

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2417/Del/2025
Assessment Year : 2014-15

Jagdish Chand Verma,
C/o CA Pramod Shukla,
3748, First Floor, Kucha
Parmanand,
Daryaganj.

Vs. Income Tax Officer,
Ward-67(2),
Delhi.

PAN: AANPV4931G

(Appellant)

(Respondent)

Assessee by : Shri Anshul Kumar, CA
Revenue by : Shri Ajay Kumar Arora, Sr.DR

Date of Hearing : 04.11.2025
Date of Pronouncement : 12.11.2025

ORDER

PER ANUBHAV SHARMA, JM:

This is an appeal preferred by the Assessee against the order dated 14.02.2025 of the Commissioner of Income-tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A), Delhi-21/10794/2016-17 arising out of the appeal before it against the order dated 30.12.2016 passed u/s 144 of the Income Tax Act, 1961

(hereinafter referred as 'the Act') by the ITO, Ward 67(2), Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the records. The Appellant is a 70 years old individual, retired from Indian Overseas Bank. In October 2013, the Appellant sold a residential flat in Delhi for a sale consideration of Rs. 70,00,000, which was originally purchased in August 2004. The sale proceeds after indexation resulted in a capital gain of Rs. 54,35,000/-. In March 2014, the Appellant purchased a new residential property in Australia for a consideration of \$5,50,000 as after retirement the Appellant has been residing in Australia since November 2013, with his sons. Ld. AR submitted that as the Appellant had planned a permanent move to Australia, various household items and other items were sold during the relevant assessment year. Further, certain cash of the spouse and one son of the Appellant was also deposited in the bank account of the Appellant, for consolidation of funds. An aggregate amount of Rs. 40,51,000 was deposited in the bank account

3. In the assessment proceedings, the Ld. AO concluded the assessment under section 144 of the Act making following additions:

- a) Disallowance of Rs. 54,35,000/- under section 54 of the Act, as the Ld. AO did not have any details of purchase of new property; and
- b) Addition of Rs. 40,51,000/- under section 68 r.w. section 115BBE, alleging the amount to be unexplained cash credit.

4. An appeal was filed before the Ld. CIT(A) and additional evidence, such as documents for purchase of property in Australia, home loan documents, bank statements for Indian Overseas Bank, copy of passport, affidavits for the deposit of cash in bank accounts were submitted. The Ld. CIT(A), after considering all the facts and documents placed on record, completed the appellate proceedings with following conclusions:

- a) Section 54 of the Act is applicable as the amendment in section 54 mandated that the new property must be purchased in India, and this is clarificatory in nature. So, deduction u/s 54 is not allowable as the property was purchased outside India.
 - b) Section 68 r.w. section 115BBE - The Appellant did not furnish any evidence in form of sale receipts or confirmations from persons/ parties to whom such items were sold. Mere filing of affidavits is not sufficient.
5. At outset it can be observed that assessment is competed under section 144 of the Act though the notices were sent on the Indian address. Thus there is justification to accept assessee could not appear in assesment. Now as far as denial of benefit u/s 54 of the Act is concerned, we find ld. CIT(A) has fallen in error to hold amendment is clarificatory. The CBDT Circular No. 01/2015 dated 21 January 2015 has clearly provided that the amendment in section 54 of the Act is effective from 1st April 2015 and will apply in relation to AY 2015-16 and subsequent Assessment years. We are in agreement with the contention of

ld. AR that it is well settled position of law that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is declaratory and clarificatory provision. If there is no such clear statement, the amendment is not merely a clarification, but a substantive amendment, which shall apply prospectively.

6. Further, where the property was purchased outside of India, prior to the amendment w.e.f. AY 2015-16, the assessee can claim benefit of Section 54 of the Act and reliance can be placed on decision of Hon'ble High Court Of Karnataka in **Commissioner of Income Tax vs. Vinay Mishra reported in [2020] 121 taxmann.com 243 (Karnataka)** and followed in The Commissioner of Income-tax v. Shri. Hosagrahar I.T.A. NO.601 OF 2019 order 05-03-2021 where the Hon'ble High Court concluded as follows;

“8. The relevant extract of CBDT Circular No.1/2015 dated 21.01.2015 reads as under:

20.5 Applicability: These amendments take effect from 1st April, 2015 and will accordingly apply in relation to Assessment year 2015-16 and subsequent Assessment years.

Thus, it is axiomatic that residential property, for which investment is made needs to be situated in India for the purpose of claiming exemption under Section 54F from Assessment year 2015-16 only and not prior to that period. In the instant case, the investment in a residential house was made in USA prior to 01.04.2015, whereas, the requirement of making an investment in a residential house, which was incorporated by way of amendment, came into force w.e.f. 01.04.2015. In the light of aforesaid well settled legal principles as well as the memorandum of objects of

Finance Act, 2014, which clearly provide that amendments will take effect from 01.04.2015 and will apply to Assessment year 2015-16 onwards as well as the CBDT's Circular dated 21.01.2015, it is evident that amendment incorporated in Section 54F(1) of theis prospective in nature. Similar view has been taken in 'Leena Jugalkishor Shah (supra), 'Dipankar Mohan Ghosh (supra) and Anurag Pandit (supra). We concur with the view taken by Delhi, Gujarat and Madras High Courts."

7. Thus the denial of deduction under section 54 of the Act cannot be sustained.

8. Coming to the addition u/s 68 of the Act, for deposits in bank account, ld. AR has submitted that the Appellant did not carry on any business during the relevant assessment year and that there was no "credit to the books of accounts", which is a pre-condition to make addition under section 68 of the Act, and thus, section 68 cannot be pressed to service. He relied decision in Baladin Ram Vs. CIT [1969] 7 ITR 427, to contend that the Hon'ble Supreme Court has held that a passbook of bank cannot be considered the books of accounts of the assessee. The Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Ms. Mayawati reported in 338 ITR 563 [DEL] has also held that section 68 cannot be invoked on cheques deposited in bank accounts as the same cannot be treated as books of accounts and it is not disputed that the Assessee was not maintaining any other books of accounts. Reliance is also placed for same proposition in case of Deepak Srivastava vs. ITO [I.T.A No.1328/Del/2024 dt. 18 December 2024,

where in co-ordinate bench has followed the decision in Ms. Mayawati (supra). Thus we are inclined to sustain this argument. As both the issues are decided in favour of assessee, the appeal is allowed. Additions are deleted.

Order pronounced in the open court on 12.11.2025.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated:12th November, 2025.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi