

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH 'A' NEW DELHI**  
**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.4089/Del/2015**  
**Assessment Year: 2009-10**

**Dr Rajinder Kumar Gupta,**  
**6/84, WEA Karol Bagh,**  
**New Delhi.**  
**(PAN: AALPG2571R)**  
(Appellant)

**vs Asstt Commissioner of Income-tax,**  
**Circle-37(1),**  
**New Delhi.**  
(Respondent)

Assessee by: Shri Rajneesh Behari Mathur, CA  
Department by: Ms Ashima Neb, Sr. DR

Date of hearing: 28.01.2019  
Date of Pronouncement: 31.01.2019

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order dated 29.04.2015 in Appeal No.49/14-15 for the Asstt. Year 2009-10 passed by the learned Commissioner of Income-tax (Appeals)-20, New Delhi {for short "Id. CIT(A)"}, assessee preferred this appeal.

2. Brief facts of the case are that assessee is an individual. He had jointly owned the house property at Flat No.3B, First floor, 12 Sham Nath Marg, Civil Lines, Delhi. Along with his wife, he sold the property under sale deed dated 10.4.2008 for Rs.1.5 crores. In respect of this sale, they have received advance in the month of January or February, 2008. In this process, they have earned the long term capital gains of Rs.1,35,52,454/-. Out of the sale

consideration, they have invested a sum of Rs.58,55,000/- by way of payment of installment for a construction linked residential house booked in the joint name of the assessee and his wife in the project under the name and style of "Omaxe Twin Towers" located at Sector 50, Noida. They have deposited a sum of Rs.60 lacs and Rs.39.7 lacs respectively in the "Capital Gains Account" with Vijaya Bank and consequently, the entire amount of capital gains were claimed as deduction u/s 54 of the Income-tax Act, 1961 ("the Act").

3. The assessee filed the return of income for the Asstt. Year 2009-2010 on 29.9.2009 declaring the income of Rs.8,67,730/-. The assessment u/s 143(3) of the Act was, however, completed by order dated 15.3.2011 at a total income of Rs.9,44,200/-. Learned CIT-XIII, Delhi vide order dated 3.2.2013 u/s 263 of the Act set aside the said assessment order and directed the learned AO to conduct de novo investigation and to pass a fresh order. Subsequently, order dated 25.3.2014 was passed by the learned AO u/s 143(3) of the Act computing the income of the assessee at Rs.77,20,430/- by making an addition of Rs.67,76,224/- by disallowing the deduction claimed u/s 54 of the Act. Learned AO recorded the reason that inasmuch as neither the possession of the residential property was handed over to the assessee within the stipulated period of 3 years, nor the construction of the property was completed within such period, claim of exemption u/s 54 of the Act was not allowable.

4. Assessee preferred an appeal to the CIT(A) and the learned CIT(A) recorded a finding that a perusal of the payment plan furnished by the assessee shows that the assessee had entered into an agreement wherein he was aware that the offer of the possession would not be made within a period of three years from the date of transfer of the old property, this fact

was apparent from the fact that the transfer of old property took place on 10.04.2008 whereas the transfer plan prescribes that a sum of Rs.13,35,000/- and 50% additional charges were to be paid on offer of possession which was an unspecified date after 23.3.2011 and thus it is quite unlikely to be within the time frame i.e. 10.04.2011. Consequently, learned CIT(A) found that the assessee made a payment of Rs.28 lacs before the sale of the old property and such an amount is not qualified to be deducted u/s 54 of the Act. On this premise, learned CIT(A) confirmed the assessment order and dismissed the appeal.

5. Assessee is, therefore, aggrieved by the orders of the authorities below, and preferred this appeal before us stating that there is no justification for the authorities to say that the deduction u/s 54 of the Act is inadmissible on the amount that was paid prior to the sale of the old property and also that if at all any disallowance is required such a disallowance has to take place in the Asstt. Year 2009-10 because the time frame provided u/s 54 of the Act lasts till 10.04.2011.

6. It is the argument of the learned AR that the learned CIT(A) is incorrect in his observations that the exemption of capital gains u/s 54 is not allowable in respect of the payments made prior to the sale of the old property or that the construction of new house had taken before the sale of old house. For this principle, he placed reliance on the decision of the Hon'ble Allahabad High Court in the case of CIT vs H.K. Kapoor, 234 ITR 753 (All).

7. He further submitted that when the assessee invested the amount received by way of capital gains before the end of three years stipulated u/s 54 of the Act and if the possession of the property is not delivered within

three years for the reasons beyond the control of the assessee, denial is unjustified. He placed reliance on the decisions reported in the cases of (i) Bhavna Cuccria vs ITO, (Chd) 82 Taxmann.com 306; (ii) Smt. Shashi Verma vs CIT, 224 ITR 106 (MP); (iii) Satish Chandra vs AO, 54 ITD 508 (Del); (iv) CIT vs. SambandamUdaykumar, 19 Taxmann.com. 17 (kar); and (vi) Kishore H Galaiya vs ITO, 24 Taxmann.com 11 (Mum) for the principle that it would be incorrect to refuse the benefit u/s 54 of the Act on the ground that the new residential house was not complete within three years of sale of the old residential property. Suffice if the substantial investment is made in construction of house and it should be deemed that sufficient steps have been taken satisfying the requirement of Section 54.

8. Per contra, learned DR placed reliance on the orders of the authorities below and submitted that there must be substantial compliance with the law and when the assessee does not prove to have taken sufficient steps for acquiring the property within three years after the sale of the old property, it is not possible to extend the benefit u/s 54 of the Act.

9. We have gone through the record. In so far as the facts are concerned, there is no dispute. The old property was sold for Rs.1.5 crores by the assessee and his wife and the long term capital gain fallen to the share of the assessee are to the tune of Rs.67,76,277/-. Assessee claims to have been invested a sum of Rs.58.55 lacs along with his wife for construction of a house in Omaxe Twin Tower and deposited a sum of Rs.60 lacs and Rs.39.70 lacs respectively in the capital gain scheme. The payment of Rs.58.55 lacs was made before filing of the Income-tax return. Since some amount had already been invested and the balance is deposited in the capital gain account scheme, the assessee claimed deduction u/s 54 of the Act.

10. The authorities below, however, turned down the claim of the assessee on two grounds. One is that the payment made prior to the sale of the old property are not qualified for deduction u/s 54 of the Act and consequently, that inasmuch as the assessee made payments to the tune of Rs.22,91,382/- after 10.04.2011 i.e. beyond the period of 3 years from the date of sale of old property, it goes without saying that the property was not acquired within the stipulated period of three years and consequently, assessee is not entitled for deduction u/s 54 of the Act. These two assumptions were challenged by the assessee now.

11. In CIT vs H.K. Kapoor (supra), the Hon'ble Allahabad High Court held in unequivocal terms that in view of the decision of the Karnataka High Court in the case of CIT vs. J.R. Subramanya Bhat (1987) 165 ITR 571, the capital gains arising from the sale of the old house to the extent it got invested in the construction of the new house would be exempt u/s 54 of the Act and Section 54 does not lay down that the construction of the new house must taken after the sale of the old residential house or that the sale proceeds of the old residential house must be used for the construction of the new residential house. Besides this, the law is fairly settled on this aspect that for acquiring the new house, it is not necessary that the assessee must utilize only the sale proceeds of the old house. By respectfully following this line of decision of the higher fora, we hold that the authorities below are not correct in refusing to accept the claim of the assessee to deduct such part of amount which was invested in the construction activity of the new house earlier to the sale of the old house.

12. Now turning to the other limb of the contention of the authorities below that the assessee did not acquire the property within three years from the date of the sale of the old house, the fact remains that there is no

dispute that except the sum of Rs.22,91,382/-, the entire sale consideration for the new house was invested on or earlier to 23.3.2011 i.e. within 3 years from the date of the sale of the old house. This amounts to substantial compliance with the provisions of Section 54 as has been held by the Hon'ble Madhya Pradesh High Court in the case of Smt. Shashi Verma (supra), Hon'ble Delhi High Court in the case of Satish Chandra (supra) and in the case of Sambandam Udaykumar (supra) besides the decisions of the Chandigarh and Mumbai Benches of the Tribunal in the cases of Bhavna Cuccria and Kishore H. Galaiya (supra). By respectfully following the ratio of the said decisions, we do not find any substance in the objection taken by the authorities below to disallow the claim for deduction u/s 54 of the Act.

13. In view of the above, we find that the authorities below are not justified in disallowing the claim of deduction u/s 54 of the Act. Hence, we allow the grounds of appeal.

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

**Order pronounced in the Open Court on 31<sup>st</sup> January, 2019.**

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER  
Dated: 31<sup>st</sup> January, 2019.

sd/-  
(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

‘VJ’

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Asstt. Registrar, ITAT

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