

**आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI  
BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6440/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2012-13)

Pramod Sharma Flat No. 12A01, Interface Heights, 13 <sup>th</sup> Floor, 'C' Wing, Off Link Road, Malad(West), Mumbai-400064	<b>बनाम/</b>  v.	ACIT-35(2) Pratyakshakar Bhavan, Bandra Kurla Road, Bandra (E) Mumbai 400051
स्थायी लेखा सं./ PAN : AMYPS6428E		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:		Shri K. Gopal/ Ms. Neha Paranjpe
Revenue by :		Shri Rajat Mittal (DR)

सुनवाई की तारीख / **Date of Hearing** : **01.05.2018**

घोषणा की तारीख / **Date of Pronouncement** : **30.05.2018**

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 6440/Mum/2016 , is directed against appellate order dated 30.08.2016 passed by learned Commissioner of Income Tax (Appeals)-46, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2012-13 , the appellate proceedings had arisen before learned CIT(A) from assessment order dated 27-03-2015 passed by

learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2012-13.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

*"1. The Ld. CIT (Appeals) erred in restricting exemption u/s 54F of the Act in respect of the sale of second flat against the investment in new flat to Rs. 58,83,891/- as against Rs. 94,34,978/- claimed u/s 54 of the Act on the facts and circumstances of the case.*

*1.1 In doing so the Ld. CIT (Appeals) did not consider the submissions of the appellant in their proper perspective.*

*Your appellant, submits that due relief be allowed.*

*Your appellant craves leave to add to, alter, delete or amend the grounds of appeal at or before the date of hearing."*

3. The brief facts are that the assessee sold property bearing flat no. 502, 5<sup>th</sup> floor, C/1, Vastu Park, Malad (W), Mumbai-400064 on 05-07-2011 for Rs. 1,30,00,000/-. The assessee computed long term capital gains to the tune of Rs.94,34,978/-. The assessee claimed exemption u/s.54 of the Act to the tune of Rs. 94,34,978/- and hence taxable long term capital gains were computed by the assessee at 'Nil' which were offered for taxation in the return of income filed with the Revenue. On verification by the AO during the course of assessment proceedings u/s 143(3) r.w.s. 143(2), it was observed by the AO that the said amount comprised of investment made in new Flat at 501, Victory Aura, Ulwe, Panvel, Navi Mumbai during the financial year 2011-12 amounting to Rs. 40,59,958/- whereas the remaining capital gain exemption of Rs. 53,75,020/- was claimed u/s 54 in this financial year which remained unutilised in the preceding year to be claimed as exempt u/s54 as investment in flat at Interface Malad in financial year 2010-11 was higher than the long term capital gains earned on sale of flat at Jaipur earned in financial year 2010-11 . The short question which has arisen in this appeal for our consideration is with respect to the allowability of exemption u/s. 54 with respect to the investment made in two residential flats situated at altogether difference location , one situated in Panvel, Navi Mumbai and other flat situated in Malad, Mumbai. The AO was also of the

view that once the assessee has claimed exemption u/s 54 w.r.t. Malad Flat in FY 2010-11 itself , the unutilised amount of investments in new assets made which could not be claimed as exemption u/s 54 from long term capital gains for AY 2011-12 as the investments in new asset were more than long term capital gains, the said excess unutilised investment in new asset so far as exemption u/s 54 is concerned, cannot be again allowed in AY 2012-13 as exemption u/s 54 from capital gains earned on sale of residential flat. The AO relied upon the provisions of Section 54 of the 1961 Act, and disallowed the exemption claimed to the tune of Rs. 53,75,020/- being investment made in FY 2010-11 in a residential flat at Interface Malad,Mumbai , vide assessment order dated 27-03-2015 passed by the AO u/s 143(3).

4. Aggrieved by the assessment order dated 27-03-2015 passed by the AO u/s 143(3), the assessee filed an appeal before learned CIT(A). The learned CIT(A) observed that two issues arise in this appeal , which are as under:-

- (i) Whether exemption u/s 54 can be claimed for investment in two properties ?
- (ii) Whether the assessee is entitled to invest in one property as against sale of two properties if the condition of Section 54 for time limit is fulfilled ?

With reference to the first issue , the assessee claimed benefit for having invested in two residential flats located at altogether different locations . The assessee relied upon following decisions and amendment to Section 54 of the Act by Finance Act, 2014 which restricted investment in 'one' residential house which came into effect from 01-04-2015 and contended that for impugned AY the exemption cannot be restricted to 'one' residential house. The assessee relied upon following decisions:

- (a) Hon'ble Karnataka High Court decision in the case of CIT v. Smt. Rukminiamma (2011) 196 Taxman 87(Kar. HC).

(b) Hon'ble Madras High Court in the case of Dr.(Smt.) P K Vasanthi Rangarajan v. CIT (2012) 23 taxmann.com 299(Mad. HC).

The learned CIT(A) relied upon decision of Hon'ble Bombay High Court in the case of CIT v. Devdas Naik ,366 ITR 12 wherein decision of Special Bench of Mumbai Tribunal in the case of ITO v. Sushila Jhaveri in ITA no. 2865/Mum/2002 ( reported in (2007) 107 ITD 327(Mum-SB) ) stood approved by Hon'ble Bombay High Court by holding that the benefit can be claimed only for one house but however if the assessee has adjoining units used as one , the claim can be allowed for two adjacent units. The Ld. CIT(A) also relied upon the decision of Hon'ble Bombay High Court in the case of CIT v. Raman Kumar Suri in ITA no. 6962 of 2010 reported in (2013) 29 taxmann.com 231(Bom.) wherein the decision of Special Bench of tribunal in Sushila M Jhaveri(supra) stood approved. Further reliance was placed by Ld. CIT(A) on the decision of Mumbai Tribunal in the case of Shri Narendra Khubchandani , Legal Heir of Late Shri Dalpat T. Khubchandani, v. ITO in ITA no. 238/Mum/2011 order dated 17.12.2014. The learned CIT(A) observed that in the case of the assessee the investments are made in two different properties at two separate locations. Thus, the learned CIT(A) held against the assessee so far as issue no.(i) is concerned , which is a matter of dispute between rival parties before the tribunal. So far as issue no. (ii) is concerned , the learned CIT( A) held the same to be in favour of the assessee which issue has now attained finality .

5. The assessee has now come in an appeal before the Tribunal so far as adjudication of issue no. (i) formulated by learned CIT(A) which was adjudicated by learned CIT(A) against the assessee. The Ld. Counsel for the assessee submitted that claim of exemption u/s 54 of the 1961 Act was reduced from Rs. 94.35 lacs to Rs. 58.84 lacs on the grounds that the benefit of exemption u/s 54 cannot be allowed for investment in two residential flats located at different locations. The learned counsel for the assessee drew our attention to a decision of Hon'ble Bombay High Court in the case of CIT v. Devdas Naik reported in (2014) 366 ITR 12(Bom) and submitted that in this case the flats were adjacent units and hence these two flats were treated as single unit so far as exemption u/s 54 of the 1961

Act is concerned. Further the learned counsel for the assessee relied upon the decision of Hon'ble Bombay High Court in the case of CIT v. Raman Kumar Suri (2013) 29 taxmann.com 231 (Bom.) and our attention was drawn to question no. (e) before the Hon'ble Bombay High Court and it was fairly submitted that this is again a case where the newly acquired flats were adjacent flats in the same society having one entrance and one kitchen and converted into one duplex flat. He drew our attention to the decision of the Hon'ble Karnataka High Court in the case of CIT v. Khoobchand M. Makhija (2014) 223 Taxmann 189 (Kar)(Mag.) and submitted that in view of decision of Hon'ble Karnataka High Court, the investment in two different flats at separate locations as were made by the assessee should be allowed. Further our attention was drawn to the decision of Mumbai-tribunal in the case of DCIT v. Ranjit Vithaldas (2012) 23 Taxmann.com 226(Mum).

The Ld. DR on the other hand submitted that the decision of the Special Bench of the Mumbai-tribunal in Sushila M Jhaveri(supra) has categorically held that investment can be made in one residential house property and deduction should be allowed restricted to one residential house property provided other conditions are fulfilled. The learned DR relied upon the decision in the case of Sushila M. Jhaveri(supra) which has been upheld by Hon'ble Bombay High Court.

The Ld. Counsel for the assessee in rejoinder submitted that amendment has been made in the 1961 Act by Finance Act, 2014 w.e.f. 01-04-2015 in section 54 wherein the word 'a' is now being substituted by the word 'one'.

6. We have considered rival contentions and have perused the material on record including case laws relied upon by both the rival parties. We have observed that the assessee sold one flat at Jaipur in financial year 2010-11 for Rs. 1,15,00,000/- . The assessee had invested Rs. 1,39,05,974/- in residential flat at Interface, Malad, Mumbai on 14-09-2010 in financial year 2010-11 . The assessee claimed exemption of Rs 80,22,083/- u/s 54 from long term capital gains arising from sale of Jaipur residential flat. The investments made in flat at Malad, Mumbai at Interface was to the tune of Rs. 1,39,05,974/- and therefore there was unutilised claim of exemption u/s 54 of the 1961 Act to the tune of Rs. 58,83,891/- for FY 2010-11 as

investments in new asset was higher than long term capital gain earned on sale of residential flat at Jaipur in financial year 2010-11 (AY 2011-12). The assessee sold another residential flat bearing no. 502, 5<sup>th</sup> floor, C/1, Vastu Park, Malad (W), Mumbai-400064 on 05-07-2011 for Rs. 1,30,00,000/-. The assessee computed long term capital gains to the tune of Rs.94,34,978/- on sale of flat no. 502, 5<sup>th</sup> floor, C/1, Vastu Park, Malad (W), Mumbai-400064. The assessee claimed exemption u/s.54 of the Act to the tune of Rs. 94,34,978/- and hence taxable long term capital gains were computed at 'Nil' in the return of income filed with the Revenue. The assessee had made investment in the new residential flat situated at Panvel of Rs. 40,59,958/- which was claimed as an exemption u/s 54 for AY 2012-13 against long term capital gain arising on sale of flat at 502, 5<sup>th</sup> floor, C/1, Vastu Park, Malad (W), Mumbai-400064 while exemption to the tune of Rs. 53,75,020/- was claimed u/s 54 out of the total un-utilised claim of exemption u/s 54 for investment of Rs. 58,83,891/- made in FY 2010-11 in residential unit at Interface, Malad. These two new assets being residential flats at Malad and at Ulwe Panvel, are situated in two altogether different locations and nothing has been brought on record as to reasons for investing in these two different flats located at two separate locations. Thus it can be presumed that the assessee made investments in these two new residential flats for commercial reasons as there was no justification brought on record by the assessee for making investments in two different flats located at different locations. The case laws relied upon by the assessee in the case of Raman Kumar Suri(supra) and also in the case of Devdas Nayak(supra), the residential flats being new assets were interconnected flats and hence under those circumstances, were treated as one single unit. Further in the case of Hon'ble Karnataka High Court decision in the case of Smt K G Rukminiamma(supra), the flats were located in the same building while in the instant case before us these two flats are at separate locations. Further in the case of Hon'ble Karnataka High Court decision in the case of Khoobchand M. Makhija(supra), there were a finding of fact that these two flats were required by the taxpayer for settling his two sons and hence instead of buying one big house to accommodate both the sons, the taxpayer bought two different small flats at separate locations. The relevant extract of the decision of Hon'ble Karnataka High Court is as under:-

**“5..... The assessee had two sons, who were living with the assessee on the date of selling of that property. As both the sons were grown up, married, having children, assessee wanted to invest the said capital gains in purchasing two independent residential houses for the benefit of his two sons. Accordingly, he purchased the property No.623 for a consideration of Rs.76,91,660/- on 27.5.1996. Prior to that, he also entered into an agreement of sale in respect of property No.739 for a consideration of Rs.75,00,000/- and paid a sum of Rs.44,00,606/- on the date of agreement of sale. He paid the balance sale consideration on 28.9.1996 and purchased the said property under a registered sale deed dated 28.9.1996.**

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**16. In the instant case, one residential house is sold, Out of the sale consideration, it was open to the assessee to purchase a big residential house as to accommodate both his sons, in which event in terms of Section 54 (1), he would have been entitled to the benefit of the said Section. However, instead of purchasing one big house, having regard to the fact that both his sons are grown up, have families and in order to see that in future there won't be any litigation or disharmony , he chose to purchase two small residential houses to accommodate both his sons.**

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**18. Therefore, we are of the view, in the facts and circumstances of this case, the acquisition of two residential houses by the assessee out of the capital gains falls within the phrase “residential house” and accordingly , the assessee is entitled to the benefit conferred under Section 54(1) of the Act. However, we make it clear that while interpreting this word, the Court or the Tribunal or the authorities have to keep in mind the facts of the particular cases. When we have held “a” cannot be read as singular, it also cannot be read as multiples and so as to avoid paying tax under Section 45 of the Act . Therefore, in the facts and circumstances of this case, we answer the first substantial question of law raised in favour of the assessee and against the Revenue.”**

The Hon'ble Karnataka High Court allowed exemption u/s 54 of the 1961 Act on which great emphasis has been placed by learned counsel for the assessee, with respect to investments made in two flats keeping in view peculiar facts of the case of the tax-payer having two sons wherein the taxpayer intended to settle both the sons and therefore instead of buying a large house to accommodate both the sons instead purchased two small flats for his two sons and it is categorically held by Hon'ble Karnataka High Court that the word “a” used by legislature cannot be extended to an extent to be read as multiples so as to avoid paying tax u/s 45 of the 1961 Act. In the instant case before us there is no such pressing/compelling need which is shown by the assessee to exist such as to settle two sons etc for which two different flats at separate locality were purchased . There are several judgments of the Hon'ble Courts/Tribunals which have consistently taken a view that under such circumstances no exemption can be allowed u/s 54

for making investment in the second flat. Thus keeping in view our aforesaid finding/reasoning and relying upon the judgments as stated above , we are of the considered view that the appeal of the assessee lacks merit and hence is hereby dismissed. We order accordingly.

7. In the result, the appeal of the assessee stood dismissed.

Order pronounced in the open court on 30.05.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 30.05.2018 को की गई ।

Sd/-

(C.N PRASAD)  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 30.05.2018

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI