

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA No.262/PUN/2017

निर्धारण वर्ष / Assessment year : 2009-10

Shri Rajesh G. Gargatte,
Row House No.5,
Orchids, S.No.24/14, D.P. Road,
Behind Medipoint Hospital,
Aundh, Pune – 411 007.

..... अपीलार्थी /
Appellant

PAN : AAXPG9886H.

बनाम v/s

The Income Tax Officer,
Ward 9(2), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Nikhil Pathak /
Shri C.S. Chandrashekhar.

Revenue by : Shri Samarat Rahi.

सुनवाई की तारीख / Date of Hearing : 18.06.2019	घोषणा की तारीख / Date of Pronouncement: 28.06.2019
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PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 13, Pune, dated 28.11.2016 for A.Y. 2009-10.

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

Assessee is an individual who filed his return of income for A.Y. 2009-10 declaring total income at Rs.17,48,320/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 29.12.2014 and the total income was

determined at Rs.17,98,320/-. Subsequently, Ld.CIT passed order u/s 263 of the Act vide order dt.27.03.2014 wherein he set aside the order of AO and directed the AO to frame fresh assessment as per the directions contained therein. Pursuant to the directs of Ld.CIT, assessment was framed u/s 143(3) r.w.s. 263 of the Act vide order dt.29.12.2014 and the total income was determined at Rs.67,83,248/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dt.28.11.2016 (in appeal No.PN/CIT(A)-13/ITO Wd 9(2)/265/2016-17) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer of Rs.50,34,928/- being disallowance of exemption u/s 54F of Act.

2. On facts and circumstances of case, the learned Commissioner of Income Tax (Appeals) erred in concluding that phrase constructed "a residential house" used in section 54F of Act is singular and does not include multiple houses and erred in confirming action of learned Assessing Officer.

3. On facts and circumstances of case, the learned Commissioner of Income Tax (Appeals) erred in concluding that amended provisions of section 54F are applicable for Assessment Year 2009-10 and erred in confirming the action of learned Assessing Officer.”

3. All the grounds being inter-connected are considered together.

3.1. Assessee had sold the plot of land at Baner on 15.04.2008 for a consideration of Rs.1,35,00,000/- and had purchased two residential flats namely, 1) Flat No.2525, 2nd Floor, Building No.25, Kohinoor City, Premier Road, Off. Lalbahadur Shastri Marg, Kurla, Greater Mumbai for Rs.52,50,000/- on 11.09.2008 and 2) Flat No.1056, 5th Floor, Building No.10, Kohinoor City for Rs.67,56,400/- on 18.08.2008 and had claimed deduction u/s 54/54F of the Act for both the residential flats. In the

original assessment proceedings, the claim of the assessee u/s 54 and 54F of the Act was allowed by the AO. Ld.CIT in the proceedings u/s 263 of the Act held that the correct claim of deduction by the assessee should have been u/s 54F and not u/s 54 of the Act and the claim of deduction u/s 54 of the Act is wrong. It was also noted by the Ld.CIT that AO had wrongly allowed deduction for both the flats. Accordingly, the AO was directed to re-compute the claim of deduction. Pursuant to the directions of Ld.CIT, AO in the assessment order framed u/s 143(3) r.w.s. 263 of the Act held that assessee was eligible for deduction u/s 54F for only one house in view of the fact that amendment to the Financial (No.2) Act, 2014 to 54F of the Act, the words “Constructed one residential house in India” was substituted for “Constructed a residential house”. He therefore held that in view of the amendment made to Sec.54F of the Act, assessee is eligible for claim of deduction only for one flat. He accordingly allowed the deduction for one flat only and disallowed the claim of for other flat. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

“2.2.3 I have considered the facts of the case and the submissions made by the appellant. The appellant has claimed the deduction u/s 54F on capital gain with respect to two residential houses. The learned AO has restricted the exemption u/s 54F to only one residential flat because the language used in the section 54F refers to 'a residential house', meaning that the assessee is entitled to the exemption in respect of only one residential unit. The Appellant argued that the term 'a residential house' used in the section 54F should be construed in plurality. The Appellant has also placed reliance on number of judicial pronouncements in support of his claim.

2.2.4 It is seen that the decisions relied on by the Appellant hold that the term 'a residential house' used in section 54F may be construed in plurality only when the facts are on all four squares. It may be mentioned that in each of the case relied upon by the Appellant, the residential units were situated in the same building or were part of the same residential property. Either they were adjacently situated or were situated on the upper and lower floors or were situated in such a manner that the units could be

construed together could make 'a residential house'.

2.2.5 In the present case, it is found that though the Appellant has made the investment in the same complex but the flats are located in the different buildings i.e. building No 25 (2nd floor) and building No 10 (5th floor). These two residential flats are not capable of being used as one residential house or as 'a residential house'. In this connection, it may be mentioned that in the case of ITO vs Ms Sushila M Jhaveri (2007) 2021TR 1(Mum), the Special Bench has held that the Appellant is entitled to get the exemption only in respect of one house of his choice because in that case, the houses were located at different locations. The decision of the Special Bench is applicable to the facts of the present case and the Appellant can avail the exemption u/s 54F in respect of only one residential house.

2.2.6 I find that the learned AO has already allowed the exemption in respect of the house, which permitted the higher deduction. Accordingly, I confirm the learned AO's decision to not allow the exemption u/s 54F in respect of two separately located residential properties.”

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

4. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee had purchased two flats in the same Society for residential purposes. It was further submitted that the amendment in Section 54F made by the Finance (No.2) Act, 2014 was w.e.f. from 01.04.2015 which made the restriction on purchase or construction to one residential house in India meaning thereby that prior to the amendment even on purchase of more than one residential house assessee was eligible to claim deduction. He further submitted that the issue is covered by the decision of Hon'ble Bangalore Bench of the Tribunal in the case of T.A.V. Gupta Vs. ITO reported in (2018) 93 taxmann.com 249 and by the decision of Hon'ble Madras High Court in the case of CIT Vs. Gumanmal Jain reported in (2017) 394 ITR 666. He also placed on record the copy of the aforesaid orders. From the copy of the decision of Hon'ble Madras High Court, he pointed that the Madras High Court in the case of Gumanmal Jain (supra) has considered the amendment made to Sec.54F of the Act by the Finance

Act No.2 of 2014 and after considering the amendment, it has held that prior to the amendment, residential house would include multiple flats / residential house and has held that as long as flats are in the same address/location even though they are located in different blocks / buildings, it was not disentitle the assessee from getting the benefit of deduction u/s 54F of the Act. He therefore relying on the aforesaid decisions submitted that assessee be allowed the claim u/s 54F of the Act. Ld. D.R. on the other hand, supported the order of lower authorities.

5. We have heard the rival submissions and perused the material on record. It is an undisputed fact that assessee had sold piece of land and had claimed deduction u/s 54F of the Act on the purchase of two residential flats (1) Flat No.2525, 2nd Floor, Building No.25, Kohinoor City, Premier Road, Off. Lalbahadur Shastri Marg, Kurla, Greater Mumbai and 2) Flat No.1056, 5th Floor, Building No.10, Kohinoor City. It is an undisputed fact that the aforesaid two flats purchased by the assessee are in the same complex but different buildings. It is Revenue's contention that u/s 54F, assessee is eligible for deduction only on one flat and not two flats. We find that Hon'ble Madras High Court after considering the amendment made to Sec.54F of the Act by the Finance (No.2) Act, of 2014 has held that even if the flats/apartments were in different blocks/buildings and so long as they are at the same location/address, assessee was eligible for deduction u/s 54F of the Act prior to 01.04.2015. It had further held that prior to the amendment made by the Finance Act (No.2) Act, 2014 w.e.f. 01.04.2015, the residential house would include multiple flats /

residential units. Before us, Revenue has not pointed out any contrary binding decision in its support. We therefore considering the fact that the impugned year being A.Y. 2009-10 wherein the amendment made by Finance (No.2) of Act, 2014 would not apply and relying on the aforesaid decision of the Hon'ble Madras High Court in the case of Gumanmal Jain (supra), are of the view that assessee is eligible for deduction u/s 54F of the Act on both the flats. We thus hold so. **Thus, the grounds of assessee are allowed.**

6. **In the result, the appeal of assessee is allowed.**

Order pronounced on 28th day of June, 2019.

Sd/- (VIKAS AWASTHY) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
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पुणे Pune; दिनांक Dated : 28th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए"/ DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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