

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" 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.2493/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Allan Emanuel Fernandes,
Mores Products, B.H. Gandhi
Hospital, Nigdi, Pune-411 044
PAN : AAEPF5478M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 9(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.M.Rajapurkar
Revenue by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 23.08.2018
घोषणा की तारीख / Date of Pronouncement : 31.08.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-9, Pune dated 27.07.2016 for the assessment year 2010-11.

2. The solitary issue raised in the appeal is against disallowance of exemption claimed by assessee u/s.54F of the Income Tax Act, 1961

(hereinafter referred to as 'the Act') and thereby making addition of Rs.33,15,420/- under the head 'Capital Gains'.

3. The brief facts of the case as emanating from records are: The assessee in the period relevant to assessment year 2010-11 sold immovable property for Rs.71 Lakhs and invested capital gains arising therefrom for purchase of a new capital asset in the name of his wife and daughter. The Assessing Officer disallowed assessee's claim of exemption u/s. 54F of the Act.

4. Aggrieved by the assessment order dated 19.12.2012, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected assessee's contentions and confirmed the findings of Assessing Officer. Against the order of First Appellate Authority, now the assessee is in second appeal before the Tribunal.

5. Shri R.M. Rajapurkar appearing on behalf of the assessee submitted that the assessee owned immovable property jointly with his wife, Mrs. Fiona Allan Fernandes. Both of them were having 50% each share in the immovable property. The said property was sold and the entire capital gain arising from sale of property was invested for purchase of a residential house jointly in the names of assessee's wife and unmarried daughter. The ld. AR submitted that originally property was owned by his father in law and after his death in 2006, the property was inherited by Mrs. Fiona Allan Fernandes. The name of the assessee was also added as joint holder of the property at the time of transfer. The ld. AR submitted that the assessee is suffering from Alziemer and as a result, his memory is impaired. In order to

protect financial interest of his unmarried daughter, new asset was purchased jointly in the name of his wife and unmarried daughter. The ld. AR furnished Neuropsychological assessment reports of the assessee to substantiate that the assessee is not in a fit state of mental health. The ld. AR further submitted that the Hon'ble Delhi High Court in the case of CIT Vs. Kamal Wahal reported as 351 ITR 04 held that the language of section 54F does not mandate that the house property should be purchased in the name of the assessee alone and the word "assessee". The provisions of section 54F being beneficial provision enacted for encouraging investment in residential houses and should be liberally interpreted. The ld. AR to further support his contentions placed reliance on the following decisions:-

- i) CIT Vs. V. Natarajan, reported as 287 ITR 271 (Madras)
- ii) CIT Vs. Ravinder Kumar Arora, reported as 342 ITR 38 (Delhi)
- iii) DIT Vs. Jennifer Bhide reported as 349 ITR 80 (Kar.)
- iv) Mir Gulam Ali Khan Vs. CIT reported as 165 ITR 288 (AP)

6. On the other hand, Rajesh Gawli representing the Department vehemently defended the impugned orders. The ld. DR submitted that the provisions of section 54F mandates that the capital gains arising from sale should be invested by assessee in his own name for claiming benefit of exemption u/s.54F of the Act. The ld. DR in support of his contentions placed reliance on the decision of Hon'ble Bombay High Court in the case of Prakash Vs. ITO reported as 173 taxmann.com 311.

7. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. We have also considered decisions on which rival sides have placed reliance to support

their respective contentions. It is an undisputed fact that capital asset sold by the assessee was jointly owned by the assessee with his wife in equal share. The capital gains arising from sale of original asset was invested for purchasing residential house jointly in the names of assessee's wife and unmarried daughter. The reason for investment in the name of wife and unmarried daughter is stated to be financial security of the ladies and fragile mental health of the assessee. The assessee has filed medical records indicating that the assessee is suffering from Neuropsychological disorder and his verbal and visual learning and memory has been impaired.

8. The Id. AR placed reliance on the decisions of various Hon'ble High Courts wherein exemption u/s. 54F/54 of the Act have been allowed where the new asset has been purchased in the name of wife. In the case of CIT Vs. Ravindra Kumar Arora (supra.) the Hon'ble Delhi High Court held that if the property is purchased jointly in the name of wife, the conditions stipulated in section 54F stands fulfilled. The Hon'ble High Court further observed that if the property is purchased in the name of women, it would encourage empowerment of women. The relevant extract of the decision of Hon'ble High Court reads as under:

"8. At the outset, important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house though in his own name but along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of the registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the house. The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a single penny has been contributed by the wife in the purchase of the house. The Tribunal also noted the argument that the property was purchased by the assessee in the joint name with his wife for "shagun" purpose and because of the fact that the assessee was physically handicapped. The Tribunal further concludes that as a matter of fact, the assessee was the real owner of the residential house in question.

9. On the aforesaid facts, we are of the view that the conditions stipulated in Section 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 Assessing Officer (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. & Ors., (1997) 226 ITR 625 (SC), the Supreme Court has also accepted the theory of constructive ownership. Moreover, Section 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 above-stated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee. Objective of Section 54F and the like provision such as Section 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. Section 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, (1987) 165 ITR 228 (AP) has held that the object of granting exemption under Section 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."

[Emphasized by us]

9. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT Vs. Kamal Wahal (supra.). The Hon'ble High Court emphasized on the rule of purposive construction of provision of section 54F of the Act. The relevant extract of the observation of Hon'ble High Court reads as under:

"9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue.”

10. In the case of DIT Vs. Jennifer Bhide (supra.) wherein wife had purchased new asset jointly with her husband and had claimed benefit of exemption u/s.54F, the Hon'ble High Court held:

“7. On careful reading of s. 54 as well as s. 54EC on which reliance is placed makes it clear that when capital gains arise from the transfer of long term capital asset to an assessee and the assessee has within the period of one year before or two years after the date on which the transfer took place purchase or has within the period of three years after the date of construction of residential house then instead of capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the provision made under the section which grants exemption from payment of capital gains as set out there under. Therefore, in the entire s. 54, the purchase to be made or the construction to be put up by the assessee, should be there in the name of the assessee, in not expressly stated. Similarly even in respect of s. 54EC, the assessee has at any time within a period of six months after the date of such transfer invested the whole or any part of the capital gains in the long-term specified asset then she would be entitled to the benefit mentioned in the said section. There also it is not expressly stated that the investment should be in the name of the assessee. Therefore, to attract s. 54 and s. 54EC of the Act, what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or investing the amounts in bonds set out in s. 54EC. Once the sale consideration is invested in any of these manners the assessee would be entitled to the benefit conferred under this provision. In the absence of an express provision contained in these sections that the investment should be in the name of the assessee only any such interpretation were to be placed, it amounts to Court introducing the said word in the provision which is not there. It amounts Court legislating when the Parliament has deliberately not used those words in the said section. That is the view taken by the Hon'ble Madras High Court and Hon'ble Punjab & Haryana High Court and we respectfully agree with the view expressed in the aforesaid judgment.

8. In the instant case the assessee has purchased the property jointly with her husband. She has invested the money in rural bonds jointly with her husband. It is nobody's case that her husband contributed any portion of the consideration for acquisition of the property as well as bonds. The source for acquisition of the property and the bonds is the sale consideration. It is not in dispute. Once the sale consideration is utilized for the purpose mentioned under ss. 54 and 54EC, the assessee is entitled to the benefit of those provisions. As the entire consideration has flown from the assessee and no consideration has flown from her husband, merely because either in the sale deed or in the bond her husband's name is also mentioned, in law he would not have any right.”

11. The Hon'ble Madras High Court in the case of CIT Vs. Natarajan (supra.) allowed the benefit of exemption u/s. 54 where the capital gains arising from sale of original asset was utilized for purchase of new asset in the name of wife. Thus, there is no bar in purchasing the new asset in the name of spouse for being eligible to claim exemption u/s. 54F of the Act. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Gurnam Singh, reported as 327 ITR 278 allowed exemption u/s.54B of the Act where the assessee had purchased agricultural land jointly in the name of his son after investing capital gains.

Thus, a plain reading of provisions of section 54F and perusal of decisions discussed above, we find that the assessee is eligible for claiming benefit of section 54F after having invested capital gain towards purchase of new asset jointly in the names of his wife and unmarried daughter.

12. The Revenue has placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Prakash Vs. ITO (supra.) for rejecting the assessee's claim of exemption u/s.54F of the Act. We find that the facts in the aforesaid case are distinguishable. In the said case, assessee had claimed exemption u/s.54F for making investment of sale proceeds of agricultural land in the name of adopted son. Whereas, in the present case, original asset sold was jointly in the name of assessee and his wife and sale proceeds from original asset were invested by the assessee jointly in the names of wife and unmarried daughter on account of his unstable mental condition.

13. Thus, in view of the facts as discussed above and various judicial precedents, we find merit in the submissions of the assessee. Accordingly, the impugned order is set aside and appeal of the assessee is allowed.

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

Order pronounced on Friday, the 31st day of August, 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 : 31st August, 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-9, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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