IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 35/Ahd/2016
(Assessment Year : 2012-13)

Umang Tejpal Shah, C-204, J-9, Apartment, Opp. Aryaman Bunglows, Thaltej, Ahmedabad. [PAN No. DUOPS 9957 M]	Vs.	ITO(HQ)(Intl. Taxn & TP) Ahmedabad.
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Parin Shah, A.R.
Respondent by :	Ms. Sonia Kumar, Sr. D.R.

Date of Hearing	10.05.2019
Date of Pronouncement	17.05.2019

O R D E R

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 17.11.2015 passed by the Commissioner of Income Tax (Appeals)-13, Ahmedabad arising out of the order dated 31.12.2014 passed by the Income Tax Officer (HQ) (International Taxation & Transfer Pricing), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'The Act') for the Assessment Year 2012-13.

2. The brief facts leading to the case is this that during the course of assessment proceeding, it appears that the assessee sold out a residential property situated at New Delhi on 14.12.2011 at a sale consideration of

Rs.95,00,000/-. Long Term Capital Gain arrived at Rs.77,69,014/-. After deducting indexed cost of acquisition a claim of deduction u/s 54 of the Act was made by the assessee in respect of two residential property one situated at Thaltej, Ahmedabad for an amount of Rs.53,91,514/- inclusive of transfer cost of Rs.6,39,514/- purchased on 08.09.2011 and the other situated at Sabarmati, Ahmedabad for an amount of Rs.23,77,500/- inclusive transfer cost of Rs.65,000/- purchased on 23.03.2012. According to the Learned AO, the claim and/or benefit u/s 54 of the Act on reinvestment of two houses properties is not legally tenable. The law does not provide for investment in second house so far as deduction under section 54 is concerned. He, therefore disallowed Rs.23,77,500/- as deduction made in second house u/s 54 of the Act and added the same to the total income of the assessee. In appeal, the Learned CIT(A) agreed upon the view taken by the Learned AO and addition was confirmed. It was also the finding of the Learned CIT(A) that these two properties are situated 10 km apart which could not be considered as 'a residential unit'. Hence, the instant appeal before us.

3. At the time of hearing of the instant appeal the Learned counsel appearing for the assessee submitted before us that the concept on which the authorities below has declined to grant relief u/s 54 of the Act is plural unit of residential houses. In fact by and under the Finance Act, 2014 section 54 has been amended w.e.f. April 01st, 2015 when the word 'a' as employed u/s 54 prior to this amended was substituted by the words 'one' which implies that the word 'a' employed includes plural residential houses prior to its amendment. Thus such amendment was made with a prospective effect from A.Y. 2015-16. In that view of the matter, though the assessee's claim relates to two residential houses being plural in number since during the period under A.Y. 2012-13, i.e.

before such amendment came into effect on and from 01st April, 2015, the assessee is entitled to such claim and thus the order passed by the authorities below in rejecting such claim is a product of non-application of mind and thus bad in law. On that score alone the addition made by the authorities below is liable to be deleted as also submitted by the Learned AR appearing for the assessee. He also relied upon the judgment passed by the Hon'ble High Court of Madras in the case of M/s. Tilokchand And Sons Hiran Bros-vs- ITO, Madurai passed in TC(A) No.771 of 2009 and also the judgment passed by the Karnataka High Court in the case of CIT-vs-Khoobchand M. Makhija, reported in [2014] 43 taxmann.com 143. On the contrary the Learned DR relied upon the order passed by the authorities below.

4. We have heard the respective parties, perused the relevant materials available on record. We have also considered the judgments cited by the Learned AR in support of his claim. Admittedly, the assessee has purchased two properties situated at different area and claimed the benefit of section 54 in respect of reinvestment of residential house. It also appears that section 54 has been amended w.e.f 01.04.2015 by substituting the word 'a' with 'one' by the legislature with only prospective effect i.e. from A.Y. 2015-16. Furthermore, such amendment has been brought into to make a change in respect of the claim available with the assessee u/s 54 towards plural residential houses into singular property. Therefore, so long as, the same assessee purchased one or more residential house out of the sale consideration for which the capital gain tax liability is in question in its own name, the same assessee should be held entitled to the benefit of deduction u/s 54, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also.

Such analogy was also upheld by the Karnataka High Court in the case of CIT-vs-Khoobchand M. Makhija as relied upon the Learned AR appeared for the assessee. In that case in respect of the dispute regarding A.Y. 1996-97, it was held that acquisition of more than one residential house by the assessee out of capital gain would not disentitled assessee from availing benefit conferred u/s 54 of the Act.

The view was further reiterated by the Hon'ble High Court of Madras in the case of M/s. Tilokchand And Sons Hiran Bros-vs- ITO. The relevant portion is as follows:

> *"The issue was whether the appellant is entitled to exemption u/s 54 with respect to the investment out of LTCGs made in one residential house only. The purpose of Section 54 appears to allow a deduction to an assessee, being an individual or HUF, to the extent of investment made in residential house as against the Capital Gains accruing on the sale of original residential house or sold capital asset. If the word 'a' as employed u/s 54 prior to its amendment and substitution by the words 'one' with effect from April 01, 2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from April 01, 2015 which the Legislature specifically made it clear to operate only prospectively from AY 2015-2016. Once it is held that the word 'a'[1] employed can include plural residential houses also in Section 54 prior to its amendment, such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case So long as the same assessee purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same assessee should be held entitled to the benefit of deduction u/s 54, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The assessee-HUF in the present case complied with the conditions of section 54 in its true letter and spirit and, therefore was entitled to the deduction u/s 54 for the entire investment in the properties and securities. Therefore, the present appeal filed by the assessee deserves to be allowed and the same is accordingly allowed."*

The question of purchase of residential houses at different address in the same city was also under consideration in the said judgment of Khoobchand M. Makhija wherein it was further held that the location of the newly purchased houses by the same assessee vis. HUF out of the sale consideration received on the sale of original capital assets or a residential house in the given circumstances of availability of such residential houses as per the requirement of the HUF will not alter the position of interpretation. The relevant portion of the said judgment is as follows:

> *"20. We have discussed about the two decisions from the Karnataka High Court, which, in our opinion, dealt with similar controversy as is raised before us herein. The only difference which we find is that the purchase of the residential houses in the present case is at different address in the same city of Madurai. In D.Ananda Basappa case stated (supra), two flats in question were admitedly adjacent to each other and which were joined to become one residential house. In the case of Khoobchand M.Makhija (supra), two door nos are given viz., 623 and 729, but the complete addresses and even the name of the city is not clear in the facts narrated in the said Judgment. But in our considered opinion, the difference of location of the newly purchased residential house(s) will not alter the position for interpretation of the word 'a residential house' to the effect that it may include more than one or plural residential houses, as held by Karnataka High Court, with which we respectfully agree. The location of the newly purchased houses by the same assessee viz., HUF out of sale consideration received on the sale of original capital Asset or a residential house in the given circumstances of availability of such residential houses as per the requirement of the HUF will not alter the position of interpretation.*
>
> *21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the words 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y.2015- 2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which*

would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same Assessee should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee-HUF in the present case, in our opinion, complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the http://www.judis.nic.in Judgment in T.C.A.No.771 of 2009 dt.14.03.2019 M/s.Tilokchand & Sons Vs.The Income Tax Officer properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in CIT Vs.D.Ananda Basappa ((2009) 309 ITR 329 (Karn)) & Khoobchand M.Makhija (supra) cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case.

22.The decision of Punjab and Haryana High Court relied upon by the learned counsel for the Revenue, in which the Division Bench of the said Court finding a distinction with D.Ananda Basapaa's case (supra) on facts, without expressing contrary opinion in detail, held that no Substantial Questions of Law arose, renders little help to the arguments advanced by the learned counsel for the Revenue.

23. Therefore, we are of the considered opinion that the present Appeal filed by the Assessee deserves to be allowed and the same is accordingly allowed and the questions of law framed above are answered in favour of the Assessee and as against the Revenue. No order as to costs.”

Taking into consideration the entire aspect of the matter, particularly the language used in section 54 prior to amendment w.e.f. 01.04.2015 and the judgments clarifying the scope of claim under section 54 of the Act we are of the considered view that the assessee is entitled to the benefit of deduction in respect of both the residential houses as claimed. In that view of the matter, we delete the addition made by the authorities below in respect of the investment

made towards the property situated at Sabarmati, Ahmedabad to the tune of Rs.23,77,500/-.

5. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on 17/05/2019

Sd/-	Sd/-
(WASEEM AHMED)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 17/05/2019
Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-13, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad