

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2722/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2013-14)

Shri Rutul M Dave 11, Shaan, Nandanvan Society, Alkapuri, Vadodara	बनाम/ Vs.	DCIT, International Taxation, Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BKEPD3880J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Urvashi Shodhan, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rajesh Meena, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	27/06/2019
घोषणा की तारीख /Date of Pronouncement	28/06/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-13, Ahmedabad, ('CIT(A)' in short), dated 11.09.2017 arising in the assessment order dated 22.03.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14

2. As per its grounds of appeal, the assessee has challenged the action of the Revenue in wrongly restricting the deduction of claim under s.54 and 54EC of the Act by 50%.

3. The assessee, a non-resident Indian, sold residential house for a consideration of Rs.2.75 Crore vide agreement dated 18th October, 2012. The consideration was split between co-owners namely; (i) Bakul N. Dave, (ii) Nikul N. Dave, (iii) Chitrang Dave & (iv) assessee-Rutul Dave in suitable proportions. The assessee received his share of Rs.69,24,250/- out of aforesaid total sale consideration of Rs.2.75 Crore. The capital gain was computed at Rs.63,02,290/- thereon. The assessee claimed to have invested the capital gains in residential house to the tune of Rs.42,36,000/- and claimed deduction under s.54 of the Act thereon and balance amount of Rs.25,80,000/- was invested in specified bonds for which deduction was claimed under s.54EC of the Act. It was observed by the AO that the property was jointly purchased with Anjanaben Mukulbhai Dave and therefore the benefit of exemption under s.54 of the Act cannot be given solely to the assessee. Likewise REC Bond Certificates have also been allotted in the joint name alongwith one Mukul N. Dave. The AO accordingly restricted the exemption under s.54EC of the Act by 50% of the claim of the assessee on account of joint holding. The claim of deduction was accordingly scaled down the 50% under both the provisions.

4. Aggrieved by the reduction in the quantum of deduction, the assessee preferred appeal before the CIT(A) without any success.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. The learned AR for the assessee submitted at the outset that identical issue has come up in the case of other joint sellers of the property namely Chitrang M Dave ITA No. 2627/Ahd/2017 order dated 13.08.2018. The learned AR also pointed out that the investment has been made out of the bank account of the assessee and therefore merely because the investment has been made in the joint name, the full deduction to the assessee cannot be denied in the light of the decision of the co-ordinate bench. The learned AR further informed the bench that the other joint owner/holder has not claimed any benefit of exemption under s.54/54EC of the Act in respect of such investment.

7. The learned DR relied upon the order of the lower authorities.

8. We have carefully considered the rival submissions. The relevant operative part of the order of the ITAT in Chitrang M Dave (supra) relied upon by the assessee reads as under:

"5. We have heard the Ld. Representatives of the respective parties. We have perused the relevant materials available on record. We find substance in the argument advanced by the Ld. AR. We have also perused the judgment passed by the Hon'ble Jurisdictional High Court as relied upon by the AR , the relevant portion whereof is as follows:-

"9. On the aforesaid facts, we are of the view that the conditions stipulated in s. 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 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. & Etc. (1997) 141 CTR (SC) 67 : (1997) 226 ITR 625 (SC), the Supreme Court has also accepted the theory of constructive ownership. Moreover, s. 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 abovestated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee.

Objective of s. 54F and the like provision such as s. 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. Sec. 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 (1986) 56 CTR (AP) 144 : (1987) 165 ITR 228 (AP) has held that the object of granting exemption under s. 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.

11. We also find judgments of other High Courts giving benefit of s. 54F(1) of the Act when the house of the assessee is purchased jointly with his wife. In the case of CIT vs. V. Natarajan (2006) 203 CTR (Mad) 37 : (2007) 287 ITR 271 (Mad) though this case was decided in relation to s. 54 of the Act, the ITA No.2627/Ahd/2017 Shri Chitrang M. Dave vs. DCIT Asst.Year - 2013-14 said section is pari materia of s. 54F(1) of the Act. Likewise, the Punjab & Haryana High Court in the case of CIT vs. Gurnam Singh (2008) 218 CTR (P&H) 674 : (2008) 6 DTR (P&H) 83 : (2010) 327 ITR 278 (P&H) took the same view while discussing the provisions of s. 54 of the Act which is again pari materia of s. 54F(1) of the Act.

12. We, thus, answer the question in favour of the assessee and dismiss this appeal with cost quantified @ Rs. 10,000."

5.1. We find that the case of the assessee is covered in favour of assessee by the judgment discussed above. Respectfully following the same, we allow the appeal preferred by the assessee holding that the assessee is entitled to the benefit of deduction of Rs.64,52,290/- under section 54 of the Act towards capital gain on the premise that the entire amount towards consideration of purchase of flat at Nandnavan Housing Co-operative Society has been paid by the assessee and merely because his father's name has been inducted as

joint- owner, the said claim cannot be denied. Accordingly, we delete the impugned disallowance.”

9. In the light of the decision of the co-ordinate bench in the identical set of circumstances, the assessee is entitled to whole amount of deduction despite joint investment of the sale consideration received on sale of property in the new residential house property and in bonds. We thus set aside the order of the CIT(A) and direct the AO to grant the deduction of full amount as claimed.

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

This Order pronounced in Open Court on 28/06/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 28/06/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।