

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 146/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Abhijit Ashok Bhalerao,
Flat No. 8, Janaki Apartments,
S. No. 47/5/A, Erandavane,
Pune - 411004

PAN : AHYPB5606N

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle - 11(2), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 147/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Jayant Dattatraya Bhalerao,
H/202, Treasure Park,
Sant Nagar, Pune-411009

PAN : AAUPB3667L

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer,
Ward - 11(4), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 148/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

Ashok Dattatraya Bhalerao,
Flat No. 8, Janaki Apartments,
S. No. 47/5/A, Erandavane,
Pune – 411004

PAN : ABAPB1824E

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer,
Ward – 11(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 07-12-2017

घोषणा की तारीख / Date of Pronouncement : 29-01-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These three appeals by three different assesseees are taken up together for adjudication as they are emanating from same set of facts. All the three assesseees are closely related to each other. These appeals are directed against the order of Commissioner of Income Tax (Appeals)-I, Pune dated 31-10-2014 for the assessment year 2010-11 in the case of each assessee.

2. The common facts in all the appeals as emanating from records are: The assesseees are co-owners of ancestral bungalow with land situated at CTS No. 851/1, Final Plot No. 187 of T.P. Scheme No. 1 Bhamburda Shivajinagar, Pune. The assesseees jointly sold the above ancestral bungalow to M/s. Yugay Constructions Pvt. Ltd. for total consideration of Rs.5,32,00,000/-. The assesseees in their return of income disclosed their respective share of Long Term Capital Gain arising from sale of ancestral property and also claimed deduction u/s. 54 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

ITA No. 146/PUN/2015 (A.Y. 2010-11)

3. The assessee's share in total consideration from sale of ancestral bungalow was Rs.1,60,00,000/-. The assessee offered Long Term Capital Gain of Rs.28,76,100/- after claiming deduction of Rs.88,54,650/- u/s. 54 of the Act. The assessee had invested gain arising from sale of ancestral property in two residential flats. Both the flats were located in different localities. The assessee purchased Flat No. 1201 in Treasure Park Society, Hingane Khurd, Karvenagar, Pune for Rs.47,91,250/- inclusive of registration and stamp duty charges. Another flat was purchased by assessee at Madhuvishwa Residency at S. No. 1/28, Saint Nagar, Pune for Rs.50,89,950/-. The Assessing Officer allowed assessee's claim of deduction u/s. 54 in respect of one flat situated at Madhuvishwa Residency, Saint Nagar, Pune and disallowed assessee's claim of deduction in respect of flat at Treasure Park Society.

3.1 The assessee while computing Capital Gains also claimed deduction in respect of certain expenses viz.

i.	Payment of brokerage	Rs.1,00,000/-.
ii.	Compensation paid to tenant	Rs.4,00,000/-
iii.	Advocate Fees	<u>Rs.50,000/-.</u>
	Total	Rs.5,50,000/-

The Assessing Officer disallowed above expenses.

Aggrieved by the assessment order dated 28-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the findings of Assessing Officer in disallowing the expenditure claimed, as well as restricting benefit of deduction u/s. 54 to Rs.50,89,950/-. Against the findings of Commissioner of Income Tax, the assessee is in second appeal before the Tribunal.

4. The assessee has raised following grounds of appeal before the Tribunal :

1. *"In the facts and circumstances of the case and in law, the learned C.LT.[A] has erred in holding that the appellant was entitled to claim deduction u/s. 54 of the I. T. Act 1961 in respect of only one flat purchased by him in Madhuvishwa residency at Karvenagar Hingne Khurd Pune and consequently has erred in restricting the deduction to Rs.50,89,950.00.00 as against the deduction of Rs.98,81,200.00 claimed by the appellant u/s. 54 of the I. T. Act 1961 for purchase of two flats one in Madhuvishwa residency and other at Treasure Park Society Santnagar Pune. The deduction as claimed by the appellant u/s. 54 of the I. T. Act 1961 in his return of income in respect of purchase of two flats referred above may please be allowed to the appellant.*
2. *The appellant may please be allowed deduction of Rs.4,00,000.00 being the compensation paid to the tenant while computing the Long Term Capital Gains in respect of 1/4th share of the appellant in the property situated at Final Plot No.187, C.T.S. No.851/1 Bhamburda Shivajinagar Pune 411004.*
3. *The brokerage of Rs.1,00,000.00 and advocate fees of Rs.50,000.00 paid by the appellant in connection with the transfer of his property be allowed as deduction while calculating the Capital Gains on transfer of 1/4th share of the appellant in the property situated at Final Plot No.187, C.T.S. No.851/1 Bhamburda Shivainagar Pune 411004.*

4. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

5. Shri Sunil Ganoo appearing on behalf of the assessee submitted at the outset that the assessee wishes to withdraw ground No. 3 raised in the appeal. The ld. AR of assessee has also filed letter from assessee dated 03-10-2017 in this regard.

5.1 The ld. AR submitted that after receipt of consideration from sale of ancestral property the assessee purchased two flats in two different localities. The assessee had two unmarried aunts who had taken care of assessee since his childhood. Both the aunts were financially dependent on the assessee. Due to some family issues between the parents of assessee and his aunts, it was not possible to accommodate them in the same house where the parents of assessee were staying. The assessee purchased first flat in Madhuvishwa Residency, Saint Nagar, Pune. Since, the flat in the said locality was costly the assessee could not afford to buy second flat in the same vicinity for his aunts. The assessee purchased another flat for his aunts in nearby locality. The assessee was constrained to purchase second flat in another locality under compelling circumstances. The ld. AR submitted that the assessee is eligible to claim benefit of deduction u/s. 54 in respect of both the flats as assessee was constrained to make investments in two different flats at different locations under circumstances beyond his control. In support of his submissions, the ld. AR placed reliance on the following decisions :

- i. Shri B. Srinivas Vs. ITO in ITA No. 1134/2008 decided on 04-07-2014 by Hon'ble Karnataka High Court;

- ii. Commissioner of Income Tax Vs. Raman Kumar Suri, 29 taxmann.com 231 (Bombay);
- iii. Commissioner of Income Tax Vs. Devdas Naik, 366 ITR 12 (Bombay);
- iv. ITO Vs. Ms. Sushila M. Jhaveri, 107 ITD 327 (Mumbai)(SB).

5.2 In respect of ground No. 2 raised in appeal, the ld. AR submitted that the assessee has claimed expenditure of Rs.4,00,000/- in respect of compensation paid to tenant for vacating the premises. The ld. AR submitted that such expenditure is allowable. The ld. AR filed affidavit of Shri Vaman Shriniwas Kulkarni who was stated to be occupant of ancestral house sold by assessee as tenant admitting receipt of Rs.12,00,000/- as consideration for relinquishing his tenancy rights in the demised bungalow.

6. On the other hand Shri Achal Sharma representing the Department vehemently defended the findings of Commissioner of Income Tax (Appeals) in restricting assessee's claim of deduction u/s. 54 in respect of only one flat. The ld. DR submitted that as per provisions of section 54 the assessee can claim benefit of deduction in respect of a residential house. The expression 'a residential house' means one house. The meaning of expression 'a residential house' has been clarified by the Finance (No. 2) Act. 2014. The expression 'a residential house' has been replaced with 'one residential house' to bring in more clarity and to remove ambiguity. The ld. DR submitted that in any case benefit of deduction u/s. 54 cannot be extended to second flat purchased by assessee in a different locality.

7. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in

ground No. 1 of appeal has assailed the findings of Commissioner of Income Tax (Appeals) in upholding Assessing Officer's action of restricting benefit of deduction u/s. 54 of the Act in respect of only one flat. It is an undisputed fact that the assessee in return of income has disclosed Long Term Capital Gain after claiming deduction u/s. 54 in respect of two flats purchased in two different localities. The assessee has tried to justify the purchase of two flats in different localities on account of family compulsions. We find that apart from bald assertions the assessee has not filed any cogent evidence to support his contentions. Be that as it may, the deduction under the provisions of section 54 is available in respect of 'a residential house'. Various Courts have interpreted the expression 'a residential house' to include within its fold two adjacent flats joined together or a complete building comprising of different residential units. The benefit of deduction u/s. 54 cannot be extended to two residential units/houses located at two different locations. In such circumstances, the assessee is eligible to claim deduction u/s. 54 of the Act in respect of only one of the two flats of his choice.

8. The assessee in support of his contentions have placed reliance on the decision of Hon'ble Karnataka High Court in the case of Shri B. Srinivas Vs. ITO (supra). We find that the facts in the said case are distinguishable. Therefore, the ratio laid down in the said case would not support the cause of assessee.

The Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Raman Kumar Suri (supra) allowed the benefit of deduction u/s. 54F where two residential flats were joined together and converted into one residential unit before the assessee acquired the flats.

The Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Devdas Naik (supra) reiterating the eligibility of deduction u/s. 54F in respect of two flats, granted the benefit of deduction u/s. 54 where two adjacent flats were combined together to make it a single residential unit.

In the case of ITO Vs. Ms. Sushila M. Jhaveri (supra) the Special Bench of Tribunal had occasioned to consider the issue with regard to assessee's eligibility of claiming deduction u/s. 54 of the Act where the assessee had made investment in two residential flats located at different locations. The Special Bench held that the assessee is entitled to exemption in respect of investment in only one flat. The Special Bench further clarified that where more than one unit are purchased which are adjacent to each other and are converted into one house for the purpose of residence by having common passage, common kitchen, etc., then it would be a case of investment in one residential house. The Special Bench further held that where the investment is made in two flats located at different localities, the assessee would be entitled to exemption in respect of investment in one house only.

9. In view of judicial precedents relied upon by ld. AR of assessee vis-à-vis the facts of present case, we are of considered view that the assessee is eligible to claim deduction u/s. 54 in respect of only one flat of his choice. We do not find any infirmity in the findings of authorities below in restricting deduction to Rs.50,89,950/- i.e. the cost of one flat. Accordingly, ground No. 1 raised in appeal by assessee is dismissed.

10. In ground No. 2 of appeal the assessee has prayed for allowing expenditure of Rs.4,00,000/- paid as compensation to the tenant for

vacating the premises. The assessee has filed affidavit of Shri Vaman Shriniwas Kulkarni who was stated to be occupant as tenant of ancestral house sold by the assessee and other co-owners. The said tenant in affidavit has admitted to have received Rs.12,00,000/- for relinquishing his tenancy rights. The ld. AR submitted that since, the ancestral house was jointly owned by assessee and Jayant Dattatraya Bhalerao and Ashok Dattatraya Bhalerao, all the three co-owners equally contributed towards the payment of compensation to Shri Vaman Shriniwas Kulkarni. Thus, 1/3rd share of assessee comes to Rs.4,00,000/-. The assessee has filed affidavit of tenant as additional evidence for the first time before Tribunal. Under such circumstances we deem it appropriate to remit ground No. 2 to Assessing Officer for verification of facts. The Assessing Officer shall decide this issue de-novo after granting opportunity of hearing to the assessee and considering additional evidence filed before us. Accordingly, ground No. 2 raised in appeal by assessee is allowed for statistical purpose.

11. In respect of ground No. 3 the ld. AR of assessee has filed an application from assessee to withdraw the ground. Accordingly, the same is dismissed as withdrawn.

12. The ground No. 4 is general in nature, hence, requires no adjudication.

13. In the result, appeal of assessee is partly allowed for statistical purpose.

ITA No. 147/PUN/2015 (A.Y. 2010-11)

14. The assessee has assailed the findings of Commissioner of Income Tax (Appeals) by raising following grounds of appeal :

1. *“In the facts and circumstances of the case and in law, the learned C.I.T.[A] has erred in holding that the appellant was entitled to claim deduction u/s. 54 of the I. T. Act 1961 in respect of only one flat purchased by him in Treasure Park Society Santnagar Pune and consequently has erred in restricting the deduction to Rs.80,66,395.00 as against the deduction of Rs.1,79,68,189.00 claimed by the appellant u/s. 54 of the I. T. Act 1961 for purchase of three flats in Treasure Park Society Santnagar Pune. The deduction as claimed by the appellant u/s. 54 of the I.T. Act 1961 in his return of income in respect of purchase of three flats may please be allowed to the appellant.*
2. *Without prejudice to Ground of appeal No. 1 above and by way of an alternate claim, the appellant submits that he may please be allowed the deduction u/s. 54 of the I.T. Act 1961 in respect of two adjoining Flats bearing Nos. 1103 and 1104 situated on 11th Floor of Treasure Park Society Santnagar Pune.*
3. *The appellant may please be allowed deduction of Rs.4,00,000.00 being the compensation paid to the tenant while computing the Long Term Capital Gains in respect of ½ share of the appellant in the property situated at Final Plot No. 187, C.T.S. No. 851/1 Bhamburda Shivajinagar Pune 411004.*
4. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

15. The ld. AR of assessee submitted that the assessee has made investment in three flats i.e. Flat No. 1103, Flat No. 1104 and Flat No. 202 at Treasure Park, Saint Nagar, Pune and had claimed benefit of deduction u/s. 54 in respect of all the three flats. Two flats are adjacent to each other on 11th floor and the third flat is on second floor of the same building. Flat No. 1103 and Flat No. 1104 on 11th floor were purchased by assessee for consideration of Rs.43,02,000/- and Rs.43,14,000/-, respectively. Flat No. 202 on second floor was purchased for consideration of Rs.74,46,250/-. The assessee had claimed deduction of Rs.1,79,68,189/- u/s. 54 of the Act. However, the Assessing Officer restricted deduction to Rs.80,66,395/- in respect of one flat only. The ld. AR submitted that since all the three flats were in the same building the assessee is eligible to claim deduction u/s. 54 in respect of all the three

flats. In support of his submissions, the ld. AR of assessee placed reliance on the following decisions :

- i. Commissioner of Income Tax Vs. Gita Duggal, 357 ITR 153 (Delhi);
- ii. Shri Narsing Gopal Patil & Ors. Vs. ACIT in ITA No. 1544/PUN/2012 for assessment year 2008-09 decided on 31-05-2013.

15.1 The ld. AR made an alternate prayer that without prejudice to his first prayer, if the assessee is not found eligible for claiming deduction in respect of all the three flats, the deduction u/s. 54 may be granted in respect of two adjoining flats purchased on 11th floor. In support of his alternate prayer the ld. AR placed reliance on following decisions :

- i. Commissioner of Income Tax Vs. Syed Ali Adil, 352 ITR 418 (AP);
- ii. Commissioner of Income Tax Vs. D. Ananda Basappa, 309 ITR 329 (Kar.)

16. In respect of ground No. 3 of appeal the ld. AR submitted that the assessee had contributed towards payment of compensation for vacating ancestral property. The total compensation paid to tenant was Rs.12,00,000/-. The assessee has paid 1/3rd share of total compensation i.e. Rs.4,00,000/-. The tenant Shri Vaman Shriniwas Kulkarni has filed an affidavit admitting receipt of Rs.12,00,000/- as compensation for surrendering his tenancy rights. In view of confirmation filed by tenant, the assessee should be allowed expenditure of Rs.4,00,000/-. The assessee filed an application to admit affidavit of Shri Vaman Shriniwas Kulkarni as additional evidence.

17. On the other hand the ld. DR vehemently supporting the findings of Commissioner of Income Tax, prayed for dismissing the appeal of assessee.

18. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee has invested amount received from sale of ancestral property towards purchase of three flats in the same building. Two adjacent flats have been purchased by assessee on 11th floor and third flat has been purchased on second floor of the same building. The assessee is claiming benefit of deduction in respect of all the three flats. The Assessing Officer has restricted assessee's claim on deduction u/s. 54 of the Act in respect of investment in only one flat.

19. As per provisions of section 54 the assessee is eligible to claim benefit of investment in 'a residential house'. This aspect we have dealt in detail in paras 7 to 9 above while deciding appeal in ITA No.146/PUN/2015. In the light of discussion made in above paragraphs we hold that the assessee can claim deduction u/s. 54 in respect of two adjacent flats bearing Nos. 1103 and 1104 on 11th floor at Treasure Park, Saintnagar, Pune provided the two flats have been combined to make it one residential unit. The fact that the two flats bearing Nos. 1103 and 1104 have been joined together to make it one single unit is not emanating from documents on record. The assessee has also not claimed anywhere before the authorities below that the two adjacent flats have been joined to make it one residential unit. This fact needs verification.

20. The reliance placed by the ld. AR of assessee rendered in the cases of Commissioner of Income Tax Vs. Gita Duggal (supra) and Shri Narsing

Gopal Patil & Ors. Vs. ACIT (supra) is misplaced. In both the aforesaid cases the assessee therein had acquired complete building consisting of independent residential units. Under such circumstances the Hon'ble High Court held that the fact that the residential house consists of several independent units cannot be permitted to Act as impediment to the allowance of deduction u/s. 54 or 54F of the Act. The facts in the present case are at variance. The assessee had purchased three independent flats in a building. It is not a case where the assessee has purchased entire building. Therefore, the ratio laid down by Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Gita Duggal (supra) does not support the cause of assessee. Similarly, in the case of Shri Narsing Gopal Patil & Ors. Vs. ACIT (supra), the Co-ordinate Bench of Tribunal held that the assessee is eligible for deduction u/s. 54 where the assessee has acquired a residential house with independent units. Thus, ground No. 1 raised in appeal by assessee is dismissed.

However, we find merit in the alternate submission of the assessee. As we have pointed earlier, the fact that flats bearing Nos. 1103 and 1104 on 11th floor of Treasure Park, Saintnagar, Pune whether have been joined together or not to make it single unit has not been verified. We deem it appropriate to remit this issue back to the file of Assessing Officer for verification of this fact and thereafter, allow the benefit of deduction u/s. 54, if the assessee is found to be eligible in the light to various decisions discussed. Thus, ground No. 2 raised in appeal by assessee is allowed for statistical purpose.

21. The issue raised by assessee in ground No. 3 is identical to ground No. 2 in ITA No. 146/PUN/2015. The findings given by us in respect of

ground No. 2 in ITA No. 146/PUN/2015 would apply mutatis mutandis in ground No. 3 of the present appeal. Thus, ground No. 3 raised in appeal by assessee is allowed for statistical purpose.

22. The ground No. 4 is general in nature, hence, requires no adjudication.

23. In the result, appeal of assessee is partly allowed for statistical purpose in the terms aforesaid.

ITA No. 148/PUN/2015 (A.Y. 2010-11)

24. The assessee has assailed the findings of Commissioner of Income Tax (Appeals) by raising following grounds of appeal :

1. *“The appellant may please be allowed deduction of Rs.4,00,000.00 being the compensation paid to the tenant while computing the Long Term Capital Gains in respect of 1/4th share of the appellant in the property situated at Final Plot No. 187, C.T.S. No. 851/1 Bhamburda Shivajinagar Pune 411004.*
2. *The brokerage of Rs.30,000.00 paid by the appellant in connection with the transfer of his property be allowed as deduction while calculating the Capital Gains on transfer of 1/4th share of the appellant in the property situated at Final Plot No.187, C.T.S. No.851/1 Bhamburda Shivainagar Pune 411004.*
3. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

25. The ground No. 1 raised in appeal is identical to ground No. 2 in ITA No. 146/PUN/2015. The findings given by us in respect of ground No. 2 in ITA No. 146/PUN/2015 would apply mutatis mutandis to ground No. 1 of the present appeal. Thus, ground No. 1 raised in appeal by assessee is allowed for statistical purpose.

26. The ld. AR of assessee has filed an application to withdraw ground No. 2. Accordingly, ground No. 2 raised in appeal by assessee is dismissed as withdrawn.

27. The ground No. 3 is general in nature, hence, requires no adjudication.

28. In the result, appeal of assessee is partly allowed for statistical purpose.

29. To sum up, ITA Nos. 146, 147 & 148/PUN/2015 are partly allowed for statistical purpose.

Order pronounced on Monday, the 29th day of January, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th January, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-I, Pune
4. आयकर आयुक्त / The CIT-I, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune