

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD KUMAR ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.2627/Ahd/2017
(Assessment Year : 2013-14)

Shri Chitrang M. Dave 11, Shaan, Nandnavan Society Alkapuri Vadodara [PAN No. BQQPD 0670Q] (Appellant)	Vs.	The DCIT (International Taxation) Vadodara (Respondent)
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Appellant by :	Ms. Urvashi Shodhan, AR
Respondent by :	Shri Lalit P.Jain, Sr.DR

Date of Hearing	30/07/2018
Date of Pronouncement	13/ 08 /2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been filed by the Assessee before us against the order dated 11.09.2017 passed by the Commissioner of Income Tax(Appeals)-13, Ahmedabad [Ld.CIT(A) in short] for Assessment Year (AY) 2013-14 arising out of the order dated 22.03.2016 passed by the DCIT, International Taxation, Baroda with the following grounds:-

1. *The order of Hon'ble Commissioner (Appeals)-13, Ahmedabad is against law and facts.*
2. *The order of the learned AO has been upheld by the Hon'ble CIT(A) without considering the facts of the case that the deduction from the capital gain u/s.54 of the Act is available to the person who has made investment in the property and not to the person whose name has been added in the sale deed to safe guard the interest of the non-resident appellant. The contention of the non-resident appellant is also corroborated by Transfer of Property Act 1882.*

2. The brief facts leading to the case is this that assessee is a non-resident Indian received a property being a residential house by virtue of a WILL executed by his grandfather Shri N.P.Dave, since deceased, which was sold during the assessment year under consideration

wherein amount of Rs.70,74,250/- was received by the assessee as his share out of the total consideration of Rs.2,75,00,000/-. Subsequently, the assessee has purchased a residential house property lying and situated at Flat No.403, Earth-4, Nandnavan Housing Co-operative Society, Vadodara for a total consideration of Rs.65,00,000/-. The said property was purchased jointly by the assessee along with his father Shri Mukul Dave whose name was added in the purchase deed. No tax was payable according to the assessee on the said capital gain of Rs.64,52,290/- as the assessee has made investment in the residential house property and sought to avail the benefit of deduction u/s.54 of the Act. The Ld. Assessing Officer (AO) disregarding the fact that the total investment was made by the assessee and there was no contribution from his father towards such investment disallowed 50% claim of the assessee and gave exemption u/s.54 of the Act of Rs.32,26,145/- towards the share of the assessee in the residential house which was ultimately affirmed by the Ld. CIT(A) against which the instant appeal has come up before us.

3. The Ld. Counsel for the assessee at the time of hearing of the matter submitted before us that the entire amount of Rs.65,00,000/- was paid by the assessee to the vendor through cheques details whereof was duly submitted to the AO during the assessment proceeding. He further submitted that the property was purchased jointly with the father of assessee in order to retain ownership or smooth running of ownership as an abundant caution. The entire payment was made by the assessee out of the capital gain accrued from the sale consideration of the earlier property. He further added that the provision of section 54F of the I.T.Act mandates that a house should be purchased by the assessee and it does not stipulates that it should be purchased in the name of the assessee. Therefore, inclusion of the name of the father cannot stand in the way of the deduction legitimately accruing to the assessee. He further added that similar issue has already been decided by the Hon'ble Jurisdictional High Court in the matter of CIT vs. Ravinder Kumar Arora 342 ITR 38.

4. On the other hand, the Ld. DR vehemently argued in favour of the orders passed by the authorities below.

5. We have heard the Ld. Representatives of the respective parties. We have perused the relevant materials available on record. We find substance in the argument advanced by the Ld. AR. We have also perused the judgment passed by the Hon'ble Jurisdictional High Court as relied upon by the AR, the relevant portion whereof is as follows:-

“9. On the aforesaid facts, we are of the view that the conditions stipulated in s. 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife. If the view of the AO or the contention of the Revenue is accepted, it would be a derogatory step.

10. Even when we look into the matter from another angle, facts remain that the assessee is the actual and constructive owner of the house. In CIT vs. Podar Cements (P) Ltd. & Etc. (1997) 141 CTR (SC) 67 : (1997) 226 ITR 625 (SC), the Supreme Court has also accepted the theory of constructive ownership. Moreover, s. 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only. Here is a case where the house was purchased by the assessee and that too in his name and wife's name was also included additionally. Such inclusion of the name of the wife for the abovestated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee.

Objective of s. 54F and the like provision such as s. 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Sec. 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied on hyper technical ground. Andhra Pradesh High Court in the case of Late Mir Gulam Ali Khan vs. CIT (1986) 56 CTR (AP) 144 : (1987) 165 ITR 228 (AP) has held that the object of granting exemption under s. 54 of the Act is that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gains are concerned. The word "assessee" must be given wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word "assessee" as that would frustrate the object of granting exemption.

11. We also find judgments of other High Courts giving benefit of s. 54F(1) of the Act when the house of the assessee is purchased jointly with his wife. In the case of CIT vs. V. Natarajan (2006) 203 CTR (Mad) 37 : (2007) 287 ITR 271 (Mad) though this case was decided in relation to s. 54 of the Act, the

said section is *pari materia* of s. 54F(1) of the Act. Likewise, the Punjab & Haryana High Court in the case of CIT vs. Gurnam Singh (2008) 218 CTR (P&H) 674 : (2008) 6 DTR (P&H) 83 : (2010) 327 ITR 278 (P&H) took the same view while discussing the provisions of s. 54 of the Act which is again *pari materia* of s. 54F(1) of the Act.

12. We, thus, answer the question in favour of the assessee and dismiss this appeal with cost quantified @ Rs. 10,000.”

5.1. We find that the case of the assessee is covered in favour of assessee by the judgment discussed above. Respectfully following the same, we allow the appeal preferred by the assessee holding that the assessee is entitled to the benefit of deduction of Rs.64,52,290/- under section 54 of the Act towards capital gain on the premise that the entire amount towards consideration of purchase of flat at Nandnavan Housing Co-operative Society has been paid by the assessee and merely because his father's name has been inducted as joint-owner, the said claim cannot be denied. Accordingly, we delete the impugned disallowance.

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

This Order pronounced in Open Court on	13/ 08/2018
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Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad; Dated 13/ 08/2018

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-13, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

प/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad