

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 139/JP/2016
निर्धारण वर्ष/ Assessment Years : 2012-13

Shri Vivek Jain, Jaipur	बनाम Vs.	DCIT, Circle-7, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACNPJ3952H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Shivangi Samadhani (CA)
& Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Shri Rajendra Jha (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 27/11/2017
उदघोषणा की तारीख / Date of Pronouncement : 08/12/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-III, Jaipur dated 16.12.2015 for Assessment Year 2012-13 wherein the assessee has challenged the action of Id. CIT(A) in confirming the disallowance of exemption of Rs. 30,00,000/- claimed u/s 54F of the Act.

2. Briefly stated, the facts of the case are that during the year under consideration, the assessee has sold three agriculture lands belonging

to him for a sale consideration of Rs. 99,25,000. The assessee has purchased another agricultural land at a consideration of Rs. 32,00,000/- for which deduction u/s 54F has been claimed and same was allowed by the Assessing Officer and is not in dispute before us. The assessee has also purchased a residential property on 23.05.2011 for a purchase consideration of Rs. 30,00,000/- in the name of his wife, Smt. Nikita Jain, and claimed deduction u/s 54F of the Act and which is in dispute before us.

3. During the course of assessment proceedings, the assessee was asked to show cause as to why the claimed u/s 54F of the Act, 1961 may not be disallowed, as the property was not owned in the name of assessee. In response, the assessee submitted that the consideration for such property was paid out of repayment of advance belonging to the assessee received from Narvik Nirman & Financiers Pvt. Ltd. and it was further submitted that the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It was submitted that the assessee has not purchased the new house in the name of a stranger and entire investment has come out of the source of the assessee and there was no contribution from the assessee's wife. The submission of the assessee was considered but not found acceptable to the Assessing Officer. As per Assessing Officer, the property which was sold was belonging to the assessee whereas the reinvestment in property (residential house) has been made in the name of Smt. Nikita Jain, wife of the assessee. It was further held by the AO that Smt. Nikita Jain, wife of the assessee, is having her PAN and filing her return of income which is also assessed to tax, therefore, as per income tax provisions,

husband and wife both could not be considered as single entity and the benefit of investment made by an individual assessee cannot be given to another individual assessee. The AO further drawn reference to the provisions of Section 54F of the Act and held that to claim deduction, the investment in new asset should be in the name of assessee himself. It was further held by the AO that in absence of the personal balance sheet of the assessee and absence of proper documentary evidence, it cannot be ascertained whether assessee does not own more than one residential house, other than new asset, on the date of transfer of the original asset. Accordingly, for these two reasons, the claim of the assessee u/s 54F of the I.T.Act, 1961 was disallowed.

4. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) and submitted that the purchase of a new residential house has to be purchased by the assessee. However, it is not specifically required under the law that the house should be purchased in the name of assessee only. It was further contended that liberal construction should be given to provisions of section 54F of the Act and if substantive requirement are fulfilled, benefit granted by the Parliament should not be taken away for small and irrelevant inconsistencies. Further, the assessee placed reliance on the decision of Hon'ble Delhi High Court in case of CIT vs. Kamal Wahal (351 ITR 4), wherein, in the context of section 54F of the Act and purchase of house in the name of assessee's wife, it was held that the new residential house need not be purchased by the assessee in his name nor is it necessary that it should be purchased and exclusively in his name. Further, reliance was placed on the decision of Hon'ble Madras High Court in case of CIT vs. V. Natarajan (287 ITR 271) where the house

was purchased in the name of the assessee's wife, deduction under section 54 was allowed. Further, reliance was placed on the decision of Hon'ble Andhra Pradesh High Court in the case of Late Gulam Ali Khan vs. CIT (165 ITR 228) wherein in the context of section 54 of the Act, it was held that the word 'assessee' must be given a wide and liberal interpretation so as to include his legal heirs also. Further, reliance was placed on the decision of Hon'ble Karnataka High Court in the case of DIT vs. Mrs. Jennifer Bhide (349 ITR 80) wherein it was held that where the entire consideration has flown from her husband, merely because either in the sale deed or in the bond, her husband's name is also mentioned, the assessee cannot be denied the benefit of deduction u/s 54 and 54EC of the Act. Further, reliance was placed on the decision of Hon'ble Delhi High Court in case of CIT vs. Ravinder Kumar Arora (342 ITR 38) wherein in the context of section 54F of the Act, it was held that where the assessee has included the name of his wife and the property has been purchased jointly in the names, it would not make any difference and the conditions stipulated in section 54F stand fulfilled.

8. The Id. CIT(A) however relied on the decision of Hon'ble Rajasthan High Court in case of Kalya vs. CIT (251 CTR 174) wherein in the context of section 54B of the Act, it was held that the assessee would not be entitled to get exemption for land purchase by him in the name of his son and daughter-in-law. Further in the said decision, it was held that the word 'assessee' used in the IT Act needs to be given a 'legal interpretation' and not a 'liberal interpretation, as it would tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not

permit. Following the decision of Hon'ble Rajasthan High Court in case of Kalya, the Id. CIT(A) upheld the rejection of claim of the assessee u/s 54F of the Act.

9. During the course of hearing, the Id. AR reiterated the submissions made before the Id. CIT(A). Further, Id. AR also drawn our reference to the recent decision of Hon'ble Rajasthan High Court in case of Sh. Mahadev Balai vs. ITO (*D.B. ITA No. 136/2017 & others dated 07.11.2017*) wherein in the context of section 54B, it was held that where the investment is made in the name of the wife, the assessee shall be eligible for claim of deduction u/s 54B of the Act.

10. In the said case, the assessee has sold agricultural land and purchased another agricultural land in the name of his wife and claimed deduction u/s 54B of the Act. The Co-ordinate Bench vide its order in ITA No. 333/JP/2016 dated 26.12.2016 following the decision of Hon'ble Rajasthan High Court in case of Kalya vs. CIT(supra) had decided the issue against the assessee and has confirmed the denial of deduction u/s 54B of the Act. In the context of said facts, on appeal by the assessee, the Hon'ble Rajasthan High Court has framed the following substantial question of law:

"Where Id. ITAT was justified in disallowing the exemption u/s 54B of the Act without appreciating that the funds utilized for the investment for purchase of the property eligible u/s 54B belonged to the appellant only and merely the registered document was executed in the name of the wife and further the wife had not separate source of income."

11. The Hon'ble Rajasthan High Court, after considering its earlier decision in case of Kalya vs. CIT(supra) and the various other decisions of Hon'ble Delhi High Court, Hon'ble Madras High Court, Hon'ble Karnataka High Court, Hon'ble Punjab and Haryana High Court, and Hon'ble Andhra Pradesh High Court, as also relied upon by the assessee, has held that it is the assessee who has to invest and it is not specified in the legislation that the investment is to be in the name of the assessee and where the investment is made in the name of wife, the assessee shall be eligible for deduction and has thus decided the matter in favour of the assessee. The relevant findings of the Hon'ble Rajasthan High Court are contained at para 7.2 and 7.3 of its order which are reproduced as under:-

"7.2 On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts, the word used is assessee has to invest, it is not specified that it is to be in the name of assessee.

7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other

expenses are for betterment of land and therefore, it will be considered a part of investment and same is required to be accepted."

12. In light of legal proposition so laid down by the Hon'ble Rajasthan High Court in case of Mahadev Balai (supra), where the investment in the new house property has flown from the assessee, which is not in dispute in the instant case, merely for the reason that the new residential house property has been purchased by the assessee in the name of his wife, the same cannot be basis for the denial of deduction claimed u/s 54F of the Act.

13. Regarding the second condition of claiming the deduction u/s 54F, which as per AO, the assessee has not substantiated in the instant case, which requires that assessee does not own more than one residential house, other than new asset, on the date of transfer of the original asset., the Assessing Officer has held that it cannot be ascertained in absence of personal balance sheet of the assessee and in absence of any other proper documentary evidence.

14. It is noted that during the course of appellate proceeding before the Id. CIT(A), the assessee has contended that a confirmation to the effect that not more than one residential house was filed before the AO which was however not accepted without any cogent reason. Our reference was also drawn to an affidavit of the assessee confirming the said fact which was also submitted as confirming evidence before the Id. CIT(A). The Id. AR has contended that Id. CIT(A) has not doubted the said affidavit and has also not confirmed the disallowance on the ground that it could not be verified and it was accordingly submitted that since the revenue is not in appeal against the order of Id. CIT(A),

the contention so raised by the assessee should be accepted. The Id DR fairly submitted that the Id CIT(A) has mainly relied on the decision of Hon'ble Rajasthan High Court in case of Kalya (supra) and has not objected to the confirmation and affidavit so filed by the assessee. We have gone through the affidavit so filed by the assessee and are of the view that the same is clear and self-explanatory wherein the assessee has categorically stated that on the date of purchase of residential property, which happens to be the date prior to date of sale of the original asset, he didn't own any other house other than the new asset. In that view of the matter, the contention so raised by the Id AR is accepted.

15. In light of above and respectfully following the decision of the Hon'ble Rajasthan High Court in case of Mahadev Balai, the assessee is held eligible for deduction under section 54F in respect of residential house property purchased in the name of his wife.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/12/2017.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य/Accountant Member

जयपुर/Jaipur

दिनांक/Dated:- 08/12/2017.

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Vivek Jain, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-07, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 139/JP/2016 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar