

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD %SMC+BENCH

**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2743/Ahd/2016
Assessment Year 2013-14**

Smt. Bhavna Hitesh Rawal, A-501, Pratishtha Apartment, Nr. Bodakdev Fire Station, J.B. Road, Bodakdev, Ahmedabad PAN: ACEPR7744N (Appellant)	Vs	The ITO, Ward-5(1)(1), Ahmedbad (Respondent)
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**Revenue by: Shri Prasoon Kabra, Sr. D.R.
Assessee by: Shri Sunil Talati, A.R.**

Date of hearing : 04-12-2017
Date of pronouncement : 30-01-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A), Ahmedabad-5 dated 15-09-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short %the Act+.

2. The assessee has raised following grounds of appeal:-

“Your appellant being aggrieved by the order passed by the learned Commissioner of income-tax (Appeals) -5, Ahmedabad presents this appeal against the same on the following amongst other grounds.

1. The Learned CIT(A) has erred in not allowing the exemption u/s 54F of the Act for purchase of Land measuring 1397.76 Sq. Yds at Block No. 133, Ambli Village, Ahmedabad against sale of gold ornaments of Rs. 35,03,347/- resulting into assessing LTCG of Rs.13,19,337/- after giving benefit of, indexation.

2. The Ld. CIT(A) has erred in denying exemption u/s 54F of the Act on the ground that the appellant was owner of two residential flats at the time of claiming exemption is incorrect as the appellant owned only one residential flat, while in another flat the ownership was of HUF of appellant's husband, Hitesh Rawal HUF. The name of the wife was only as a second name for convenience/nomination, she being member/coparcener of the Hitesh Rawal HUF. On the facts and circumstances of the case and in law, the Ld. CIT(A) was not justified in not allowing exemption u/s 54F of the Act. The impugned addition confirmed by Ld. CIT(A) w.r.t. LTCG of Rs.13,14,337/- be deleted and the exemption so not granted being invalid on facts and law, the same be allowed now.”

3. As both the grounds of appeal of the assessee are interconnected, so, for the sake of convenience, the same are adjudicated together.

4. In this case, return of income declaring income of Rs. 13,61,500/- was filed on 30th July, 2013. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 23rd September, 2014. The assessee has shown income from salary, house property and other sources. During the course of assessment proceedings, the assessing officer noticed that assessee has purchased land in Ambli village, Ahmedabad for Rs. 82,53,270/- for construction of residential property. Regarding source of investment in the aforesaid property the assessee explained that she had obtained loan of Rs. 47 lacs from her husband Shri Hitesh M Rawal and the balance amount of Rs. 35,03,347/- was obtained on sale of

gold to Chokshi Ambalal Govind Lal. The assessee had explained that the gold was obtained on various occasions. The assessee has shown indexed cost of acquisition of gold at Rs. 21,84,010/- and Rs.13,19,337/- as long term capital gain arises from sale of gold. During the course of assessment proceedings the assessee requested for exemption of Rs. 13,19,337/- u/s. 54F as long term capital gain arises from sale of gold which has been invested in purchase of land in Ambli village, Ahmedabad for Rs. 82,53,270/- to construct a residential unit. The assessing officer has denied the exemption u/s. 554F of the I.T. Act on the ground that assessee has already owned two residential houses as mentioned below:-

- (i) ½ share in Adiraj Bunglow 10, Ahmedabad
- (ii) ¼ share in Himalaya Arcade Office 302 and 303
- (ii) ½ share flat no. A/501 at Pratishksha Apartment Bodakdev, Ahmedabad

In this connection the assessee explained during the course of assessment proceedings that the said property A/501 Pratishksha is owned by H.M. Raval, HUF and name of the assessee is included only for the sake of convenience as joint holder and the payment has been made by Hitesh Raval . The assessing officer had not accepted the contention of the assessee on the ground that she was having ownership of two residential house at the time of purchase of aforesaid land in Ambli village, Ahmedabad. Consequently the assessing officer concluded that since the assessee had already owned two residential houses, therefore, no exemption u/s. 54F was available for investment on long term capital gain of Rs. 13,19,337/-

5. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has sustained the disallowance made by the assessing officer by observing as under.

“Decision:

4.3. *In this case, the AO has denied the claim of exemption u/s.54F of the Act on the ground that assessee was owner of two residential flats at the time of claiming exemption u/s.54F of the Act. The brief facts of the case are that the assessee^ has claimed exemption u/s.54 of the Act for purchase of land measuring 1397.76 Sqr. Yrds. against sale of ggld ornaments of Rs.35,03,347/- resulting into long term capital gain of Rs.13,19,337/-. The AO has noticed that at the time of purchase of new land assessee was having ownership of two residential houses i.e. 10, Adiraj Bungalow and A/501 Pratishta Apartment. Since the assessee has owned two residential houses the AO has held that no exemption u/s.54F is available to the assessee.*

4.4. *The contention of the appellant is that the assessee in fact owned only one residential house jointly with husband Shri Hitesh Raval at Bungalow No. 10 Adiraj, Taltej, Ahmedabad. It is further submitted that the virtual owner of Pratishta Flat is Hitesh Raval, HUF as the investment is made by HUF and in the return of income these facts are reflected in the A.Y. as back as 2006-07. It is further contended that the joint name is kept of Mrs. Bhavnaben Raval only out of abundant precaution for meeting out any untoward incident in future and also safeguarding family interest and also for belief in Shagun Purpose for the whole family. It is also submitted that following the principle of substance over form it can be construed that appellant is owner of one house only on the date of sale of original asset. In this regard the appellant has relied upon various judgments as under:-*

- (1) *CIT v/s Ravinder kumar Arora 342 ITR 0038 delhi High Court*
- (2) *Dr. P.K. Vasanthi Rangarajan v/s. CIT 252 CTR 0336 (Madras High Court)*
- (3) *CIT v/s. Podar Cements Pvt. Ltd. and etc. 226 ITR 626 (Supreme Court) (1997)*
- (4) *Late Mir Gulam Ali Khan v/s CIT 56 CTR (A.P.) 144*

4.5. *The facts of the case and submissions are considered. For ready reference the provisions of Section 54F are reproduced as under:-*

"54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house Hereinafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date [constructed, one residential house in India] (hereinafter in this section referred to as the new asset), the capital gain shall be deal with in accordance with the following provisions of this section, that is to say,-

(a) If the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) If the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears

to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45;"

[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; or

(ii) Purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) Constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) The income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]

Section 54F of the Act provides for exemption of long term capital gains on transfers of any asset, if the net sale consideration is reinvested in acquisition of a residential house. One of the conditions in order to claim the benefit of this exemption is that on the date of transfers of the asset, the tax payer should not own more than one residential house. In the instant case the appellant has jointly own two residential houses and question arises whether can the houses which are jointly owned be regarded as a house which is owned by the appellant. The appellant has mainly contended that the whole investment in one of the house is made by Hitesh Raval HUF and this HUF is virtual owner of the house. However, for all legal and technical purposes it can be said that the appellant is owner of the house which she jointly owned with the HUF. For all legal purposes it cannot be said that the appellant is an owner for name sake only and doesn't have any right in the property. A joint ownership would amount to ownership of the residential house, for the purpose of considering one owns a residential house to fulfill the condition of Section 54F of the Act. The case laws cited by the appellant are all in respect of the issue whether the benefit u/s.54F of the Act is available to an assessee if the assessee has purchased new property jointly alongwith his wife. Therefore these decisions are not applicable to the facts of the instant case.

Considering the above discussion, the view taken by the A.O. is justified and the exemption rejected by the AO is confirmed. Thus the grounds of appeal are dismissed."

6. During the course of appellate proceedings before us, the Id. counsel has submitted paper book containing information regarding submission made before the Id. CIT(A), detail of payment along with bank statement of Hitesh H Rawal, HUF, copy of return of income,

copy of sale deed of property etc. He has also placed reliance on the following judicial pronouncements:

- (i) ITO vs. Dr. Vandana Bhulchandani (2016) 72 taxmann.com 281 (Mumbai Tribunal)
- (ii) Dr. P.K. Vasanthi Rangarajan vs. CIT, Appeal Noo 1435 of 2005 (High Court of Madras)
- (iii) DIT(Intl. Taxation) vs. Mrs. Jennifer Bhide (2011) 15 taxmann.com 82 (Karnataka)

He contended that Id. CIT(A) has erred in not allowing the exemption u/s. 54F of the act on purchase of land against the sale of gold ornaments which resulted in long term capital gain of Rs. 13,19,337/-. On the other hand, Id. departmental representative has vehemently contended that assessee is not entitled to get exemption u/s. 54F of the act as it is clearly evident form the documents mentioned in assessment order that she owned more than one residential house at the time of purchase of new plot of land. He has also placed reliance on the decision of hon^{ble} supreme court in the case of M.J. Shivani vs. CIT Bangalore (2015) 53 taxmann.com 318 (SC)

7. We have heard both the sides and perused the material on record carefully. The assessing officer noticed during the course of assessment proceedings that at the time of purchase of aforesaid new property the assessee was having ownership of two residential houses, therefore, no exemption u/s. 54F is available to the assessee. Section 54F of the act provides for exemption of long term capital gain on the transfer of any asset if the net sale consideration is re-

invested in acquisition of a residential house. One of the condition in order to claim the benefit of this exemption is that on the date of acquisition of the asset, the assessee should not own more than one residential houses. In the case of the assessee, she has jointly owned two residential houses and the question arises whether the house which are jointly owned be regarded as a house which is owned by the assessee. In this connection, we have perused the judicial pronouncements referred by the Id. counsel and observed that facts of this judicial pronouncements were distinguishable from the facts in the case of the assessee. In addition to this , we observed that the findings laid down in the decision of Hon^{ble} Supreme Court in the case of M.J. Shivani vs. CIT, Bangalore 2015 53 taxmann.com 318 (SC) are squarely applicable to the fact of the case of the assessee. We find that in the aforesaid decision of the Hon^{ble} Apex Court, it was held that where assessee on date of sale of long-term asses owns more than one residential house even jointly with another person, the benefit u/s. 54F arising from sale of asset was to be rejected. We considered that exemption u/s. 54F has been granted to the assessee with a view to encourage construction of one residential house. The exemption provided u/s. 54F would not be available in a case where the assessee already owned more than one residential houses. Even if, other residential house may be either owned by the assessee wholly or partially. Under these circumstances, the assessee is not eligible for the concession provided u/s. 54F of the act. We have also noticed that proviso to section 54F of the act clearly provide that no deduction shall be

allowed if the assessee owns more than one residential house. After considering the above facts and legal findings elaborated supra in this order, we are of the view that Id. CIT(A) is justified in sustaining the disallowance made by the assessing officer in the case of the assessee. Therefore, we do not find any reason to interfere in the findings of the Id. CIT(A). Accordingly, the appeal of the assessee is rejected

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 30-01-2018

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad : Dated 30/01/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अर्पण / 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 अधिकरण,
अहमदाबाद