

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1670/Ahd/2015
Assessment Year 2011-12**

The DCIT, Circle-1(2), Ahmedabad (Appellant)	Vs	Shri Bharatbhai Madhavlal Patel, C/o Apollo Steel, 46 Municipal Shops, Outside Dariapur Gate, Ahmedabad Pan: AATPP8332R (Respondent)
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**Revenue by: Shri K. Madhusudan, Sr. D.R.
Assessee by: Shri A. N. Shah, A.R.**

Date of hearing : 24-08-2017
Date of pronouncement : 14-09-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2011-12, arises from order of the CIT(A)-10, Ahmedabad dated 23-03-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act:

2. The revenue has raised following ground of appeal:-

" The Id. CIT(A) has erred in law and on facts in deleting the disallowance u/s 54F of Rs. 1,85,54,242/- without appreciating the fact that the assessee has not fulfilled the condition as laid down in the section."

3. In this case, return of income declaring income of Rs. 42,38,730/- was filed on 29th Feb, 2012. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the on 28th Sep, 2012. The assessing officer has noticed that assessee has claimed exemption u/s. 54F of Rs. 2,05,54,242/- against sale consideration of Rs. 2,53,51,325/-. During the course of assessment proceedings on verification of the details submitted by the assessee, the assessing officer noticed that assessee has purchased plot of land on 10th May, 2010 for Rs. 1,20,54,242/- including interest paid on money borrowed for acquisition of plot of land of Rs. 6,09,942/- for construction of a new residential house to avail exemption u/s. 54F against long term capital gain. He further stated that the main condition to avail exemption u/s. 54F was that the assessee must have completed the construction of the new house within the period of three years from the date of sale of assessed asset and the date of sale in the hand of the assessee was 23rd Sep, 2009 hence the construction of the residential house must be completed within three years by 23rd Sep, 2013. The assessing officer found that further in the case of the assessee, the construction of the new house was not completed within the long period of three years. He found from the photograph of the construction of the house that till 23rd Sep, 2013 the residential house was not completed. Therefore, the assessing officer observed that to avail benefit of deduction of section 54F in respect of capital gain, it is necessary to fulfill the condition laid down

in that section in respect of investment in construction of residential house. He observed that assessee has used the net sale consideration in purchasing plot of Rs. 1,20,54,242/- and that construction of new residential house of Rs. 65 lacs and claimed total exemption u/s. 54F was of Rs. 1,85,54,242/-. He was of the view that assessee must have completed the construction of the new residential house by 23rd Sep, 2013 within a period of three years from the date of sale of asset. Further, the assessee has not completed the construction of residential house within three years from date of sale therefore he disallowed the total cost of construction of Rs. 65 lacs u/s. 54F and cost of plot for Rs. 1,20,54,242/- u/s. 54F of the act.

4. Aggrieved against the decision of the assessing officer, the assessee preferred appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee by observing as under:-

"4.3 Decision: The rival submissions have been considered. It is not in dispute that the appellant sold first agricultural land on 23.09.2010. It is also not in dispute that the appellant invested Rs.1,20,54,242/- in purchase of a plot of land and further invested Rs.69,56,679/- in construction of residential house on the said plot of land. Out of total sale consideration, the appellant had deposited Rs.65,00,000/- in a Capital Gains account as stipulated u/s 54F(4) of the Act. Sub-section (4) of sec. 54F requires that out of net consideration on sale of asset whatever amount is not invested in new asset by the due date for filing of return u/s 139(1) of the Act, that amount should be deposited in a Capital-Gains account. This condition has been fulfilled by the appellant and the AO has not contested this.

The only ground on which the AO has not found the appellant eligible for exemption u/s 54F is that construction of the new house has not been completed within 3 years from the sale of land which as per the AO is the requirement for exemption u/s 54F of the Act. Hon'ble Madras High Court in CIT vs. Sardarmal Kothari (2008) 302 ITR 286 (Mad) on identical facts have upheld the order of Tribunal allowing exemption u/s 54F. The Hon'ble court has held as follows: -

"The Tribunal has also taken note of its own earlier order in the case of Mrs. Seetha Subramanian v. Asst. CIT reported in [1996] 59 ITD 94 (Mad.), wherein the Tribunal has held that, in order to get the benefit under section 54F, the assessee need not complete the construction of the house and occupy the same. It is enough if the assessee established that the assessee had invested the entire

net consideration within the stipulated period. The said view taken consistently by the Tribunal has been applied in these cases also. The Tribunal has distinguished the Delhi High Court judgment in the case of D. P. Mehta v. CIT reported in [2001] 251 ITR 529 , relied on by the Revenue in their favour to non-suit the assessee for exemption. In our view, the Tribunal has distinguished the same rightly because in the cited case, there was a factual finding by the authorities that the assessee himself has admitted that the construction put up was only a garage and service quarters and it was not fit enough for occupation of the assessee. That factual finding is totally absent in these cases. There is no material to entertain these appeals. The appeals fail and the same are dismissed."

The above judgment of the Hon'ble Madras High Court has been affirmed by the hon'ble Apex Court and the appeal filed by Revenue was dismissed at the stage of preliminary hearing vide order dated 06.04.09. I am inclined to agree with the appellant that ratio of judgement in the above case is squarely applicable to the case of the appellant.

Relying on the above cited judgement of hon'ble Kamataka High court in CIT vs. S. Uday Kumar (2012) 345 ITR 389 has held as follows: -

"Section 45 of the Act makes it very clear that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save or otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H is chargeable to income tax under the head 'capital gains' and shall be deemed to be income of the previous year in which the transfer took place. The aforesaid sections which form part of section 54 of the Act are cases where capital gain on transfer of capital asset not to be charged in those cases. Section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the said provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section 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 asset 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 in 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. The essence of the said provision is whether the assessee who received capital gains has invested in a residential house. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from the said benefit."

I am inclined to agree with the appellant that ratio of judgment in the above case is squarely applicable to the case of the appellant. In view of decisions cited above, it is clear that to be eligible for claiming exemption u/s.54F of the Act, it is not mandatory that construction of the house should be completed.

The only condition is that net consideration from sale of asset should have, been invested in the construction of a house within three years. This condition is satisfied in the case of the appellant. In any case, 65% of the construction has been completed as certified by the consulting engineer as mentioned by the AO.

In view of discussion above and relying on the judgment of hon'ble Madras High Court in CIT vs. Sardarmal Kothari (supra) and judgment of hon'ble Karnataka High Court in CIT vs. S. Udaykumar (supra) as discussed above, I hold that the AO was not justified in disallowing exemption of Rs.1,85,54,242/- claimed u/s 54F of the Act. Accordingly, addition of Rs.1,85,54,242/- is hereby deleted. This ground of appeal is allowed."

5. During the course of appellate proceedings before us, Id. departmental representative relied on the order of the assessing officer. On the other hand the Id. counsel has submitted paper book containing information relating to the submission made before the assessing officer and the Id. CIT(A) along with judicial pronouncements in the following case:-

CFRVs. Sardarmal Kothari and Another[2008] 302 ITR 286 (Mad)(HC)
CIT Vs. Sardarmal Kothari & ANR. Hon'ble Supreme court of India Order dated 06.04.2009 in TC(A)Nos.354 & 355 of 2008 HC of Madras
CIT Vs. Sambandam Udaykumar[2012] 345 ITR 389(Karn
Bhavna Cuccria Vs. ITO[2017] 83 taxmann.com 306(Chandigarh -Trib)

He has also supported the order of the Ld. CIT(A).

6. We have heard both the sides and perused the material on record. We have noticed that the AO has not found the assessee eligible for exemption u/s 54F on the ground that construction of the new house has not been completed within 3 years from the sale of land. The Ld. Ld.CIT (A) has stated that ratio of judgment of Hon'ble Madras High Court in the case of CIT vs. Sardarmal Kothari (2008) 302 ITR 286 (Mad) and Kamataka High court in CIT vs. S. Uday Kumar (2012) 345 ITR 389 is squarely applicable to the case of the

assessee. In view of these decisions, the assessee is eligible for claiming exemption u/s. 54F of the Act, and it is not mandatory that construction of the house should be completed. The Ld. CIT(A) has also stated that the only condition is that net consideration from sale of asset should have been invested in the construction of a house within three years. This condition is satisfied in the case of the assessee . After considering the above facts and judicial findings, we do not find any error in the decision of the Ld. CIT(A), therefore, the appeal of the revenue is dismissed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 14-09-2017

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 14/09/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अपेक्षित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ आधिकरण,
अहमदाबाद