

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.7191/Mum/2012
(Assessment Year 2005-06)

Smt.Aruna D Sawant,
2, Bhaskar Bhau Lane,
Mantri Building, Gamdevi,
Grant Road, Mumbai 400007
PAN:AAOPS6604

..... Appellant

Vs.

The ITO 16(2)(4),
Matru Mandir,
Mumbai

.... Respondent

Appellant by : Shri Bhupendra Shah
Respondent by : Shri A. Ramachandran

Date of hearing : 29/09/2016
Date of pronouncement : 30/11/2016

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2005-06 is directed against an order passed by CIT(A)-27, Mumbai dated 25/09/2012, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 24/12/2007.

2. The Grounds of appeal raised by the assessee read as follows:-

"1) In the facts and circumstances of the case and in law, the learned A.O. erred in expanding the scrutiny without prior approval and monitoring by the JCIT Additional Commissioner of Income Tax, even though the present case was selected specifically on the basis of information received through AIR returns & should be limited to only that aspect as per Board's F.No. 225/26/2006- ITA-IJ [PT] dated 23-5-2007.

2) In the facts and circumstances of the case and in law, the learned A.O. erred in treating stamp duty valuation of Rs. 10041394/- 1- in respect of sale of flat at Bandra , without referring the same u/s 50C to the DVO thereby making addition of Rs. 5652245/-.

3) In the facts and circumstances of the case and in law, the learned A.O. erred in disallowing exemption under section 54 in respect of the cost of development expenses on plot of land at Karjat amounting to Rs 14,57,025/- by holding that the same are incurred in A.Y. 2006-07 even though allowed u/s 54.

4) In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) erred in disallowing exemption u/s 54 in respect of the cost of flat at Dahisar amounting to Rs 470575/-.

5. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) erred in holding that reinvestment u/s 54 has to be as per the value determined u/s 50C

6) Interest u/s 234. is wrongly levied & penalty u/s 271 [I] [c] is erroneously initiated."

3. In this appeal, although assessee has raised multiple Grounds of appeal but the only point agitated by the assessee before us against the action of the CIT(A) is in not allowing exemption of capital gains under section 54 of the Act in full and bringing to tax a sum of Rs.19,27,600/-.

3. In this context, facts relevant to appreciate the controversy are as follows. During the year under consideration, assessee sold a flat at Bandra for a consideration of Rs.55,00,000/-, whereas in terms of section 50C of the Act, the full value of consideration was adopted at Rs.1,41,00,394/- being the market value of the property determined by Stamp Valuation Authorities. On the basis of adopting the Stamp Duty valuation as the consideration in terms

of section 50C of the Act, the capital gain was worked by the Assessing Officer as well as CIT(A) at Rs.56,52,245/-. In para 5 of the order, the CIT(A) notes that assessee has claimed investment in house in Karjat as under: -

“Land at Karjat	Rs. 2,62,500/-
Construction expenses (Rs.4919170 – Rs. 827025/- - Rs.63,00,000)	Rs. 34,62,145/-
Flat at Dahisar	<u>Rs. 4,50,000/-</u>
	<u>Rs. 41,74,645/-</u>

The CIT(A) notes that the flat at Dahisar was a separate property purchased on 13/12/2005 and would constitute a second property and, therefore, he considered the eligible amount of investment for the purpose of exemption under section 54 of the Act at Rs.37,24,645/- only. As a consequence, the resultant capital gain of Rs.19,27,600/- (i.e. Rs.56,52,245 (-) Rs.37,24,645/-) was determined as taxable capital gains in the hands of the assessee.

4. Before us, the Ld. Representative for the assessee pointed out that the CIT(A) has erred in not appreciating that assessee has invested the actual sale consideration received on sale of property in acquiring the new asset and, therefore, the entire amount on capital gains would be exempt under section 54 of the Act. The Ld. Representative for the assessee pointed out that the CIT(A) erred in holding that the assessee was required to invest the entire amount of capital gain worked out by applying the deeming provisions of section 50C of the Act in the purchase of new asset.

5. At the time of hearing, the Ld. Departmental Representative pointed out that CIT(A) in para -7 of the order has relied upon the decision of the

Bangalore Tribunal in the case of Gouli Mahadevappa vs. ITO, 128 ITD 503(Bang) to hold that the remaining portion of long term capital gain computed by applying the provisions of section 50C as reduced by the exemption worked out under section 54F of the Act by considering actual amount received as full value of consideration would be taxable. In this manner, the Ld. Departmental Representative had sought to defend the order of the CIT(A).

5. Having considered the rival stands, in our view, the assessee has to succeed on the short point raised before us. At the time of hearing, the Ld. Representative for the assessee relied upon the decision of the Mumbai Tribunal in the case of Raj Babbar vs. ITO, 56 SOT 1(Mum), wherein it has been held that while computing exemption under section 54 of the Act actual sale consideration is to be taken into consideration and not the Stamp duty valuation of consideration in terms of section 50C of the Act. To the similar effect is also the decision of the Jaipur Bench of the Tribunal in the case of Nand Lal Sharma v. ITO, 61 taxmann.com 271(Jaipur-Tib). A perusal of the decision of the Co-ordinate Bench in the case of Raj Babbar(supra) reveals that the decision of the Bangalore Tribunal in the case Gouli Mahadevappa (supra), which has been relied upon by the CIT(A) has also been considered and distinguished. According to the Mumbai Bench of the Tribunal, the deeming fictional import of section 50C of the Act cannot be imported for the purposes of working out the exemption outlined in section 54F of the Act. In our considered opinion, though the Tribunal in the case of Raj Babbar (supra), was dealing with an exemption under section 54F of the Act in a case where section 50C of the Act was applied for computing the capital gains, but the

ratio therein is fully applicable in the present case also, which is in relation to assessee's claim for exemption under section 54 of the Act. Inasmuch as, in the present case, also the capital gains have been determined in terms of section 50C of the Act. Furthermore, it is also not in dispute that if capital gains is computed by adopting the actual sale consideration received by the assessee, the cost of the new asset as determined by CIT(A) is in excess of the capital gain so determined and, thus capital gain becomes exempt under section 54 of the Act. Under these circumstances, we uphold the plea of the assessee and direct the Assessing Officer to allow the claim for exemption under section 54 of the Act as claimed by the assessee. Thus, the assessee succeeds in this appeal.

6. Resultantly, appeal of the assessee is partly allowed, as above.

Order pronounced in the open court on 30/11/2016

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 30/11/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai