

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.143/CTK/2017
Assessment Year : 2012-13

Prafulla Kumar Khatei, Plot No.E-17, BJB Nagar, Bhubaneswar.	Vs.	ITO, Ward 2(3), Bhubaneswar.
PAN/GIR No. BZVPK 4677 E		
(Appellant)	..	(Respondent)

Assessee by : Shri B.N.Mohapatra, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 02/08/ 2017
Date of Pronouncement : 04 /08/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 28.2.2017 for the assessment year 2012-2013.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the order of the Assessing Officer disallowing deduction u/s.54F(1) of the Act for Rs.11,35,701/-.

3. The brief facts of the case are that the assessee got compensation money of Rs.11,62,893/- towards his share of the land compulsorily acquired by the Government. The assessee earned long term capital gain of Rs.11,35,701/-. The assessee claimed deduction u/s. 54F (1) of the

Act for Rs.11,35,701/- since the compensation amount was invested in the construction of a new building. The Assessing officer did not allow the claim of deduction u/s.54F(1) of the Act to the assessee on the ground that the assessee possesses more than one residential building and proviso (a)(i) to section 54F(1) debars the assessee for claiming the same.

4. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

5. Ld A.R. of the assessee submitted that the Assessing Officer got enquiry conducted through Inspector, who visited the residence of the assessee in Nuapatna, Pratap Sasan, Post: Balakati, where he was staying in a two storied building with his wife and children. The assessee submitted that his brothers are staying separately in different houses situated at Uttara Chhak which comes under Sardeipur Mouza and those houses are also in the name of their father Late Sudam Charan Khatei. The house in which he is staying is the house which comes in his share in village property as no formal partition is made among the brothers. The Assessing Officer therefore held that he was the owner of one house property at the time of sale of the original asset giving rise to long term capital gain and, therefore, he was not entitled to deduction u/s.54F of the Act. He submitted that as per proviso clause (a)((i) to Section 54F(1) of the Act, the assessee would not be entitled to deduction u/s.54F(1), where he owns more than one residential house, other than the new asset, on the date of transfer of the original asset. He argued that the

Assessing Officer has mis-directed himself in concluding that as per the said proviso, if the assessee owns one residential house other than new assets on the date of transfer of the original asset, he would not be entitled to deduction u/s.54F of the Act. Therefore, he prayed that the disallowance should be deleted.

6. On the other hand Id D.R. supported the orders of lower authorities.

7. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts giving rise to this appeal are that the Assessing Officer disallowed deduction u/s.54F of the Act for Rs.11,35,701/- being long term capital gain arising from sale of land on the ground that he was the owner of one residential building on the date of transfer of the original assets and, therefore, was not entitled to deduction as per proviso (a)(i) to Section 54F(1) of the Act. The same was confirmed in appeal by the CIT(A). I find that the said proviso (a)(i) to section 54F(1) of the Act reads as under:

“Provided that nothing contained in this sub-section shall apply where –

(a) The assessee –

(i) Owns more than one residential house, other than the new asset, on the date of transfer of the original asset”

Thus, a reading of the above shows that the assessee is not entitled to deduction u/s.54F(1) of the Act, if he owns more than one residential house on the date of transfer of the original asset excluding new asset.

In the instant case, the assessee on the date of transfer of original asset was the owner of one house property excluding new asset and, therefore, is entitled to deduction u/s.54F(1) of the Act on the long term capital gains of Rs.11,35,701/- arising out of transfer of land. Hence, I set aside the orders of lower authorities and delete the disallowance of deduction of Rs.11,35,701/- and allow the ground of appeal of the assessee.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 04 /08/2017.

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 04/08/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant : Prafulla Kumar Khatei, Plot No.E-17, BJB Nagar, Bhubaneswar
2. The Respondent. ITO, Ward 2(3), Bhubaneswar
3. The CIT(A) -1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack