

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.231 & 232/Del./2019
Assessment Year 2013-2014

Smt. Usha Mahajan, B-51, Vardhan Apartments, I.P. Extension, New Delhi. PIN – 110 092. PAN ALZPM8081B	vs.,	The Income Tax Officer, Ward – 60(3), Room No.304B, D-Block, Vikas Bhawan, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Prakash Sinha, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	27.08.2019
Date of Pronouncement :	06.09.2019

ORDER

Both the appeals by Assessee are directed against different Orders of the Ld. CIT(A)-28, New Delhi, Dated 26.10.2018 for the A.Y. 2013-2014 and Dated 30.10.2018 for the A.Y. 2013-2014, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. I have heard the Learned Representatives of both the parties and perused the material on record.

3. In ITA.No.231/Del./2018 assessee challenged the addition of Rs.34,23,565/- on account of capital gains. The assessing officer noted that the assessee is an individual deriving income from capital gains and income from other sources during the year. As per computation of income filed by the assessee for the A.Y. 2013-14 under appeal, the assessee has claimed an exemption under section 54 of the I.T. Act amounting to Rs.51,45,226/- on account of investments made out of total long term capital gains earned on sale of Flat for Rs.75.00 Lacs at 673, Ground Floor, Pocket- E, Mayur Vihar, Phase-II, New Delhi. The assessee has invested entire long term capital gains so earned in three separate Flats in Earth Iconic Infrastructure Pvt. Ltd namely - 1. EST2-490 for Rs.14,15,722/-, 2. EST2-489 for Rs.13,32,073/- and 3. K-1003 for Rs.25,00,635/- totaling to Rs.52,48,430/- during the financial year relevant to assessment year as against the long term capital gains of Rs.51,45,226/-. The A.O. noted that claim of assessee is not allowable under section 54 of the I.T. Act, 1961. The A.O. issued show cause notice to the assessee intimating that

exemption under section 54 is allowable for purchase of one residential house only. Therefore, more beneficial could be allowed as exempt in favour of the assessee. The assessee, in response thereto, submitted that she has purchased two residential units i.e., Flat Nos.ETS2 489 & ETS2 490 which are located in the same building and adjacent to each other having common facilities which has to be used by both the units. These are on the same floor, attached with each other and have to be used as a single unit. The floor plan of the residential units was submitted before assessing officer. The assessing officer accepted the explanation of assessee that since both these flats are adjacent to each other, therefore, same were considered as one residential unit. The claim of the assessee for exemption under section 54 totaling to Rs.17,21,661/- (Rs.8,29,850/- and Rs. 8,91,817/-) amount being paid up-to the date of filing of 1TR i.e. 17.07.2013 was allowed. The A.O. however, held that assessee's claim on payments made towards 3rd Flat No. K-1003 is not allowable under section 54 of the I.T. Act. The assessing officer made calculation of the capital gain accordingly and

computed the taxable long term capital gains at Rs.34,23,565/- and made the addition accordingly.

4. This addition was challenged before the Ld. CIT(A). The assessee reiterated the submissions made before the assessing officer. The assessee claimed that the provisions of Section 139(1) includes provisions of Section 139(4) and considering this the date of furnishing the return comes to 31.03.2015 and assessee has paid all the amount before 31.03.2015. The assessee relied upon the Judgment in the case of Nandlal Sharma vs. ITO as reported in 61 Taxmann 271 in which several decisions including the Judgment of Hon'ble Punjab & Haryana High Court have been referred to in the case of CIT vs. Ms. Jagriti Aggarwal [2011] 339 ITR 610 in which it was held that "*Section 139(1) includes Section 139(4)*". It was, therefore, noted that if the sale consideration is utilised for the construction or purchase of a new residential house before due date of filling of return under section 139(4), i.e., 31.03.2010. In this case, the same will be eligible for exemption under section 54 of the I.T. Act. The assessee, therefore, pleaded

that considering the above fact the claim of assessee is allowable under section 54 of the I.T. Act. The Ld. CIT(A) confirmed the Order of the A.O. with regard to considering two Flats 489 and 490 as one residential unit. However, it was held that assessee would not be entitled for benefit of investment in third Flat i.e., K-1003 and following Section 139(1) of the I.T. Act, dismissed the appeal of assessee.

5. I have heard the Learned Representative of both the parties.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee has made the investment by paying the amounts to the builder up-to March, 2015. Therefore, as per Section 139(4) of the I.T. Act, assessee would be entitled for deduction under section 54 of the I.T. Act. He has relied upon Judgment of Hon'ble Punjab & Haryana High Court in the case of CIT, Rohtak vs. Jagtar Singh Chawla [2013] 259 CTR 388 (P & H) in which it was held as under :

“Where assessee paid substantial amount of sale consideration of a residential house for purchase of another residential property within extended period of limitation of filing of return under section 139, his claim for deduction under section 54F was to be allowed.”

6.1. Learned Counsel for the Assessee further submitted that Ld. CIT(A) has erred in evaluating effect of “a residential house with one residential house as given Amendment in Finance Act, 2014 read with Memorandum explaining the budget. The Amendment which was prospective, one can be used to restrict the benefit flowing to the assessee by preponing it. He has also referred to Board Circular in this regard.

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that authorities below have rightly considered two flats as one residential unit and investment made till filing of the return have already been allowed to the assessee. The rest of the amount was not deposited in capital gain account.

Therefore, assessee would not be entitled for further deduction. The Ld. D.R. submitted that third property is independent and distinct property, therefore, on second property, no benefit under section 54 could be given to the assessee.

8. I have considered the rival submissions. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ms. Jagriti Aggarwal [2011] 339 ITR 610 [P&H] in which it was held as under :

“The assessee sold her house property for Rs.45 lakhs on January 13, 2006 and having purchased a new residential property on January 2, 2007, claimed deduction under section 54 of the Income-tax Act, 1961. The Assessing Officer declined the claim holding that the assessee failed to deposit the amount in the capital gains account scheme and also failed to purchase house property before the due date of filing the return of income. The Commissions (Appeals) held that the assessee had purchased a new residential property on January 2, 2007, and the due date according to section 139(4) was

March 31, 2007, and, thus, the assessee had complied with the provisions of section 54 of the Act. This order was affirmed by the Tribunal. On appeal:

Held, dismissing the appeal, that the sale of the asset had taken place on January 13, 2006, falling in the previous year 2006-07, the return could be filed before the end of the relevant assessment year 2007-08, i.e. March 31, 2007. Thus, sub-section (4) of section 139 provides the extended period of limitation as an exception to sub-section (1) of section 139 of the Act. Sub-section (4) was in relation to the time allowed to an assessee under sub-section (1) to file the return. Therefore, such provision was not an independent provision, but relates to the time contemplated under subsection (1) of section 139. Therefore, sub-section (4) had to be read along with sub-section (1). Therefore, the due date for furnishing the return of income according to section 139(1) of the Act was subject to the extended period provided under sub-section (4) of section 139 of the Act.”

8.1. Following the above decision, it is clear that due date for furnishing return of income according to Section 139(1) of the Income Tax Act, 1961 was subject to extended period provided under Section 139(4) of the Income Tax Act. The assessee has filed the chart at page-52 of the paper book which shows that even some of the payments have been made for Flat Nos.489 and 490 after the extended period expired on 31st March 2015. The assessee despite taking specific plea before the Ld. CIT(A) and relied upon several decisions, the Ld. CIT(A) did not decide this issue in the light of decisions. Therefore, it requires actual verification how much assessee made payments after the extended period as per Law and whether the assessee would be entitled for deduction under section 54 as per the aforesaid decisions. Accordingly, I set aside the Order of the Ld. CIT(A) as regards claim of exemption under section 54 of the Income Tax Act in respect of Flat Nos.489 and 490 and restore the matter in issue to the file of Ld. CIT(A) with a direction to re- decide this issue as per Law, following the decisions of the Hon'ble Punjab and Haryana High Court in

the cases of CIT vs. Ms. Jagriti Aggarwal [2011] 339 ITR 610 and CIT vs. Ms. Jagtar Singh Chawla 259 CTR 388 (supra). The Ld. CIT(A) shall verify the investments made by assessee up-to the extended period under Section 139(4) of the Income Tax Act and shall allow the claim of assessee after verification as per Law, by giving reasonable and sufficient opportunity of being heard to the assessee.

8.2. However, as regards the claim of assessee claiming exemption under section 54 in respect of investment made by assessee-company in Flat K-1003, I am of the view that such claim is not allowable in favour of assessee. Even according to the arguments of Learned Counsel for the Assessee, amendment in the Section is prospective in nature, therefore, it would not be allowed beneficial to the assessee. The language of Section 54 of the Income Tax Act is very clear that benefit under this provision could be extended in respect of investments made in one residential house in India. The authorities below, therefore, rightly denied the claim of exemption under section 54 in respect of Flat K-1003. The Orders of the

authorities below to that extent are maintained and appeal of assessee is dismissed.

9. In the result ITA.No.231/Del./2019 of the assessee partly allowed for statistical purposes

ITA.No.232/Del./2019 :

10. Assessee challenged levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 on the addition made by the assessing officer of Rs.34,23,565/-. Since on this issue, part of the matter in issue have been restored to the file of Ld. CIT(A), therefore, it would be appropriate that the penalty matter be also restored to the file of Ld. CIT(A) for passing the order afresh. In view of the above, I set aside the order of Ld. CIT(A) and restore the entire penalty matter to the file of Ld. CIT(A) with a direction to re-decide the penalty matter after deciding the quantum appeal of assessee as per Law ,by giving reasonable and sufficient opportunity of being heard to the assessee.

11. In the result, appeal of assessee allowed for statistical purposes.

12. To sum-up, ITA.No.231/Del./2019 of the Assessee partly allowed for statistical purposes and ITA.No.232/Del./2019 of the Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 06th September, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.