

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपीलसं / I.T.A. No.3782/Mum/2014
(निर्धारणवर्ष / Assessment Year: 2010-11)

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| Mr. Sanjay Sharma C/o. Robust Hotels P. Ltd. 365, Anna Salai, Tenyampet, Chennai - 600018 | बनाम / Vs. | The Assistant Commissioner of Income Tax 26(1) 6 th Floor, K.G.Mittal Hospital Building, Charni Road, Mumbai - 400002 |
| स्थायी लेखासं. / जी आइ आर सं. / PAN/GIR No. ARVPS9380F | | |
| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| Assessee By: | Shri KiritSanghvi |
| Revenue By: | Smt. JyothilakshmiNayak |

सुनवाई की तारीख / Date of Hearing: 24.03.2017
घोषणा की तारीख / Date of Pronouncement: 31.03.2017
आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 30.04.2014 passed by the Commissioner of Income Tax (Appeals)-28, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11.

2. The assessee has raised the following grounds:-

- “1. *The Ld. Commissioner of Income Tax has erred in confirming the action of the Assessing Officer assessing the income of the assessee at Rs.2,41,21,150/- instead of Rs.66,10,765/- as declared by the appellant in his return of income.*
2. *The Ld. Commissioner of Income Tax (A) has erred facts and in law by confirmation of denial of deduction u/s.54 amounting to Rs.1,74,03,119/- of the Income Tax Act, 1961 as rightfully claimed by the appellant on making substantial payment out of capital gains towards acquisition of residential house property.”*

3. The brief facts of the case are that the assessee filed his return of income on 25.12.2010 declaring total income to the tune of Rs.66,10,765/-. The assessee was employed with Juniper Hotels Pvt. Ltd. from 01.04.2009 to 31.05.2009 and Robust Hotels Pvt. Ltd, from 01.04.2009 to 31.03.2010. Apart from taxable salary income of Rs.79,03,912/-. The assessee has shown income from house property (-) Rs.11,93,147/-. The case was selected for scrutiny. Notice u/s. 143(2) of the Income Tax Act, 1961 (in short “the Act”) dated 27.08.2011 was issued and served upon the assessee. Notices dated 19.11.2012 and 12.02.2013 u/s.142(1) and questionnaire were issued and duly served upon the assessee. At the time of assessment, the assessee also showed interest income amounting to Rs.2,944/- which was added to the income of the assessee. The assessee also showed the leave encashment to the tune of Rs.4,04,320/- and claimed exempt u/s.10(10AA) of the Act. The leave encashment was allowable to the extent of Rs.3 lakhs for A.Y.2010-11. Therefore an amount of Rs.1,04,320/- was added to the income of the assessee. The assessee sold the flat at Bandra, Mumbai for a consideration of Rs.4,30,00,000/-. The assessee showed Long Term Capital

Gain to the tune of Rs.1,74,03,119/-. The assessee claimed the said Long Term Capital Gain as exempt on account of purchase of another flat at Lower Parel in a project called Orbit Terraces as agreement entered into on 30.07.2010 and claimed the deduction u/s.54 of the Act. The Assessing Officer was of the view that the assessee sold the flat on 03.02.2010 and tentative agreed date of possession was 30.06.2013 which works out three years and four months which was not exempted u/s.54 of the Act hence, the said income was added to the income of the assessee. Feeling aggrieved the assessee filed an appeal before the CIT(A) who confirmed the said order, hence the assessee has filed the present appeal before us.

ISSUE NO.1 & 2:-

4. Issue no.1 and 2 are interconnected, therefore, are being taken up together for adjudication. Infact both the issues are in connection with the plea of the assessee that the Assessing Officer has wrongly disallowed the Long Term Capital Gain to the tune of Rs.1,74,03,119/- as not exempted u/s.54 of the Act. The representative of the assessee has argued that the assessee sold the flat at Bandra, Mumbai for a sum of Rs.4,30,00,000/- and received the capital gain to the tune of Rs.1,74,03,119/-. The assessee purchased an another flat at Lower Parel by virtue of agreement dated 30.07.2010 and claimed exemption u/s.54 of the Act. It is also argued that the Assessing Officer has taken into consideration the tentative date of possession 30.06.2013 wrongly and illegally whereas the agreement was registered on 30.07.2010 hence the assessee is entitled for exemption u/s.54 of the Act and also placed reliance upon the law settled in [2012] 19

taxmann.com 17 (Kar.), Hon'ble High Court of Karnataka in case titled as Commissioner of Income Tax Vs. SambandamUdaykumar. However, on the other hand the learned departmental representative has strongly relied upon the order of CIT(A) in question. In view of the argument advanced by the parties and perusing the record carefully, it is not in dispute that the assessee sold the flat at Bandra, Mumbai in a sale consideration of Rs.4,30,00,000/- on 03-02-2010. The assessee received the Long Term Capital Gain to the tune of Rs.1,74,03,119/- and claimed as exempted u/s.54 of the Act. The Assessing Officer declined the claim of the assessee on the ground that in view of the agreement the tentative date of possession was 30.06.2013. The Assessing Officer took the period into consideration between the date of sale on 03.02.2010 and tentative dated of possession on 30.06.2013 and found the period to the extent of three years and four months and accordingly declined the claim of the assessee. It is not in dispute that an amount has already been paid on 30.07.2010 towards investment in new assets. The allotment letter dated 08.02.2010 and the agreement dated 30.07.2010 and payment on 30.07.2010 are also not in dispute. However the said agreement speaks about the tentative date of possession on 30.06.2013 which falls outside the specified period of 3 years. The construction of the flat still continues and incompleted because floor, electrical fitting etc. are yet to be completed. The object of enacting section 54 of the Act is to encourage the investment in residential building whether completed or not and this controversy has been adjudicated in case [2012] 19 taxmann.com 17 (Kar.), Hon'ble High Court of Karnataka in case titled as Commissioner of Income Tax Vs. SambandamUdaykumar and in case of the Commissioner of

Income Tax, Bangalore Vs. Smt. B.S.Shanthakumari. In case Smt. B.S.Shanthakumari (supra) it is specially held that:-

“The Hon’ble Karnataka High Court in the case of CIT V. Smt. B.S.Shanthakumar (2015) 233 taxman 347 (Karnataka) held that “the words used in the sectioned 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 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 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.”

5. From the above it is evident that the claim of deduction is allowable based on the investment of LTCG and not based on completeness of the asset in question. While the payment of the gains to the builder is in the hand of the assessee, the completeness of construction and the if any is attributable to the builder.

6. In view of the above said facts and circumstances and in view of the above mentioned law, we are of the view that the CIT(A) has wrongly confirmed the addition of Rs.1,74,03,119/- which is liable to be treated as Long Term Capital Gain and entitled to be exempted u/s.54 of the Act. The Assessing Officer is directed to re-compute the assessment by allowing the addition as exempt to the tune of Rs.1,74,03,119/- as Long Term Capital Gain. Accordingly, this issue is decided in favour of the assessee against the revenue.

7. In the result the appeal filed by the assessee is hereby **Allowed**.

Order pronounced in the open court on 31st March, 2017.

Sd/-
(D.KARUNAKARA RAO)
लेखासदस्य / ACCOUNTANT MEMBER

Sd/-
(AMARJIT SINGH)
न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31st March, 2017
MP

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (पील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai