

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1220/JP/2018  
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Madan Lal Saboo D-6, Kalwar Scheme, Gopal Bari, Jaipur.	बनाम Vs.	The DCIT, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADGPS 6681 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Amit Kothari (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 16/07/2019  
उदघोषणा की तारीख / Date of Pronouncement: 23/07/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 18.09.2019 of the Id. CIT(A)-I, Jaipur for the assessment year 2014-15.

The assessee has raised the following grounds:-

*"1. The Id. CIT(A) has erred in sustaining the order passed by the Id. A.O., which is bad in law and bad on facts.*

*2. The Id. CIT(A) has erred in sustaining disallowance of deduction claimed u/s 54 amounting to Rs. 21,46,014/- on account of investment made in residential house. The claim of*

*appellant u/s 54 was allowed u/s 54F which was bad in law and bad on facts and deserved to be allowed u/s 54.*

*3. The appellant pray for suitable costs.*

*4. The appellant craves liberty to add, amend, alter, and modify any of the ground of appeal on or before its hearing before your honour."*

2. Ground no. 1 is general in nature and does not require any specific adjudication as the assessee has not advanced any argument as to how the order passed by the AO as well as the impugned order of the Id. CIT(A) is bad in law.

3. Ground no. 2 is regarding disallowance of deduction claimed U/s 54 of the I.T. Act. The assessee is an individual and filed his return of income on 18.05.2015 declaring total income at Rs. 73,34,060/-. During the course of scrutiny assessment, the AO noted that the assessee has sold two properties being shops no. D-5 and D-6, Kalwar Yojana, Near Railway Station, Jaipur for a consideration of Rs. 89,31,000/- each vide registered sale deed dated 24.06.2013. The assessee has also purchased a residential property i.e. flat no. 704, 'Somdutt Land Mark', Hawa Sadak, Civil Lines, Jaipur on 29.01.2014 for a consideration of Rs. 1,11,51,000/-. It was further observed by the AO that the assessee has claimed deduction of Rs. 1,16,63,500/- U/s 54 of the Act. The AO asked

the assessee to explain his eligibility for deduction U/s 54 of the I.T. Act. In reply the assessee submitted that the said property was essentially a residential house however, some portion of the same was being used as commercial therefore, the assessee supported his claim of deduction U/s 54 of the Act for the investment of the capital gain in purchase of residential house. The AO did not accept the submission of the assessee and held that when the assessee has sold a commercial property being shop and then the capital gain arising from the sale of commercial property is eligible only for deduction U/s 54F and not U/s 54 of the Act. Accordingly, the AO allowed the deduction U/s 54F of the Act and thereby made an addition of Rs. 21,46,014/-. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

4. Before us, the Id. AR of the assessee has submitted that the ground floor of the said property is having shops bearing no. D-5 and D-6 whereas the mezzanine floor and first floor are the residential and therefore, capital gain arising from the sale of the residential portion and land appurtenant to the residential portion is eligible for deduction U/s 54 of the Act apart from the capital gain arising from the sale of shop is eligible for deduction U/s 54F of the Act. The Id. AR has

submitted that the property which was sold was a mixed property and it is comprising of the commercial as well as residential property. The conditions of Section 54 of the Act is that if there is sale of residential unit, and the new investment in residential house is being made, the benefit of deduction U/s 54 is allowable to the assessee. The conditions prescribed U/s 54 of the Act are satisfied in the present case therefore, the benefit of the said section cannot be denied to the assessee. He has referred to the map of the property in question which are also annexed to the sale deed and submitted that the same clearly indicates that at the first floor there are rooms, kitchen, and bathrooms which is being used as a residential unit. Thus, the Id. AR has contended that the Id. CIT(A) has wrongly observed that the same is not a residential unit. In support, he has relied upon the following decisions:-

1. ITO vs. P.C. Ramakrishna (HUF) 107 TTJ (Chennai) 351.
2. Adarsh Kumar Swarup vs. DCIT .
3. Venkata Ramana Umareddy vs. DCIT (2013) 155 TTJ (Hyd) 234.
4. C.N. Anantharam vs. ACIT (2015) 275 CTR (Kar.).

Thus, the Id. AR has submitted that the capital gain arising from sale of land appurtenant to a residential house is eligible to exemption U/s 54 of the Act. The expression "being building or land appurtenant" thereto

used in Section 54 of the Act does not necessary requires the whole of the residential house to be sold. Therefore, even if the assessee has sold a residential house as well as non residential property and invested the sale consideration for purchase of new residential house then the deduction U/s 54 as well as U/s 54F of the Act is eligible proportionately on the capital gain arising from residential as well as non residential property. The Id. AR has further submitted that the objective of Section 54F as well as Section 54 of the Act is to provide impetus to the housing construction and so long as the purpose of housing construction is achieved such hyper technicality should not impede benefit which the legislature has allowed. Sections 54 and 54F are the beneficial provisions which are interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied on hyper technical ground.

5. On the other hand the Id. DR has submitted that as per sale deed what was sold by the assessee are two shops bearing no. D-5 and D-6 Kalwar Yojana, Near Railway Station, Jaipur. The Id. CIT(A) has given a finding that the Plot No. D-5 and D-6 were allotted by the Urban Improvement Trust, Jaipur to the assessee for construction of shops on which construction was made by the assessee on the ground floor,

Mezzanine and first floor. Once, the plots were allotted for construction of shops which are non residential plots then the capital gain arising from sale of two plots along with construction in the shape of shops and other construction at first floor is not eligible for deduction U/s 54 of the Act and the AO has rightly allowed the claim of deduction 54F of the Act. The construction made by the assessee above the shops is unauthorized construction and therefore, the plots in question are commercial for construction of shop cannot be considered as appurtenant to such unauthorized construction. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the relevant material on record. As per sale deed the assessee stated to have sold two shops bearing No. D-5 and D-6 along with some other construction at mezzanine and first floor. It is not in dispute that the plots of land in question were allotted to the assessee for commercial use and construction of shops which were constructed by the assessee. Therefore, the commercial use of the plots were fully utilized by the assessee for construction of shops. Further, the construction being mezzanine and first floor above the shops is not as per allotment of the plots in question and therefore, such unauthorized construction cannot

be treated as separate unit ignoring the authorized construction of shops. The said construction at the most would part take the character and colour only from the authorized construction being shops. Even as per the map filed by the assessee it can be seen that there is no independent or separate access to the mezzanine and first floor of the property but the access to mezzanine and first floor is only from the shops at ground floor therefore, the extra construction made by the assessee above the shop cannot be treated as separate and independent unit as it has no access except through the shops. Hence the said construction is part and parcel of the shop and therefore, cannot part take an independent character of residential unit. The Id. CIT(A) has considered this issue in para (iii) & (iv) as under:-

*"(iii) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted that the plot Nos. D-5 and D-6 were allotted by the Urban Improvement Trust, Jaipur to the appellant for construction of shops on which construction was made by the appellant on the ground mezzanine and first floor. It was claimed by the appellant that the first floor was a residential house and therefore, it is entitled for deduction u/s 54 of the Act. It may be mentioned that both the above properties were adjacent to each other and were sold by the appellant on the same date and having the similar construction. I have examined the maps of the properties enclosed with the sale deeds and it appears that the mezzanine floor was a part of the shop only and was not having any*

*independent existence. Further, it is noted from these maps that the rooms on the first floor were of very small size and there was no bathroom. It appears that the first floor was nothing but the extension of the shops on the ground floor as a part of these shops was of double height. It is further noted that these two properties were sold by the appellant to M/s Sun Stone Engineering Industries. Pvt. Ltd. in which Shri Chandra Shekhar Saboo, the son of the appellant was a director. Further, there is nothing in the sale deeds which may establish that the first floor of the property was treated as residential house by the sub-Registrar for the purposes of charging stamp duty. These facts establish that the properties under consideration were commercial properties only and were bought by the buyer for commercial purposes only.*

*(iv) Therefore, in view of the above discussion and looking to the totality of facts and circumstances of the case, it is held that the AO was justified in not allowing deduction u/s 54 of the Act as claimed by the appellant and hence, I do not find any reason to interfere with the findings of the AO as recorded in the assessment order."*

The facts as recorded by the Id. CIT(A) have not been disputed by the assessee but the only contention and grievance of the assessee in the present appeal is that the Id. CIT(A) has not appreciated the facts as well as law on the point. We find that the decision relied upon the Id. AR of the assessee are not on the question of the classification of asset being residential or commercial but those are only on the issue of term "a residential house" whether one or more than one or even undivided share in the residential house. Therefore, there was no dispute or

question in those cases regarding the nature of the existing asset sold by the assessee. In the case in hand the assessee has not disputed that the plot of land were allotted to the assessee for commercial purpose and the assessee construction the shops on these plots as per allotment made by the Urban Improvement Trust, Jaipur. Hence, if any extra construction is made by the assessee above the shops the same will not be regarded as a different and independent unit being a residential house. In the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the Id. CIT(A). The decisions relied upon the Id. AR of the assessee are not applicable in the facts of the present case as discussed above.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 23/07/2019.

Sd/-  
( रमेश सी० शर्मा )  
(Ramesh. C. Sharma)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:-23/07/2019.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Madan Lal Saboo, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-3, Jaipur.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1220/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar