

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6612/Del/2016  
(Assessment Year: 2013-14)

Ram Mohan Rai, A-8/25, Vansant Vihar, New Delhi PAN:AAAPR0728C	Vs.	ACIT, Circle-33(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Sh. Ved Jain, Adv Sh. Ashish Chadha, CA
Revenue by:	Sh. FR Meena, Sr. DR
Date of Hearing	06/04/2017
Date of pronouncement	10/04/2017

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. The assessee against the order of the Id CIT (A)-11, prefers this appeal, New Delhi dated 21.03.2016 for the Assessment Year 2013-14.
2. The assessee has raised the following grounds of appeal:-
  - “1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) (CIT(A)} is bad both in the eye of law and on facts.
  2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO in restricting the exemption under Section 54 of the Act to the extent of Rs. 9,65,227/- as against Rs. 75,47,650/- claimed by the assessee.
  - 3.(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO in relation to exemption under Section 54 to be granted on one house property as against two properties claimed by the assessee.
  - (ii) That the learned CIT(A) has erred, both on facts and in law, in confirming the same despite the fact that amendment under Section 54 restricting the exemption to the extent of one house property has

come into effect from A Y 2015-16 and hence the same is not applicable during the relevant assessment year.

(iii) That the learned CIT(A) has erred, both on facts and in law, in confirming the above said disallowance misinterpreting the case laws relied on by the assessee.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in levying interest under Section 234B and 234C of the Act,”

3. Ground No. 1, 4 are general in nature and therefore they are dismissed.

4. The brief facts of the cases that assessee is an individual who filed his return of income on 05/07/2013 showing income of Rs. 7648330/- deriving income from business, long-term capital gain and income from other sources. During the year, assessee has sold a property for Rs. 2.60 crores as per collaboration agreement entered into by the assessee and the builder, which was purchased by assessee before 1981. The assessee computed capital gain of Rs. 21712000/- and claimed exemption under section 54 of the income tax act of Rs. 754750/- on account of purchase of two property situated at Vasant kunj Delhi for Rs. 6582423/- and another property at Greater Noida at Rs. 7547650/- . During the course of assessment proceedings, the Ld. assessing officer stated that exemption under section 54 of the income tax act is available for purchase of only one property and not for two properties as claimed by the assessee. The reliance placed by the assessee on several decisions was rejected or distinguished by the Ld. assessing officer. The Ld. assessing officer further relied upon the decision of the Hon. Punjab and Haryana High Court in case of Pavan Arya versus CIT (2011) 237 CTR (P and H) 210 and made an addition of Rs. 6 582423 in form of disallowance of deduction under section 54 of the income tax act. Consequently, assessment under section 143 (3) of the income tax act was passed on 24/02/2016 determining total income of the assessee at to Rs. 14230750/- against a returned income of Rs. 7648330/-. Assessee, aggrieved with the order of the Ld. assessing officer preferred an appeal before the Ld. Commissioner of income tax (A) who in turn dismissed the appeal of the assessee wide order dated 09/12/2016. Assessee, aggrieved with the order of the Ld. CIT (A) has preferred appeal before us.

5. The Ld. authorized representative submitted that the issue is now squarely covered in favour of the assessee. In view of the decision of the Hon'ble

Delhi High Court in case of Commissioner of income tax versus Geeta Duggal dated 21/02/2013 against which the Hon'ble Supreme Court has dismissed the special leave petition wide order dated 29/08/2014. He further referred to the amendment made under section 54 by finance act No. 2 (2014), wherein the words were substituted 'one residential house' for 'a residential house' w.e.f. 01/04/2015. He therefore submitted that prior to that even if the investment is made in more than one residential house property, the deduction under section 54 was available.

6. The Ld. departmental representative relied upon the orders of the lower authorities and submitted that the deduction under section 54 was available only with respect to one residential house property and cannot be availed for multiple houses.
7. We have carefully considered the rival contentions. It is apparent that assessee has purchased more than one house property and claimed deduction under section 54 of the income tax act with respect to 2 house properties. The Hon'ble Delhi High Court in case of CIT versus Geeta Dugal has already held that deduction under section 54 is available with respect to more than one properties and decided the issue wherein the properties were purchased by the assessee at two different places one in Jhor Bag and another at Sonipat. The Hon'ble high court held as under :-

**8.** It is the correctness of the above view that is questioned by the revenue and it is contended that the interpretation placed by the Tribunal gives rise to a substantial question of law. The assessee strongly relies upon the judgment of the Karnataka High Court (supra) which, it is stated, has become final, the special leave petition filed by the revenue against the said decision having been dismissed by the Supreme Court as reported in the annual digest of Taxman publication. The judgment of the Karnataka High Court supports the contention of the assessee. An identical contention raised by the revenue before that Court was rejected in the following terms :

"A plain reading of the provision of section 54(1) of the Income-tax Act discloses that when an individual-assessee or Hindu undivided family- assessee sells a residential building or lands appurtenant thereto, he can invest capital gains for purchase of residential building to seek exemption of the capital gains tax. Section 13 of the General Clauses Act declares that whenever the singular is used for a word, it is permissible to include the plural.

The contention of the Revenue is that the phrase "a" residential house would mean one residential house and it does not appear to the correct understanding the expression "a" residential house should be

understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. The combined reading of sections 54(1) and 54F of the Income-tax Act discloses that, a non-residential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to section 54 of the Income-tax Act, lays down that if the assessee has already one residential building, he is not entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building."

This judgment was followed by the same High Court in the decision in CIT v. Smt K.G. Rukminiamma [2011] 196 Taxman 87/[2010] 8 taxmann.com 121 (Kar.)."

8. Recently in [2016] 74 taxmann.com 227 (Madras) , Hon HIGH COURT OF MADRAS in G.Chinnadurai v. Income-tax Officer, Income-tax Department Non-Corporate Ward 13(2), Chennai has considered a situation where the facts before the court were that assessee investment in five flats does not satisfy the parameters of Section 54F, has initiated proceedings for reassessment. That being a beneficial provision, without taking note of the provision, as it stood at the relevant point of time, investment in residential property is allowable, even though spread over multiple flats. In support of such contention, reliance was placed on the decision of the Hon'ble Division Bench of this Court in Smt. V.R. Karpagam v. ITO[2013] 34 taxmann.com 98/143 ITD 126 (Chennai-Trib.), and the decision in the case of Dr. Smt. P.K. Vasanthi Rangarajan v. CIT[2012] 23 taxmann.com 299/204 Taxman 628, and the decision of the Hon'ble Division Bench in the case of CIT v. G. Saroja [TC (Appeal) No. 656 of 2015, dated 4-1-2012]. The learned counsel referred to the circular of the CBDT, in circular No. 1 of 2015, dated 21.01.2015, to submit that the amendments to Section 54F(1), will take effect from 1<sup>st</sup>, April, 2014 and will accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years and would not apply to the petitioner's case pertaining to the assessment year 2011-12. Further, it is submitted that delay in handing over of the property by the seller to the petitioner is not materially relevant for grant of exemption under Section 54F of the Act. Reliance was placed on the decisions of the ITAT in the case of Narasimha Raju Rudra Raju v. Asstt. CIT[2013] 35 taxmann.com 90/143 ITD 586 (Hyd. - Trib.). The contention of the revenue was that petitioner has invested in five different flats in different blocks, out

of which one is under joint ownership and therefore, the petitioner has not fulfilled the condition for claiming exemption under Section 54F of the Act, which states that within a period of three years, the assessee should have constructed a residential house, which has to be interpreted as one residential house and not more than one and this position was so even prior to the amendment of Section 54F(1) of the Act. The learned counsel sought to factually distinguish the decisions in the case of Smt. V.R. Karpagam (supra), and Dr. Smt. P.K. Vasanthi Rangarajan (supra). Further, it is submitted that as per the principles laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO[2003] 259 ITR 19/[2002] 125 Taxman 963, the petitioner has to participate in the reassessment proceedings. The learned counsel placed reliance on the decision of the Punjab & Haryana High Court in the case of Pawan Arya v. CIT[2011] 11 taxmann.com 312/200 Taxman 66 (Mag.), and the decision of the ITAT - Mumbai in Narender Khubchandani v. ITO [IT Appeal No. 238 (Mum.) of 2011, dated 17-12-2014]. Under these facts, after considering the decisions relied upon by the lower authorities, the Hon'ble high court decided as under:-

**7.** Section 54F deals with 'Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house'. The common condition both under Section 54E to 54ED and 54F, is that the assessee must purchase or construct a residential house before or after the transfer of the asset, which yields capital gains. If the assessee had invested the money in the construction of the house within the time limit, the exemption cannot be denied on the ground that construction has not been completed [see CIT v. Praveen Kumar[2007] 290 ITR 90/[2006] 153 Taxman 138 (Mad.)]. However, the onus is on the assessee to produce sufficient material to establish the claim for exemption. In the instant case, the petitioner claimed exemption by stating that they have purchased flats with the built up area of 8050 sq.ft., along with an extent of 1807 sq.ft of undivided share in land by a document, dated 29.10.2010. The reason for reopening the assessment is that the petitioner has invested an amount of Rs. 2,62,50,000/-, into five flats and the construction of the flats were completed only upto 70% at the relevant point of time and therefore, the petitioner is eligible to claim exemption under Section 54F only for a residential property, apart from the fact that the only 70% of the construction has been completed. Thus, the question would be whether the petitioner can be denied exemption on the ground that he has invested in five flats and what would be the effect of the construction having been only partially completed.

**8.** The legal issue has been considered by the Hon'ble Division Benches of this Court as well as by the ITAT. As factual matrix in Smt. V.R. Karpagam (supra) is more or less similar to the case on hand, the same is referred at

the first instance. In Smt. V.R. Karpagam (supra), (ITAT), the assessee challenged the order restricting the claim for exemption under Section 54F to a single flat. The assessee Smt. V.R. Karpagam entered into an agreement for development of a piece of land owned by her and as per the agreement, she was entitled to receive 43.75% of the built up area, which translated to five flats. The claim for exemption was restricted only to one flat. It was contended by the Revenue that the reliance placed on the decision in the case of G. Saroja (supra), is distinguishable, since in the said case, High Court had granted relief to the assessee for four flats received by the assessee in exchange of ownership over part of the land with building and four flats, were assessed, as one unit with one door number, whereas in the case of Smt. V.R. Karpagam (supra), it was five flats with different residential units with different door numbers. While considering the said factual issue, the Tribunal was called upon to examine as to whether "a residential house" should be treated as "one residential house" or whether "more than one residential house" can be considered eligible for deduction under Section 54 of the Act. After referring to the said provision, the Tribunal took note of the various decisions of the Courts including the decision in the case of Dr. Smt. P.K. Vasanthi Rangarajan (supra) and held as follows:—

'The proviso which disables the assessee from claiming exemption under Section 54F mentions at cl.(i) that assessee concerned should not own more than one residential house, other than the new asset. Other clauses also restrict a claim under Section 54F, if an assessee purchased a house or sub-proviso (i) of proviso (a) i.e., owning more than one residential house on the date of transfer of the original asset will come into play only where assessee had within a period of one year before the date of transfer constructed a residential house as mentioned in substantive portion of sub-section (1). New asset is clearly defined in the substantive portion, to mean 'a residential house'. Whether 'a residential house' can include only one flat or more than one flat was the issue considered by Hon'ble Karnataka High Court in the case of CIT v. Smt. K.G. Rukminiamma(2010) 48 DTR (Kar) 377; (2011) 239 CTR (Kar) 435; (2011) 331 ITR 211 (Kar). Relying on Section 13 of the General Clauses Act, 1897, it was held as under by their Lordships at para 10 of the judgment:

"(2) words in the singular shall include the plural, and vice versa"

10. The context in which the expression 'a residential house' is used in Section 54 makes it clear that, it was not the intention of the legislation to convey the meaning that it refers to a single residential house. If that was the intention, they would have used the word 'one'. As in earlier part, the words used are buildings or lands which are plural in number and that is referred to as 'a residential house', the original asset. An asset newly acquired after the sale of the original asset also can be buildings or lands appurtenant thereto, which also should be 'a residential house'. Therefore, the letter 'a' in the context it is used should not be construed as meaning 'singular'. But being an indefinite article, the said expression should be read in consonance with the other words 'buildings and lands' and therefore, the singular 'a residential house' also permits use of plural by virtue of Section 13(2) of the General Clauses Act. This is the view which is taken by this Court in the aforesaid CIT v. D. Ananda Basappa case in IT Appeal No.113 of 2004, disposed of on 20th Sept., 2008 (reported at (2009) 223 CTR (Kar) 186; (2009) 20 DTR (Kar) 266-Ed.]

8. Their Lordships have clearly held in the above judgement that 'a residential house' in the context could not be construed as a singular. In the said case also, claim for exemption was with regard to four flats in lieu of share in land, but the claim was under Section 54 of the Act and not under Section 54F of the Act. However, in our opinion the meaning given to the expression 'a residential house' will apply *pari passu* to Section 54F also, since the expression used here is also 'a residential house'. New asset defined in Section 54F, as 'a residential house' has also to be understood in the plural. It is not necessary that all residential units should have a single door number allotted to it as argued by the learned Departmental Representative. No doubt Hon'ble jurisdictional High court in the case of G. Saroja (*supra*), did consider the fact that different flats were having one door number. However, this also was not the reason why assessee was held to be eligible for claiming of exemption under Section 54F of the Act. Their Lordships took cue from the decision of Hon'ble Karnataka High Court in the case of Smt. K.G. Rukminiamma (*supra*). Similar exemption was given by the Hon'ble jurisdictional High Court again in the case of Dr. (Smt) P.K. Vasanthi Rangarajan (*supra*), wherein there was no claim that flats allotted in lieu were having single number. We are therefore of the opinion that assessee was eligible for claiming exemption under Section 54F of the Act on the five flats received by her in lieu of the land she had parted with.'

9. In the case of Dr. Smt P.K. Vasanthi Rangarajan (*supra*) the assessee entered into an agreement for joint development of eight apartments in another property owned by her individually. In terms of such agreement, she retained to herself undivided share in the land to an extent of 50% and the balance 50% was to be conveyed to the developer. The consideration for parting with 50% of the undivided land share was in lieu of four flats as well as a sum of Rs.10 lakhs payable by the developer. The claim for exemption under Section 54, was rejected, affirmed in appeal and further affirmed by the Tribunal and the correctness of these orders were tested by the Hon'ble Division Bench. The assessee contended before the Hon'ble Division Bench that investing in four flats would not disentitle the claim for exemption placing reliance on the decision in the case of G. Saroja (*supra*) which in turn followed the decision of the Karnataka High Court in the case of CIT v. Smt. K.G. Rukminiamma[2011] 331 ITR 211/196 Taxman 87/[2010] 8 taxmann.com 121 and CIT v. D. Ananda Basappa[2009] 309 ITR 329/180 Taxman 4 (Kar.) and the Special Leave Petition filed against the decision in the case of Ananda Basappa (*supra*) having been dismissed, the assessee was entitled to claim exemption. The Hon'ble Division Bench agreed with the view expressed in the decision in the case of G. Saroja (*supra*) and held that the purchase of four flats would not disentitle the assessee for exemption.

10. The learned counsel for the revenue relied on the decision of the Punjab and Haryana High Court in the case of Pawan Arya (*supra*) to sustain the impugned order. In the said case, the assessee claimed exemption on capital gains on sale of flat on the ground of acquisition of two houses. When the assessee placed reliance on the decision of the Tribunal in the case of D.Ananda Basappa (*supra*), it was distinguished by the High Court stating that in the said case, two flats could be treated to be one house as both had been combined to make one residential unit.

11. In the decision of the Tribunal in the case of Narender Khubchandani (*supra*), the assessee had purchased two residential flats under two different agreements from different sellers, they were adjacent units and they were combined into one unit having a common kitchen. In the said

case, the property sold by the assessee consisted of two garages. However, the sale agreement did not refer to any garages. The Assessing Officer estimated the sale consideration of the garages and assessed the same as long term capital gain. While deciding the correctness of said order, the Tribunal took note of the other decisions and pointed out that in the case of CIT v. Devdas Naik[2014] 366 ITR 12/227 Taxman 157 (Mag.)/49 taxmann.com 30 (Bom.), wherein it was held that exemption under Section 54F will be applicable only when house purchased is a single unit and in the said case (Devdas Naik), the assessee purchased two residential flats under two different door numbers, from two different owners and combined it to one unit having common kitchen. On facts, the High Court held that the assessee was entitled to deduction. However, the Tribunal followed the decision of the jurisdictional High Court namely, the Bombay High Court in ITA No.238 of 2011 and on facts, in the said case, and held that the assessment order has computed the sale consideration relating to garages purely on surmises and conjuncture without bringing any material on record to show that the assessee had received any consideration separately for garages, over and above, the amount declared in the development agreement.

**12.** Before proceeding further, I would like to point out that the facts, which arose for consideration in Pawan Arya (supra), Narender Khubchandani (supra), are different from that of the case on hand. In fact, the factual position is required to be carefully analysed to see as to whether the transaction done by the assessee would fall within the meaning of a residential unit. The Bombay High Court in Devdas Naik (supra), considered two flats purchased from two different owners with two different door numbers to be one because on purchase, it was converted into a single dwelling unit with one kitchen. Therefore, sans facts a decision cannot be taken. Therefore, we have to look into the type of transaction which had been entered into between the parties. The petitioner and other partners M/s. Karpagam Studio, entered into an agreement to execute a deed of an absolute sale dated 29.10.2010, in respect of the property in Saligramam and Virugambakkam villages and a separate agreement was entered into by the partners individually and the petitioner entered into such an agreement on 29.10.2010.

**13.** In terms of the said agreement, the developer has offered 9500sq.ft., of built up area along with proportionate undivided share of land in the proposed building complex. Therefore, the agreement is a composite agreement and it mentions that the petitioner is entitled to a total built up area of 9500 sq.ft. Therefore, it would be immaterial, if whether 9500sq.ft., of built up area given to the petitioner is separate over in the same floor or in a different floor or in different blocks in the apartment complex, since the consideration which has passed on, was for agreeing to offer 9500 sq.ft., of built up area along with proportionate undivided share. This agreement was followed by a supplementary agreement, dated 5th September 2013, where except for a small reduction in the super built up area by reducing it to 8050 sq.ft., and giving the details of the flat numbers, there are no other changes to the principal agreement dated 29.10.2010.

**14.** Thus, by applying the legal principles enunciated in the case of Smt. V.R. Karpagam (supra), Dr. Smt. P.K. Vasanthi Rangarajan (supra), and G. Saroja (supra), it is to be pointed out that the expression "a residential house" used in Section 54, should not be taken to convey the meaning that it refers to a 'single residential' house and if that was the intention of the legislature, the framers of the statute would have used the word "one"

instead of "a". In fact, the facts of the case in Smt. V.R. Karpagam (supra), is more or less identical to that of the case on hand, which also pertained to a development of a property, originally owned by the assessee and the consideration was that the owner/assessee was to receive 43.75% of built up area after development, which translated into five flats.

**15.** In the instant case, there is no doubt raised by the respondent with regard to the petitioner's eligibility to claim exemption under Section 54F, but the dispute is as to whether the petitioner is entitled to claim such exemption for all the five flats or for only one flat.”

9. The Ld. departmental representative could not brought to our notice any other decision of higher forum for also could not say that that amendment made by the finance act No. 2 (2014)w.e.f. 01/04/2015 are applicable retrospectively. In view of this, respectfully following the decision of the Hon'ble Madras high court in G.Chinnadurai v. Income-tax Officer, ( supra) and also the decision of the Hon'ble Delhi High Court in case of CIT versus Geeta Dugal 2013] 30 taxmann.com 230 (Delhi)/[2013] 214 Taxman 51 (Delhi)/[2013] 357 ITR 153 (Delhi)/[2013] 257 CTR 208 (Delhi) we hold that assessee is entitled for deduction under section 54 of the act with respect to both the properties, amounting to Rs. 7547650/- as claimed by the assessee. In the result ground No. 2 and 3 of the appeal of the assessee is allowed.
10. In the result, appeal of the assessee is partly allowed.  
Order pronounced in the open court on 10/04/2017.

-Sd/-  
(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 10/04/2017  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi