

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.39/RPR/2015
Assessment Year : 2011-12**

Arun Kumar Telang, H.No. A-127, Phase- II, Junwani, Surya Vihar, Nehru Nagar, Bhilai, Durg (CG).	Vs.	ITO, Ward- 4, Bhilai (CG).
PAN : ABKPT8378B		
(Appellant)		(Respondent)

**ITA No.44/RPR/2015
Assessment Year : 2011-12**

ITO, 1(3), Bhilai (CG).	Vs.	Arun Kumar Telang, H.No. A-127, Phase- II, Junwani, Surya Vihar, Nehru Nagar, Bhilai, Durg (CG).
		PAN : ABKPT8378B
(Appellant)		(Respondent)

Assessee by : Shri Sunil Kr. Agrawal, CA
Ms. Laxmi Sharma, CA
Department by : Shri Rituparan Namdeo, DR
Date of hearing : 08-08-2018
Date of pronouncement : 17-08-2018

ORDER

PER R. K. PANDA, AM :

These are cross appeals. First one filed by the assessee and second one filed by the Revenue and are directed against the order dated 24.12.2014 of

CIT(A)- II, Raipur (CG) relating to assessment year 2011-12. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 09.08.2011 declaring total income of Rs.3,20,800/- which included long term capital gain amounting to Rs.1,47,458/-. The assessee has derived income by way of consultancy fee receipts from CECON Consultants Pvt. Ltd. and income from other sources which includes income by way of interest receipts on S.B. account and TDRs with State Bank of India. During the course of assessment proceedings, the Assessing Officer observed that as per the information available on record by way of AIR, the assessee had sold an immovable property for Rs.1,32,52,500/- on 30.12.2010. Perusal of the computation of income appended to the return filed for the assessment year revealed that the assessee had declared long term capital gain on sale of residential house property at Rs.63,89,382/-. After claiming the deduction amounting to Rs.62,41,924/- u/s 54, the assessee has offered long term capital gain amounting to Rs.1,47,458/- for taxation. The Assessing Officer further noted that the assessee has taken the sale consideration of residential house property for computing the long term capital gain at Rs.95,00,000/- and therefrom he has deducted indexed cost of acquisition and indexed cost of

improvements totaling to Rs.31,10,618/-. On the basis of letter issued by the Assessing Officer to the Sub-Registrar, Durg calling for a copy of the sale deed in respect of the property transaction undertaken by the assessee, it was replied that the stamp duty valuation authority had adopted the market value of the property at Rs.1,32,52,500/-. The Assessing Officer brought to the notice of the assessee the provisions of section 50C and asked him why the said provisions should not be applied to the assessee for computation of the long term capital gain. Rejecting the various explanation given by the assessee, the Assessing Officer adopted the value of Rs.1,32,52,500/- as adopted by the stamp valuation authority for the purpose of computing the capital gain as per the provisions of section 50C of the Act.

3. The Assessing Officer on the basis of various replies given by the assessee observed that the assessee has purchased two residential houses against the sale of the old house and has claimed deduction u/s 54 of the Act. Referring to the provisions of section 54, the Assessing Officer asked the assessee to explain as to how he is entitled to claim deduction u/s 54 on account of investment in two properties. Rejecting the various explanations given by the assessee and relying on various decisions, the Assessing Officer held that the assessee is entitled to claim deduction u/s 54 only in respect of one property. He accordingly allowed such deduction at Rs.34,73,541/- in respect of

investment in one house property. Accordingly, the Assessing Officer determined the long term capital gain of the assessee at Rs.66,68,341/- after allowing the deduction u/s 54 of the I.T. Act.

4. Before the Id. CIT(A), the assessee made elaborate submissions based on which Id. CIT(A) restricted the fair market value of the property at Rs.1,07,00,000/- for the purpose of calculating the long term capital gain on the basis of the report of the DVO. He further allowed the enhanced claim of deduction u/s 54 at Rs.29,03,970/-. He however rejected the claim of deduction u/s 54 in respect of the second house property.

5. Aggrieved with such part relief given by the Id. CIT(A), the assessee as well as the Revenue are in appeal before the Tribunal.

ITA No.44/RPR/2015 (By Revenue) :

6. The grounds raised by the Revenue read as under :-

“1. Whether in law and on facts and circumstances of the case, the Ld. CIT(A) was justified in referring the matter to District Valuation Officer for the purpose of calculation of deemed capital gains u/s 50C of the Income Tax Act, 1961 when the assessee has failed to ask the A.O. to refer the matter to the DVO during assessment proceedings.

2. Whether in law and on facts and circumstances of the case, the Ld. CIT(A) was justified in restricting fair market value of the property at Rs.1,07,00,000/- for the purpose of calculation of Long Term Capital Gain.

3. Whether in law and on facts and circumstances of the case, the Ld. CIT(A) was justified in allowing deduction u/s 54 of the Income Tax Act, 1961 for the investments of Rs.8,66,240/- and Rs.20,37,730/- totaling to Rs.29,03,970/-.

4. The order of the Ld. CIT(A) is erroneous both in law and on facts.

5. Any other ground that may be deducted at the time of hearing.”

7. The ld. counsel for the assessee, at the outset, submitted that the tax effect involved in the grounds raised by the Revenue is below Rs.20 lakhs. Therefore, in view of the latest CBDT Circular No.03/2018 [F.No.279/Misc.142/2007-ITJ (Pt)] dated 11th July, 2018 which is applicable even to pending appeals, the appeal filed by the Revenue is not maintainable.

8. The ld. DR on the other hand fairly conceded that the tax effect involved in the grounds raised by the Revenue is admittedly below Rs.20 lakhs.

9. We have heard the rival submissions made by both the sides. It is an admitted fact that the tax effect involved in the grounds raised by the Revenue is less than Rs.20 lakhs. Therefore, in view of the latest CBDT Circular cited (supra) raising the monetary limits for filing of the appeals before the Tribunal which is applicable even to pending appeals, the appeal filed by the Revenue is dismissed.

ITA No.39/RPR/2015 (By Assessee) :

10. The grounds raised by the assessee are as under :-

“1. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in applying the DVO report as it is (i.e., only accepted the typographical error in the report), while it is not binding on the appellate authority. It has to be decided on merits after considering the objections raised by the appellant and by giving proper opportunity for hearing.

2. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in not considering the objection pointed out by the appellant against the valuation report as in respect to the depreciation worked out (i.e., depreciation taken for 35 years instead of 50 years).

3. On the facts and in the circumstances of the case as well as in law, the ld. CIT(A) has erred in invoking sec.50C(2), unless there is evidence for understatement

of the consideration, in respect of the transfer, and the burden of showing that there is such understatement, is on the revenue, which is not the case of the assessee.

4. *On the facts and in the circumstances of the case as well as in law, the ld. CIT(A) has erred in confirming the method of computing capital gain u/s 48 by applying FMV taken by the DVO, as expression 'full value of consideration' mentioned in the sec.48, does not have any reference to the 'market value', but only to the 'consideration referred to in the sale deed' as the sale price of the assets, which have been transferred.*

5. *On the facts and in the circumstances of the case as well as in law, the ld. CIT(A) has erred in not giving exemption u/s 54 for the 2nd residential house (i.e., LIG-164, Junwani, Durg) purchased by the appellant, stating that, appellant is entitled to claim exemption u/s 54 on 'one house' only.*

6. *The assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of appeal."*

11. The ld. counsel for the assessee did not press ground of appeal no.1 and 2 for which ld. DR has no objection. Accordingly, these grounds are dismissed as not pressed.

12. So far as ground no.3 and 4 by the assessee are concerned, ld. counsel for the assessee submitted that the actual sale consideration received at Rs.95,00,000/- should be considered as full value of consideration as required u/s 54 and be applied for computing capital gain u/s 48 and the fair market value considered by the ld. CIT(A) as estimated by the DVO of Rs.1,07,00,000/- u/s 50C(2) may be ignored. According to him, the provisions of section 50C(2) cannot be invoked by the Revenue unless there is understatement of the consideration in respect of the transfer of alleged asset and the burden showing that there is understatement is on Revenue. Since the Revenue in the instant case has not discharged that burden, therefore, the addition sustained by the ld.

CIT(A) should be deleted. He submitted that the exemption u/s 54 of Rs.62,41,924/- and Rs.4,05,855/- for investment in two residential houses was claimed by the assessee as per language of the provisions of section 54 of the I.T. Act. He submitted that for computing the capital gain u/s 48, there is no provision in the Income Tax Act to apply FMV of the asset transferred and the full value of sale consideration received or accrued to the assessee as per the sale deed has to be applied in absence of finding by the Revenue that assessee has received more than the amount mentioned in the sale deed. Referring to the provisions of section 48, he submitted that the said section provides that amounts taxable as capital gain is the full value of the consideration received and it does not refer to the consideration as deemed u/s 50C or fair market value. Referring to the various decisions, he submitted that for the purpose of working out exemption u/s 54 capital gain is to be determined by referring to section 48 by actual sale consideration and not deemed consideration. For the above proposition, he relied on the decision of the Jaipur Bench of the Tribunal in the case of Nand Lal Sharma vs. ITO reported in (2015) 61 taxmann.com 271, decision of the Hon'ble Delhi High Court in the case of CIT vs. Smt. Nilofer I. Singh reported in 309 ITR 233 and the decision of the Jaipur Bench of the Tribunal in the case of Gyan Chand Batra vs. ITO reported in (2010) 8 taxmann.com 22. Relying on various other decisions, he submitted that for the

purpose of computing the deduction u/s 54, the capital gain that has to be considered is the actual sale value and not the deemed sale consideration u/s 50C of the Act.

13. The ld. DR on the other hand heavily relied on the order of the ld. CIT(A) and submitted that the ld. CIT(A) has rightly taken the value determined by the DVO as the actual consideration received for the purpose of computation of capital gain u/s 48 and thereby the deduction u/s 54 of the Act.

14. We have considered the rival arguments made by both the sides and perused the material available on record. The issue that has to be decided in the impugned ground of appeal is that while computing the exemption u/s 54, whether actual sale consideration has to be taken into consideration or the stamp duty valuation adopted by the stamp valuation authorities as per the provisions of section 50C of the Act. We find the Jaipur Bench of the Tribunal in the case of Nand Lal Sharma (supra) while adjudicating the identical issue has held that while computing exemption u/s 54, actual sale consideration is to be taken into consideration and not the stamp duty valuation u/s 50C of the Act. The Tribunal while deciding the above issue has relied on the decision of the Hon'ble Delhi High Court in the case of Smt. Nilofer I. Singh (supra) and the decision of the Jaipur Bench of the Tribunal in the case of Gyan Chand Batra (supra) has observed as under :-

“13. Apropos ground No. 2(b), the hon'ble Delhi High Court in the case of Smt. Nilofer I. Singh (supra) has categorically held that mode of computation of capital gain is statutorily defined under section 48 of the Act which uses the words actual cost of "consideration" and not the deemed cost of consideration under section 50C. We find merit in the arguments of the learned authorised representative that section 50C is a deeming fiction by which stamp duty value of the asset sold is to be substituted for actual consideration. This being purely a fiction, its scope is limited to section 50C only and cannot be enlarged without a specific reference. In the absence of any enabling statutory provision, a fiction cannot be imported in other section. This view has been squarely adopted by the hon'ble Delhi High Court in the case of Smt. Nilofer I. Singh (supra) and followed it by this Income-tax Appellate Tribunal Bench in the case of Gyan Chand Batra (supra). Respectfully following the same, we hold that while computing exemption under section 54, the actual sale consideration is to be taken into consideration and not the stamp duty valuation under section 50C. Thus, the assessee's claim of exemption as made in the return of income as raised in ground No. 2 of the assessee is allowed.”

15. However, the facts in the instant case are not coming out properly, we therefore deem it proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. The Assessing Officer while deciding the issue shall keep in mind the decision cited above. The grounds are accordingly allowed for statistical purposes.

16. So far as ground no.5 is concerned, the same relates to the claim of exemption u/s 54 in respect of two house properties.

17. After hearing both the sides, we find the assessee claimed exemption u/s 54 in respect of investment in two house properties i.e. one house property at Rs.62,41,924/- and the other house property at Rs.4,05,855/-. The Assessing Officer while computing the deduction u/s 54 rejected the claim of deduction

u/s 54 in respect of the second house property at Rs.4,05,855/- which was upheld by the Id. CIT(A) by observing as under :-

“The appellant purchased House No.A-27, Phase-II, Junwani, Surya Vihar out of sale consideration received from sale of land and building located at Plot No.1, Old Motilal Nehru Nagar, Bhilai. He has invested Rs.4,05,855/- out of the sale consideration for purchase of House No.LIG-164, Junwani, Durg. The house at A-27, Surya Vihar has been used by the appellant for his residential purpose and the other house was rented out and subsequently sold as per the information gathered by the A.O. The two houses are independent house and are located in separate locality. In the given facts are circumstances of the case, placing reliance in the case of Shri Pawan Arya vs. CIT 2011-TIOL-01-HC-P&H-IT, it is held that the appellant is entitled to claim exemption u/s 54 on one house only. The facts of the case relied on by Ld. AR are different and exemption was claimed on two houses located in same. Apartment and which could be made one house after making some modification in the flats. Likewise, since the 2nd house was sold within 3 years from the purchase, placing reliance in case of CIT vs. P.K. Raghavan Nair 224 ITR 404 (Ker), it is held that the appellant is not entitled for claiming deduction u/s 54 of the Act on investment in 2nd house. Accordingly, the ground of appeal is rejected.”

18. It is the submissions of the Id. counsel for the assessee that various High Courts have observed that a residential house as appearing in section 54/54F cannot be construed to mean a single residential house. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Gita Duggal reported in (2014) 15 taxmann.com 46, he submitted that the Hon'ble Supreme Court in the said decision has dismissed the SLP filed against the order of the Delhi High Court where it was held that merely because a residential house is considered of several independent residential units, deduction u/s 54/54F could not be disallowed. He submitted that Finance (No.2), 2014 has made substantive amendment to the provisions of section 54/54F w.e.f. 01.04.2015

where words construed “one residential house” in India shall be substituted for constructed “a residential house”. Therefore, from 01.04.2015 only, the exemption u/s 54 will not be allowed for more than one independent residential unit. However, this amendment has to be applied only from assessment year 2015-16 being prospective in nature and will not be applicable in the case of the assessee which is for assessment year 2011-12. Relying on various other decisions, he submitted that the assessee is entitled to claim of deduction u/s 54F in respect of the second residential unit.

19. The ld. DR heavily relied on the order of the ld. CIT(A).

20. After hearing both the sides, we find the issue stands decided in favour of the assessee by the decisions of the Hon’ble Delhi High Court in the case of Smt. Gita Duggal (supra) where the Hon’ble High Court has held that merely because a residential house consists of several independent residential units, deduction u/s 54/54F could not be disallowed. The SLP filed by the Revenue has been dismissed by the Hon’ble Supreme Court. Further, the provisions of section 54/54F have been amended by the Finance (No.2) Act, 2014 w.e.f. 01.04.2015 according to which no exemption u/s 54 will be allowed for more than one independent residential unit. This amendment, in our opinion, is prospective in nature. In this view of the matter, we are of the considered opinion that denial of exemption u/s 54F in respect of the second residential unit

by the Id. CIT(A) is not justified. Accordingly, the same is set-aside and the ground raised by the assessee is allowed.

21. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on this 17th August, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 17-08-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., Raipur.

By Order

//True Copy//

Sr. Private Secretary
ITAT, Raipur