	Foam Sheet	29749
05.11.2014	Softech Systems	Invertors & Battery	133250
16.08.2015	Raj Glass House	Dinning table top, table glass	111154
03.12.2014	Good Creation	Server, Video Projector, Key terminal	708765

21.02.2015	Good Creation	IR Emitter Probe	16301
15.04.2015	MotiramSutar	crockery, telephone trolley, shoe rack center table, pafi sofa	97900
15.04.2015	MotiramSutar	Bed with table	50000
14.04.2015	MotiramSutar	Bed with table	50000
	Vishal Interiors	Dabridge Trolley	333375
21.12.2014	Maharatra Electronics Corporation	Sony Led Televisions Nos 3	1150000
21.12.2014	Maharatra Electronics Corporation	Sony Led Television	61000
14.10.2014	The Bath Studio a	Pump	77553
21.01.2015	Design Plaz Interior Ltd	Bed with Cushion	360000
28.01.2015	Diamonds Lights House	Light Decorum	26403
15.11.2014	A D Associates	Fiber Optics	326208
23.01.2015	Mr. Decor P Ltd.	Sofa set, Arm Chair, Center Table, Vase	1176300
15.01.2015	Sathe& Company	Bathroom Fittings	420000
17.02.2015	Stanley Boutique	Cushions	100000
17.02.2015	Design Plazo Interior Ltd	SS Bed, Tables	260000
02.11.2014	Stroika	Almirah, Vase	325000
		Total	1,10,05,154

*5.1.5 All these items are ineligible to be classified as repairs and renovation of the flat to make it habitable. Hence, the same needs to be excluded from the cost of the acquisition of residential unit, for the purpose of computing the exemption u/s 54F of the Act. The detailed analysis of the entire expenditure under this head renovation and modification, needs to be carried out. Thus, we can reach a conclusion that apart from Rs. 1 Cr. (Capital Gains deposit) for which no evidence*

was furnished, most of Rs. 1.91 Cr. (Rs 1.1 Crs) is ineligible and the same needs to be reduced under 54F of the Act.

## 5.2 Cost of Acquisition of one dwelling Unit

5.2.1 The assessee has claimed to have purchased two adjacent apartments from the HUF of R Bhansali and these units were combined into one, by the assessee soon after purchase. And the same were renovated to make the same habitable for the assessee's family, by taking the permission of the builder. Details are as under:

Flat # 3123, Clover Palisades	23.06.2014	26,000,000	1,590,100	27,590,100
Flat- # 3124, Clover Palisades	23.07.2014	24,000,000	1,470,100	25,470,100

5.2.2 The AR of the assessee was asked to establish during the course of hearing on 24.03.2021, that they were adjacent apartments with common wall and the builder had given permission for merging and combining them into one, and also asked him to submit architectural plans to show that they are capable of being merged into one unit. However, the AR filed a letter from the builder permitting repairs and renovation to the flats without encroaching into common areas and not for combining them into one unit. The architectural plan indicate that the two flats are separated by common areas and do not share common wall, hence they are not capable of being merged into one and used as one. The assessee failed to provide any concrete documentary evidence in support of his version. Considering the above, I am of the considered view that the claim of the assessee that the two units are combined into one, is not factually correct and hence, not acceptable. Accordingly, I am of the view of that the assessee is entitled for exemption u/s 54F of the Act, on the cost of one unit (Flat # 3123, Clover Palisades ) which is more expensive.

5.3 In view of the discussion Supra in para 5.1 to 5.2.2, the allowable deduction under Section 54F is to be worked out as under:

Net Sale Consideration sale of shares	:	Rs 11,42,85,600/-
Capital Gain	:	Rs 10,86,37,509/-
Residential House Property Flat 3123 (Being higher of two flat values)	:	Rs2,75,90,100
Exemption Under Section 54F	:	Rs 2,62,26,573/-
Exemption Under Section 54EC	:	Rs 50,00,000/-
		.....

*Taxable Gain* : *Rs 7,74,10,936/-*

*5.4 Preliminary Objection of the assessee against the proceedings under section 263 of the Act*

*5.4.1 The assessee raised preliminary objection against a notice issued u/s 263 of the Act, by submitting as under:*

*“At the outset the assessee states that provisions of 263 of the Act are inapplicable on the facts and in the circumstances of the case and in law. Provisions of Section 265 of the Act are not attracted in the instant case.*

*The income tax officer issued notices on the Assessee under the Section 142(1) of the Income-tax Act, 1961 and the show cause notice was also served on the assessee under the Act.*

*In response to the above-mentioned notices, the Assessee has made replies on 28th September 2017, 4<sup>th</sup> October 2017 and 13<sup>th</sup> November 2017 (copies are enclosed in Annexure I, II and III).*

*In these circumstances, provisions of Section 263 of the Income tax Act, 1961 do not attract. Therefore, the proceedings initiated under provisions of Section 263 of the Income tax Act, 1961 may, kindly, be dropped.”*

*5.4.2 As discussed supra, the assessee has made incorrect claim u/s 54F of the Act, in respect of cost of acquisition of dwelling units (two in place of one allowed wef 01-04-2015) and also claimed ineligible expenses under the head making the flat habitable, apart from making the wrong claim of Rs. 1 Cr. (Capital Gains Deposit). These facts are discussed at length supra in this order. The contradiction in the submission of the assessee before the AO and in response to notice u/s 263 of the Act, has already been discussed. The case laws relied upon by the assessee are old case laws relevant to the law before the amendment wef 01.04.2015.*

*5.4.3 Considering the above discussion on specific issues, it is apparent that the A.O has failed to apply his mind to the case in all perspectives and the order passed by him was erroneous and in result prejudicial to the interest of the revenue.*

*5.4.4 In the case of CIT v. JawaharBhattacharjee [2012] 341 ITR 434 (Gauhati) (HC) (FB) it has been held that non-application of mind to relevant material or an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of order being erroneous.*

*5.4.5 It is now a settled law that an order passed by the A.O become erroneous and prejudicial to the interest of Revenue as per the provisions of Section 263 of the Income Tax Act in following cases -*

- a) *The order sought to be revised contains error of reasoning or of law or of fact on the face of it,*
- b) *The order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law or without application of mind,*
- c) *The order passed by the A.O is a stereotype order or where he has failed to make the requisite enquiries and examine the genuineness of the claim, which is called for in the circumstances of the case.*

*5.4.6 The facts of the case under consideration are duly covered under the yardstick discussed above. Hence in the light of the discussions that have preceded and for the reasons alluded in the show cause notice, I am of the opinion that this is a fit case for exercise of the suo-motu revision powers of the CIT under Section 263 of the (IT) Act. Accordingly, after considering the totality of facts & circumstances of the case and for the detailed reasons discussed herein above, I hold that the assessment order u/s. 143(3) on 14/12/2017 for A.Y. 2015-16, passed by the Assessing Officer as erroneous & prejudicial to the interest of revenue.*

*6.0 From the facts discussed supra, it is apparent that the A.O has failed to take into consideration in all perspectives of the case and has not applied his mind to the above issue at all, while passing the order u/s. 143(3) on 14/12/2017 for A.Y. 2015- 16, as the same is erroneous & prejudicial to the interest of revenue.*

*7. Accordingly, the assessment order u/s. 143(3) on 14/12/2017 for A.Y. 2015-16, is hereby set aside to the file of assessing officer to be framed de-novo in the light of the above discussions. While making a fresh assessment order, the Assessing officer shall take into account the issues already considered/additions made in the order dated 14/12/2017 and complete the assessment after making necessary verification of issues after giving an opportunity of being heard to the assessee.”*

This leaves the assessee aggrieved.

5. Both the learned representatives reiterated their respective stands against and in support of the learned PCIT's impugned revision directions. The first and foremost issue that arises for our apt adjudication is regarding the allowability of assessee's section 54F deduction claim regarding reinvestment of his long term capital

gains in the foregoing twin residential units. We make it clear that hon'ble apex court's landmark decision in Malabar Industrial Co. vs. CIT (2000) 243 ITR 83 (SC) has settled the law long back that an assessment has to be both erroneous as well as prejudicial to interest of the Revenue; simultaneously, before the CIT or the PCIT; as the case may be, invoke his section 263 revision jurisdiction. Their lordships further hold that such an exercise would not be sustainable in case the Assessing Officer takes one of the two possible views. And also that it is his not each and every case that the impugned revision jurisdiction would stand attracted when the CIT/PCIT is of the opinion that the Assessing Officer's view could be substituted in section 263 proceedings.

6. We keep it in mind the foregoing well defined parameters of the CIT/PCIT's revision jurisdiction and revert to the fact of the instant case. Learned CIT-DR vehemently argued that the legislature has amended the clinching statutory expression "a residential house" in section 54F(1) vide Finance Act, 2014 w.e.f. 1.4.2015 by substituting the same with "one residential house in India" only. Meaning thereby that the assessee's impugned deduction claim of having reinvested his long term capital gains in

the twin residential units had been wrongly allowed by the Assessing Officer. Mr. Gupta further sought to highlight the learned PCIT detailed discussion that there was no indication about the assessee had converted the foregoing twin residential units into one as it has been his case before us.

7. We find no merit in the Revenue's foregoing arguments *qua* allowability of assessee's section 54F deduction. We wish to repeat here that he had very well purchased the twin residential units in the year 2014 (*supra*) itself whereas the clinching amendment to section 54F(1) is applicable with prospective effect from 1.4.2015 only. Case law CIT vs. Smt. K.G. Rukmaniamma 331 ITR 291 (Kar.), CIT vs. Geeta Dugal 357 ITR 153 (Delhi), CIT vs. V.R. Karbagam 373 ITR 122 (Mad.) and CIT vs. Gumanmal Jain 394 ITR 666 (Mad.) have already rejected the Revenue's identical stand thereby holding that "a residential house" for the purpose of section 54F(1) deduction can indeed cover multiple units in same or different towers or residential blocks; as the case may be. This is indeed coupled with the fact that the assessee's corresponding sale agreements had also purchased the right of passage of lobby or carpet area(s) intervening the foregoing twin flats nos.3123 and

3124 (supra) as it is evident from perusal of the sole plea page 160 in his paper book. We take into account all these facts as well as various judicial precedents quoted hereinabove to hold that the learned PCIT has erred in treating the assessee's reinvestment of capital gains in purchase of these two flats totalling to Rs.5,30,60,200/- as wrongly allowed u/s 54F in the Assessing Officer's regular assessment (supra). The assessee succeeds in his first and foremost grievance in very terms therefore.

8. The factual position is just the opposite in assessee's stand so far as correctness of learned PCIT's directions regarding the latter facet(s) of renovation/modification in the foregoing twin residential units of Rs.1,10,05,154/- and Rs.1 crore deposited in capital gains scheme (supra) is concerned as this taxpayer has failed to prove that the Assessing Officer had carried out detailed enquiries during the regular assessment in issue in light of section 263 Explanation 2 as amended by the Finance Act, 2015 w.e.f. 1.6.2015. We make it clear that although the assessee has placed strong reliance on his explanation filed before the Assessing Officer, we do not find any specific and detailed enquiry carried out at the latter end during scrutiny. We thus quote the foregoing case law (supra) that lack of

enquiry itself invites application of section 263 revision jurisdiction and conclude that the learned PCIT's impugned directions *qua* this aspect deserve to be sustained. We order accordingly. It is made clear that the assessee shall be afforded adequate opportunity of hearing to prove his impugned section 54F deduction claim in consequential proceedings. Ordered accordingly.

No other ground/argument has been raised before us.

9. This assessee's appeal is partly allowed in above terms.

Order pronounced on this 6<sup>th</sup> day of July, 2022.

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(S. S. GODARA)**  
**JUDICIAL MEMBER**

/ Pune / Dated : 6<sup>th</sup> July, 2022.  
*Sujeet (DOC)*

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The Pr. CIT (Central), Pune.
4. DR, ITAT, "A" Bench, Pune.
5. Guard File.

BY ORDER,

// True Copy //

Senior Private Secretary  
ITAT, Pune.