

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMC', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 902/CHD/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Sh. Simrandeep Grewal, 64-E, Sarabha Nagar, Ludhiana	Vs. बनाम	The DCIT, Circle-7, Ludhiana
स्थायी लेखा सं./PAN NO: AGSPG9156F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ashwani Kumar, CA

राजस्व की ओर से/ Revenue by : Sh. N.D.Gupta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19.12.2018

उदघोषणा की तारीख/Date of Pronouncement : 19.12.2018

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 24.5.2018 of the Commissioner of Income Tax(Appeals)-3, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The assessee is aggrieved by the action of the CIT(A) in confirming the order of the Assessing officer in denying the deduction u/s 54F of the Income-tax Act, 1961 (in short 'the Act').

3. **Ground No.1** : The plea of the assessee has been that it had sold property vide registered sale deed on 4.4.2014, however, the possession of the aforesaid property was handed over to the buyer on 10.10.2013 itself, when the first installment of Rs. 9 lacs towards the sale price was received.

Assessee claimed deduction u/s 54F of the Act in respect of the investment made in the month of February 2013. However, the Assessing officer denied the deduction in respect of the investment made in the month of February 2013 on the ground that the aforesaid investment was prior to one year from the date of sale of property as per registered sale deed i.e. 4.4.2014. The Ld. CIT(A) confirmed the aforesaid findings made by the Assessing officer.

3. Before the Tribunal, the Ld. Counsel for the assessee has submitted that since the possession of the house was handed over to the buyer on 10.10.2013 itself, hence, the said date should be taken as the date of transfer of the house and, therefore, investment made in the property by the assessee in the month of February 2013 would fall within the stipulated period of one year from the date of transfer on 10.10.2013.

4. The Ld. DR, on the other hand, has submitted that the aforesaid contention of the assessee is an after thought. That no documents have been placed on the file to show that the transfer took place on 10.10.2013.

5. I have considered the rival submissions and have gone through the record. I have also gone through the registered sale deed 4.4.2014, wherein, the details of the payments made and received by the assessee on account of transfer of the house in question have been mentioned, the first date being 10.10.2013. However, a perusal of the sale deed reveals that it is nowhere mentioned that the possession of the house was also handed over by the assessee on receipt of first installment on 10.10.2013. It has

been duly mentioned in the sale deed that the possession of the house has been handed over at the time of registration of the sale deed. In view of this, I am not convinced with the above submissions of the assessee. The date of transfer in such a case is the date of registration of the sale deed in the absence of any other evidence on record.

6. However, there is another peculiar fact on the file. Though the assessee was already paying installments towards the purchase of the new house since 5.2.2013 with the first installment of Rs. 8.56 lacs, however, the new house ultimately stood transferred to the assessee on 28.10.2015 on the payment of last installment on 8.10.2015. The total cost of the house as mentioned in the assessment order as well as in the sale deed, copy of which is placed at pages 58 to 92 of the paper book, is Rs. 90,68,000/-. Now the question before the Bench is as to whether the relief / exemption u/s 54F is to be allowed as per the date of investment / payment of installment or is to be allowed as per the total cost of the new house purchased. As per the facts on the file, though the assessee started paying installment towards the new house on 5.2.2013, however, the transfer of the new house in favour of the assessee was registered on 28.10.2015 at a total cost of Rs. 96.68 lacs. On the other hand, in respect to the house sold by the assessee, though the assessee started to receive installments on 10.10.2013, however, the house was ultimately sold by way of sale deed on 4.4.2014 at a total cost of Rs. 77.20 lacs.

6. Now coming to the relevant provisions of section 54F of the Act, what is required is the purchase of the new house either one year prior to

date of sale of residential property or two years after the date of sale of the residential property. Admittedly, the assessee had purchased the house within two years from the date of sale of the property i.e. 28.10.2015. As per the provisions of the Act, if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of capital gain should not be charged as chargeable u/s 45 of the Act.

7. Keeping in view the above facts and circumstances of the case, since the installment was paid by the assessee towards the purchase of the new house, which was purchased within the stipulated period and two years from the date of sale of the old house and also keeping in view the fact that the assessee had received most of the sale consideration by way of installment from the date of sale of his house through registered sale deed dated 4.4.2014 and keeping in view the fact that the assessee also started making installments of the purchase of the new house, much earlier than the actual transfer of the new asset to the assessee on 28.10.2015, and also keeping in view the beneficial object of the provisions and especially the sub section (1) of section 54 of the Act which provides for allowance of exemption towards the cost of the house paid and there is nothing specifically provided whether any installment towards the said cost paid earlier to the prescribed period is to be excluded, I am of the view, that the assessee is entitled to the claim of exemption u/s 54F of the Act in respect of the installments which actually constituted part of the cost paid for the new house which was purchased within the stipulated period as provided under the provisions of section 54F of the Act.

In view of this, the lower authorities are directed to allow the claim of the assessee accordingly. The appeal of the assessee is hereby allowed.

Ground No.2. : The Ld. Counsel for the assessee at the bar has stated that as per the instructions of his client, he does not press ground No.2 of the appeal. The same is accordingly dismissed as 'not pressed'.

In the result, the appeal of the assessee is treated as partly allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 19.12. 2018

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under [section 45](#) ;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under [section 45](#):

Provided that nothing contained in this sub-section shall apply where—

- (a) the assessee,—
 - (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or
 - (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
 - (iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
- (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation.—For the purposes of this section,—

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under

the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under [section 139](#), shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of [section 139](#)] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),
exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under [section 45](#) as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]