

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.2762/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Gulab Guruappa Hulsure,
Row House No.2,
Vivekanand Nagar, Housing Society,
Pundalik Nagar Road,
CIDCO No.4(5),
Aurangabad – 431 003.

..... अपीलार्थी /
Appellant

PAN : ABAPH5420J.

बनाम v/s

The Income Tax Officer,
Ward – 1(2), Aurangabad.

..... प्रत्यर्थी /
Respondent

Assessee by : None.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 20.12.2018	घोषणा की तारीख / Date of Pronouncement: 21.12.2018
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 1, Aurangabad dt.05.10.2017 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

2.1 Assessee is an individual stated to be having income from salary, house property and other sources. Assessee electronically filed its return of income for A.Y. 2013-14 on 30.07.2013 declaring

total income of Rs.9,64,910/-. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.30.03.2016 and the total income was determined at Rs.47,63,180/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.05.10.2017 (in appeal No.ABD/CIT(A)-1/93/2016-17) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“In our case the entire consideration has been received by the assessee Mr. Gulab Guruappa Hulsure intune Rupees 75,00,000/- and the entire consideration in addition to the advance of Rupees 31,70,735/- of State Bank of India Housing loan taken in the Name of Mr. Gulab Guruappa Hulsure Mr. Gulab Guruappa Hulsure which was entirely use for the purchase of new house property at. Flat No. at Flat No. 305 And 306, at Subhashnagar Co. Op Housing society, Subhash Nagar, Dharawi, Kumbharwada, Mumbai - 400017.

Exemption U/s 54 should be given to the assessee on the facts and the points given in the appeal Here respected sir it should be keenly noted that the essence of the section 54 says that consideration received should be by the assessee and invested it should be by the assessee himself then and then only the deduction is allowed under this section. The addition of the name as a joint owner for purchase of new house property so as to avoid any further legal complications of property matters should not deny the full exemption of section 54 F.”

3. On the date of hearing, none appeared on behalf of the assessee but however written submissions were filed on behalf of the assessee by the Registered Tax Practitioner by Sri Harihar N. Shahane. It was submitted that the written submissions made be considered while deciding the appeal.

4. During the course of assessment proceedings, AO noticed that during the year under consideration, assessee had sold

residential property at CIDCO, New Aurangabad and capital gain derived on sale of such property was re-invested in acquiring new property at Mumbai. AO noted that while calculating the capital gains from the sale consideration of Rs.75 lacs assessee had deducted indexed cost of acquisition of Rs.97,371/- and indexed cost of construction at Rs.10,98,275/- aggregating to Rs.11,95,646/- and the capital gains was worked out at Rs.63,04,354/-. Further since assessee had purchased new residential house at Rs.74,85,900/-, the taxable capital gains was worked at Rs. Nil. AO noted that during the course of assessment proceedings, assessee had failed to furnish any supporting documents in respect of cost of plot and construction cost. He accordingly denied the claim of indexed cost of plot and construction. With respect to the claim of deduction u/s 54F of the Act, AO noted that new flat purchased at Mumbai was in the name of the assessee and Shri Atul G. Hulsure. AO was of the view that for being eligible for deduction u/s 54F of the Act, the new asset must be in the same name of the person in whose name the original asset exists. In the present case since the new asset was acquired in the name of the assessee and a relative, AO was of the view that assessee was entitled for deduction only to the extent of 50%. He accordingly restricted the deduction u/s 54F of the Act at 50% and thus worked out the taxable capital gains at Rs.37,57,050/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO in view of the fact that assessee did not furnish any evidence. With respect to the cost incurred for the purchase of asset. With respect to the AO's

action of granting deduction u/s 54 @ 50% to assessee, Ld.CIT(A) agreed with the findings of AO and thus dismissed the grounds of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

5. In the written submissions filed by the assessee, assessee filed a letter from CIDCO, Aurangabad to demonstrate the original value of the asset which could be considered as cost of acquisition. With respect to the claim of deduction u/s 54F of the Act, he placed reliance on the decisions cited in the written submissions. It is assessee's submission that the investment in the new asset has been made entirely by the assessee and no part of the purchase has been funded by his son, Mr. Atul Hulsure. It is further his submission that the name of the assessee's son was only included to avoid any future legal complications after his demise. Ld.D.R. on the other hand, supported the order of lower authorities.

6. I have heard the Ld.D.R. and perused the written submissions and material on record. The issue in the present case is with respect to the computation of long term capital gains and the claim of deduction u/s 54F of the Act. It is Revenue's contention that with respect to cost of acquisition and construction of the asset sold, no documents were furnished by the assessee to demonstrate the cost of acquisition. Before me, assessee has furnished a letter from CIDCO, Aurangabad as an evidence for the cost of acquisition. Though it is a fact that the aforesaid document was not furnished by the assessee before the lower authorities, but since it has been

furnished now, I am of the view that in the interest the same needs to be considered while computing the capital gains.

7. As far as, issue of claim of deduction u/s 54F of the Act is concerned, it is Revenue's contention that since new asset was purchased by the assessee jointly with his son, assessee is entitled for deduction only to the extent of 50%. Before me, it is assessee's contention that the entire investment in the new house purchased at Mumbai, for which the assessee has claimed deduction u/s 54F, is out of assessee's funds and no part of the purchase of new asset has been financed by assessee's son, Mr. Atul Hulsure, who is the joint owner of property. It is further assessee's contention that the name of his son has been included as the joint owner to avoid any future legal complications. The aforesaid contentions of the assessee have not been controverted by Revenue before me. Before me, Revenue has not placed any material on record to demonstrate that the assessee was not the real owner of the new asset purchased by the assessee. I find that Hon'ble Delhi High Court in the case of CIT Vs. Ravinder Kumar Arora reported in (2012) 342 ITR 38 (Del) has held that when the investments in the new house was made by the assessee and for safety reasons, the name of his brother was included, there was no justification in AO's action in restricting the deduction to 50% of the value of the new property. The Hon'ble High Court has further held that Sec.54F of the Act 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 assessee only. It further held that Sec.54F of the Act is a beneficial

provision and its objective is to provide impetus to the house construction and so long as the purpose of house construction is achieved, hyper-technicality should not impede the way of deduction which the legislature has allowed. It further held that Sec.54F of the Act is a beneficial provision which should be interpreted liberally in favour of the exemption / deduction to the tax-payer and the deduction should not be denied on hyper-technical ground. The aforesaid decision of Hon'ble Delhi High Court was relied by Mumbai Tribunal in the case of Jitendra V. Faria Vs. ITO (ITA No.6792/Mum/2016 dt.27.04.2017) while deciding on identical issue in favour of assessee. I therefore following the aforesaid decisions hold that AO was not justified in restricting the deduction u/s 54F of the Act to 50%. I therefore direct the AO to grant the deduction of the entire amount invested by the assessee. In para 6 hereinabove, I have held that the cost of acquisition has to be determined on the basis of CIDCO letter submitted before me. I therefore restore the issue back to the file of AO and direct him to decide the issue afresh as directed hereinabove after considering the submissions of assessee and in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to furnish all the required details called for by the AO. I therefore allow the grounds of appeal of assessee for statistical purposes.

8. **In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced on the 21st day of December, 2018.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 21st December, 2018.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Aurangabad. .
4. Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" /
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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