

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3416/M/2016
Assessment Year: 2010-11**

Income Tax Officer, 31(2)(5), Mumbai	Vs.	Pravin Chand Sehgal (HUF), Unit No.204/206, M/s. Shree Mahavir Textiles Mills, Kamla Bhawan, Sharma Indl. Estate, Goregaon (East), Mumbai-400 063 PAN: AAAHP2624R
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shekhar Gupta, A.R.
Revenue by : Ms. Pooja Swaroop, D.R.

Date of Hearing : 22.02.2018
Date of Pronouncement : 28.03.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 16.02.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The grounds raised by the Revenue are as under:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has not erred in allowing the benefit of section 54 of the Income Tax Act , 1961 to the assessee against the sale of residential flat at Mount Unique Peddar Road , Mumbai on the ground that the assessee has an allotment letter from the builder ignoring the fact that the assessee has not have a registered purchase agreement?

2. The Appellant Prays that the order of the CIT (A) be set aside and the

order of the Assessing officer may be resorted The Appellant craves to leave to amend or alter any ground or add new ground which may be necessary for disposal of the appeal.”

3. The facts in brief are that the assessee filed return of income on 29.09.2010 declaring an income of Rs.18,85,178/- which was processed under section 143(1) of the Act. Thereafter, the case was reopened u/s 148 of the Act by issuing notice dated 18.03.2013. Thereafter the statutory notices were duly issued and served upon the assessee. The only issue under challenge before this Tribunal is with respect to denial of exemption under section 54 of the Act to the tune of Rs.2,47,48,087/-. During the assessment proceedings, the AO noticed that the assessee has sold property being residential flat at Mount Unique, Peddar Road, Mumbai for a consideration of Rs.3,75,00,000/- on 10.07.09 resulting into a long term capital gain of Rs.2,47,48,087/- after reducing the cost of acquisition which was claimed as exempt under section 54 of the Act in respect of investment in new flat at Orbit Terrace. Before the AO, the assessee submitted the details of payment and allotment letter dated 22.10.09 for claiming the exemption u/s 54 of the Act. Since there was no registration of sale deed executed in favour of the assessee as regards new flat purchased, the AO issued show cause notice dated 12.03.2014 as to why the claim of exemption should not be rejected as the assessee has failed to produce registered deed within the stipulated period which was replied by the assessee vide letter dated 20.03.14 by submitting that the long term capital gain arising out of sale of flat in Mount Unique building, Peddar Road, Mumbai has been invested in the purchase of

flat in building called Orbit Terrace vide allotment letter dated 22.10.09. The assessee also submitted that the benefit of exemption under section 54 cannot be denied on the ground that there is no formal agreement/sale deed entered with the builder ignoring the fact that the entire amount of capital gain stands invested in the new flat and allotment letter has been issued in favour of the assessee. The assessee also submitted that in the allotment letter 22.10.09 given by the builder is not containing any clause that no right as to provisional/final allotment accrues until the buyer's agreement is signed and and second, that no right to claim title/ownership results from the confirmation letter itself. In absence of such a bar in the allotment letter, the assessee acquired the right in the flat by virtue of the allotment letter and therefore eligible for exemption under section 54. However the AO rejected the contention of the assessee by rejecting the claim of exemption u/s 54 of the Act while framing the assessment.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after considering the submission and the contention raised by the assessee in the appellate proceedings. The Ld. CIT(A) relied on the decision of Hon'ble Karnataka High Court in the case of CIT vs. Sambandam Udaykumar (2012) 345 ITR 389/206 Taxman 150/19 taxmann.com 17 and the decision of the Mumbai Benches in the case of Khemchand Fagwani vs. ITO (2014) in ITA No.7876/M/2010 dated 10.09.14.

5. The Ld. D.R. vehemently submitted before us that the action of the Ld. CIT(A) was wrong and against the facts of the case in directing the AO to allow the claim of the assessee u/s 54 of the Act. The Ld. D.R. submitted that the assessee could not be allowed exemption under section 54 on the basis of letter of allotment filed by the assessee where no registered sale deed has been executed in favour of the assessee and thus the assessee has no right or interest acquired on the said flat. The Ld. D.R. submitted that in view of these facts the order of the AO needs to be restored.

6. The Ld. A.R., on the other hand, relied on the decision of the Ld. CIT(A) and also took us to various decisions relied upon by the Ld. CIT(A) while deciding the issue. The Ld. A.R. also filed an application under rule 29 of the ITAT rules submitting the additional evidences in the form of newspaper cutting and copies of suit in the Bombay High Court requesting the same to take on record as the assessee was still not given the possession of the flat and thereafter the litigation ensued. It is undisputed fact that assessee has been given a letter of allotment and the assessee has invested the profits in the purchase of new flat though the possession was not given to the assessee. The case of the assessee is also supported by a series of decisions referred by the assessee. In the case of CIT vs. Sambandam Udaykumar (supra) it has been held that where the entire payment was made merely because a registered sale deed has not been executed and registered in favour of the assessee, the assessee cannot be denied the benefit of section 54F of the Act. Similarly, if the assessee has

invested money in the construction of residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming benefit u/s 54 of the Act. The essence of the said provision is whether the assessee has invested the capital gain in a residential house and once it is demonstrated that the gain received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from the benefit of exemption u/s 54 of the Act. Further, in the case of *Khemchand Fagwani vs. ITO (supra)* it has been held that there is no requirement in the Act that it necessarily has to produce the agreement more so when letter of allotment along with proof of payment/investment was duly produced before the concerned authorities. Similarly, in the case of *Sanjeev Lal vs. CIT 365 ITR 389 Hon'ble Supreme Court* has held that a sale deed may not be essential if the transfer can be deduced from the facts of the case. Similarly, in the case of *CIT vs. Smt. Brinda Kumari (2001) 114 Taxmann 266* it has been held that when an allotment letter wherein it has been held that where the assessee acquired a substantial domain over a flat in a housing society under agreement with society coupled with payment of almost entire cost of construction within a period of 2 years from date when assessee conveyed original property to society, assessee could claim exemption

under section 54. The court also observed that Board has stated in Circular No.471 & 672 that when an allotment letter is issued to an allottee, under the scheme on payment of first installment towards the cost of construction, the allotment is final unless it is cancelled. Similarly, in the case of CIT vs. Kuldeep Singh (2014) 49 taxmann.com 167 it has been held that if the assessee has made substantial investment in the flat, deduction under section 54 has to be granted even though legal ownership has not vested with the assessee. Similarly, in the other decision of the co-ordinate bench of the Tribunal in the case of Hasmukh N. Gala vs. ITO (2017) 83 taxmann.com 49 (Mumbai-Trib) and in the case of Mr. Rajeev B. Shah vs. ITO in ITA No.262/M/2015 for A.Y. 2010-11 vide order dated 08.,07.2016 it has been held that the assessee has invested the gain for acquisition of flat and builder has issued allotment of letter to the assessee then the deduction under section 54 could not be denied merely on the basis that the construction of flat was not completed within the stipulated period.

7. In view of the above discussion and the ratio laid down by the various courts and judicial forums, the appeal of the Department is dismissed.

Order pronounced in the open court on 28.03.2018.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.03.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Mumbai.

Dy/Asstt. Registrar, ITAT,