

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2251/Del/2014
(Assessment Year: 2010-11)

Ravi Kant Tyagi, Flat No. 36, Sadbhawana Apartment, 13, IP Extn, New Delhi PAN:ABTPT3527G	Vs.	ITO, Ward-46(1), New Delhi
(Appellant)		(Respondent)

Revenue by :	Shri Suresh Kumar Gupta, CA
Assessee by:	Shri Atiq Ahmad, Sr. DR
Date of Hearing	03/08/2017
Date of pronouncement	09/10/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-XXX, New Delhi dated 18.02.2014 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-
 - “1. The Id CIT(A) has erred both in law and on facts in confirming the order of the AO treating the sale of the property belonging to the wife in the hands of the appellant and consequently assessing the long term capital gain of Rs. 4687834/- in his hands and without prejudice disallowing deduction u/s 54 of the Act against the above capital gain.

2. The Id CIT(A) on the facts and in law has acted contrary to the evidences on record in treating the appellant as actual owner of the property when he was merely acting in the capacity as attorney of the owner.

Brief facts

3. Assessee is an individual who filed his return of income on 29/07/2010 declaring income of Rs. 1 25480/-. During the year under consideration the assessee is declared the income under the head income from salary. In the computation of income filed by the assessee has taken an income from house property of Rs. 2 7720/- and claim the identical amount of deduction. As a rent paid to nullify the effect of additional income. The AIR information was received by the assessing officer that assessee has entered into purchase/sale of property of Rs. 5210000/-
4. The assessee has sold one residential house property situated at Indira Puram, Ghaziabad for Rs. 5210000/-. The assessee has also purchased a residential property on 12/09/2009 for Rs. 45 Lacs. And assessee claimed deduction under section 54 of the income tax act of capital gain earned on sale of the property.

Assessment proceedings

5. During the course of assessment proceedings, the Ld. assessing officer issued a show cause notice on 01/11/2012 asking the assessee to furnish the details of purchase and sale of the above property holding that no deduction or exemption was claimed by the assessee through the income tax return for the relevant period. The assessee replied wide letter dated 29/10/2011 giving the particulars of the details of the property purchased as well as the property sold and capital gain arising there from. It was the claim of the assessee that assessee has sold property for Rs. 52.10 Lacs and out of which are commission of Rs. 1.04 Lacs was paid to the broker resulting into the accrual of Nat consideration of Rs. 51.04 Lacs. It was further stated that the assessee has purchased a residential house property for Rs. 45 Lacs and paid registration charges of Rs. 1.80 Lacs plus commission paid to the broker was

rupees, 90,000 making the total cost of property of Rs. 47.70 Lacs. It was further stated that the assessee has done some construction work in that particular property incurring the cost of Rs. 2.50 lakhs resulting into the net cost of acquisition of the new house property of Rs. 50.20 Lacs/deduction under section 54 of the income tax act was claimed.

6. The claim of the Ld. assessing officer is that property sold by the assessee is a scheme launched by Ghaziabad development authority, which is meant for residential purposes will stop in the agreement it was return that the same plot could not be used for any other purpose except residential purposes and the assessee has constructed temporarily one-room set to use it as a residential house. The assessee has not taken electrical connection. However, there was a tube well to get water for connection and therefore it cannot be said to be a residential house. Thereafter, another show cause notice was issued by him on 23/11/2012, which was replied by the assessee on 20/11/2012. The Ld. assessing officer was further of the view that as the claim of the assessee was not found in the original return of income and no revised return was also filed by the assessee, capital gain is chargeable to tax, whereas the exemption deduction under section 54 of the income tax act cannot be granted. Therefore he computed the capital gain on the sale of the property where the consideration of Rs. 52.10 Lacs was received and computed the capital gain thereof of Rs. 4 687835/-. Consequently, the income was assessed at Rs. 4 841033/- against the returned income of Rs. 1 25480/- by passing an order under section 143 (3) of the income tax act, 1961 on 10/12/2012.

Appeal before the Ld. CIT (A)

7. aggrieved by the order of the Ld. assessing officer assessee preferred an appeal before the Ld. CIT (A) who wide order dated 18/02/2014 dismissed the appeal of the assessee. The Ld. CIT (A) also obtained the remand report of the Ld. assessing officer before disposing off the appeal of the assessee. It was the claim of the assessee before the Ld. CIT appeal that the property is not sold by him, but by his wife which was rejected by the CIT (A) wide para No.

5.1 of his order. In para No. 5.2 of his order. He upheld that the Ld. AO has correctly calibrated the capital gain in the hands of the appellant. In para No. 5.3 of his order. He further held that the new property was purchased by the assessee in the name of wife of the assessee and therefore the assessee cannot claimed the exemption under section 54F of the income tax act. He further held that the consideration for purchasing the flat is also given by the wife of the assessee, which is evident from the copies of the cheques furnished at the time of appellate proceedings. Therefore, assessee, aggrieved with the order of the Ld. CIT (A) has preferred an appeal before us.

Additional ground of appeal raised before us

8. Assessee has filed an application for admission of additional ground under rule 11 of the appellate tribunal rules, 1963 raising the following grounds of appeal:-
“without prejudice to the contention that the capital gain on sale of property is taxable in the hands of the wife of the appellant, alternatively, the appellant prays that the authorities below have erred in not allowing deduction under section 54F in the hands of the appellant in respect of investment in residential house out of the sales consideration of the original asset, if the capital gain is assessed in the hands of the appellant.”
9. The assessee submitted that the Hon’ble Bombay High Court in case of baby Samuel versus ACIT 262 ITR 385 open bracket Bombay). It was held that the assessee cannot be denied the right to claim adjudication of the issue on the merits when the said issue was specifically taken at the time of final hearing of the said appeal and the revenue had an occasion to deal with the submission made thereon. He further submitted that there issue is legal in nature and no further facts are required to be investigated for the purpose of decision of the above additional ground.
10. The Ld. departmental representative vehemently objected to the admission of additional ground.

11. We have carefully considered the rival contention and as the additional ground was to the root of the issue whether the assessee is eligible for deduction under section 54F of the income tax act or not against the capital gain and by the assessee when the house property is purchased in the name of the wife of the assessee. The above issue is already been considered by the Ld. CIT in para No. 5.3 of is appellate order, therefore, the facts are also not required to be investigated or no fresh facts are required to be brought on record. In view of this, in the interest of Justice, we admit the additional ground of appeal filed by the assessee.

Argument of the Ld. authorized representative

12. Per ground No. 1 of the appeal, on the issue chargeability of the long-term capital gain of Rs. 4 687 3834/-. In the hands of the appellant. The Ld. authorized representative repeated the same arguments, which were raised before the Ld. assessing officer and Ld. CIT appeal. He submitted that the assessee was not the owner of the house property and therefore the capital gain should not be charged in the hands of the assessee.
13. On the issue of allowability of the deduction under section 54 of the income tax act against the above capital gain, the Ld. authorized representative submitted that the house property purchase in the name of the wife of the assessee is allowable as deduction in view of the decision of the Hon'ble Delhi High Court in case of CIT versus Kamal Wahal 351 ITR 4 (Delhi) wherein Hon'ble Delhi High Court has held that having regard to the rule of purposive construction and object for which section 54 f seeks to achieve and also following the decision of the Hon'ble Delhi High Court in CIT versus Ravinder Kumar Arora 342 ITR 38 (Delhi) allowed the claim when the property was purchased in the name of wife of the assessee.

Argument of the Ld. departmental representative

14. The Ld. departmental representative vehemently objected to the argument of the assessee and submitted that the capital gain is required to be charged in the hands of the assessee which is

conclusively proved by the Ld. assessing officer as well as by the Ld. CIT (A. With respect to the deduction of section 54F in the hands of the assessee when the property was purchased in the name of wife of the assessee he submitted that section provides that the assessee should purchase the property.

Reasons and decision

15. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The lower authorities conclusively held that the assessee is the owner of the property which was sold and therefore the capital gain was rightly charged in the hands of the assessee. The Ld. assessing officer as well as the Ld. CIT appeal has held that assessee submitted the sale deed dated 04/09/2009, which includes that the said property was sold by the assessee through registered sale deed. In the sale deed the name of the assessee as well as the permanent account number of the assessee is bench and therefore there is no reason that the assessee cannot be held to be the seller of the above property and capital gain is to be charged in the hands of the assessee. Nothing has been brought on record before us by the Ld. authorized representative stating that the capital gain is not chargeable in the hands of the assessee. In view of this we reject the 1st ground of the appeal of the assessee with respect to the chargeability of capital gain in the hands of the assessee. According to us there is no infirmity in the orders of the lower authorities holding that capital gain is chargeable to tax in the hands of the assessee on sale of the property.
16. The 2nd limb of the argument is that the assessee must be granted deduction under section 54F against the capital gain, if same is chargeable to tax in the hands of the assessee despite the fact that the assessee has purchased new residential house property in the name of the wife of the assessee. In view of the decision of the Hon'ble Delhi High Court in case of CIT versus Kamal Wahal (351 ITR 4) (Delhi), we do not have any hesitation in upholding the claim of the assessee for purchase of property, in the name of the wife of the assessee for the

purpose of deduction under section 54F of the act. Therefore, 2nd limb of the ground No. 1 as well as the additional ground raised by the assessee is allowed. However, as the computation of the capital gain and deduction there from under section 54F, we set aside the issue to the file of the Ld. assessing officer with a direction to compute the capital gain as per the direction of the Ld. CIT (A) considering the cost of the property at Rs. 2 96235/- which is not been challenged by the assessee before us and from the resultant capital gain grant deduction under section 54F of the income tax act. In the result ground No. 1 and additional ground of the appeal of the assessee is partly allowed.

17. In view of our decision in ground No. 1 and additional ground of appeal of the assessee, The ground No. 2 of the appeal of the assessee with respect to the challenge of taxing capital gain in the hands of the assessee is dismissed.
18. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 09/10/2017.

-Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:09/10/2017
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi