

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR  
श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 351/JP/2018  
निर्धारण वर्ष / Assessment Year: 2011-12

Geeta Devi, W/o- Shri Tara Chand, H. No. A- 1, Ganpati Nagar, Near Sidhi Ganesh Samaroh Sthal, Foy Sagar Road, Ajmer.	बनाम Vs.	I.T.O., Ward 1(3), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJUPD 3588 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya (Adv)  
राजस्व की ओर से / Revenue by : Shri Rajendra Jha (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 09/08/2019  
उदघोषणा की तारीख / Date of Pronouncement : 21/08/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Ajmer dated 20/07/2017 for the A.Y. 2011-12 in the matter of order passed U/s 147/148 r.w.s. 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. There is delay in filing the appeal. In support of the delay, the assessee has filed application for condonation of delay. The assessee has also filed an affidavit supporting the reasons mentioned in the

condonation application. After going through the reasons, I am satisfied that there was reasonable ground for delay in filing the appeal. Accordingly, the delay is condoned and appeal is being heard on merit.

3. In this appeal, the assessee is aggrieved for decline of claim of exemption U/s 54F of the Act. At the outset, the Id AR of the assessee placed on the record the order of the Coordinate Bench in the case of co-owner Shri Mohandas Kurani in ITA No. 655/JP/2016 order dated 08/03/2019 wherein the Tribunal directed for allowing deduction U/s 54F of the Act. Accordingly, it was pleaded that the issue is squarely covered by the order of the Coordinate Bench of the Tribunal.

4. On the other hand, the Id DR has relied on the orders of the authorities below and contended that the property sold was commercial in nature, therefore, deduction U/s 54 is not allowable. Moreover, investment in the new house was not made within the stipulated period nor deposited in capital gain account, therefore, the A.O. has correctly denied exemption U/s 54 of the Act. The Id DR has further contended that the assessee has not claimed deduction U/s 54F of the Act before the A.O., therefore, there is no reason to allow the same even though claim before the Id. CIT(A).

5. I have considered the rival contentions and carefully gone through the orders of the authorities below. I have also carefully gone through the order of the Coordinate Bench in the case of co-owner of the property wherein issued has been decided in favour of the assessee with respect to 2/3<sup>rd</sup> share of the property. The precise observation of the Coordinate Bench was as under:

*“5. We have considered the rival submissions as well as the relevant material on record. Though the assessee in the grounds of appeal has claimed the deduction under section 54F, however, we find that the assessee has invested Rs. 24,00,000/- in purchase of new house property as against the sale consideration which is 1/3rd of Rs. 53,04,800/-. Therefore, there will be no change in the quantum of deduction whether it is allowed under section 54 or 54F of the Act. Since the AO has already accepted the claim of deduction under section 54F while passing the order under section 154 of the IT Act dated 6th January, 2017, therefore, without going into the controversy of allowability of the claim under section 54, we consider the deduction under section 54F on the entire investment made by the assessee. There is no dispute that the assessee has purchased the new residential house and invested Rs. 24,00,000/- within the time period prescribed under section 54F. However, the AO has restricted the deduction only on the ground that the assessee has not deposited the entire sale consideration in the Capital Gain Account Scheme. We find that once the substantial and primary condition as prescribed in section 54F for investment of the sale consideration for purchase of new residential house is satisfied, then the claim of deduction cannot be denied merely*

*on the ground that prior to the investment the assessee has not deposited the amount in the Capital Gain Account Scheme. The Coordinate Bench of this Tribunal in case of ACIT vs. Zahida Banoo (supra) has considered an identical issue in para 6 as under :-*

*“6. We further note that when the assessee has claimed deduction u/s 54F of the Income Tax Act for the assessment year 2006-07 which was allowed by the Id. CIT(A) then the said claim is also allowable for the assessment year under consideration particularly in view of the fact that the investment in the new house has been made by the assessee within time prescribed under the provisions of Section 54F of the Act. It was brought to our notice that the assessee purchased the new property on 26.12.2005 and therefore the investment in new property was made within prescribed time under the provisions of section 54F of the Act. Though the Revenue can raise an objection about the allowability of deducting u/s 54F of the Act as the assessee has not deposited the net consideration in the capital gain account however, when the assessee has not received the entire sale consideration during the year under consideration then the question of depositing the same does not arise. The condition of depositing the amount in capital gain accounts scheme presupposes that the assessee has already received the entire sale consideration. In the case in hand when the assessee did not receive the sale consideration during the year under consideration then, the said condition cannot be thrust upon the assessee. Further, the assessee has invested the amount within the time period provided u/s 54F of the Act and we find that the Hon’ble Karnataka High Court in case of Principal CIT vs. C. Gopaldaswamy 384 ITR 307 has held that the condition precedent for claiming the benefit u/s 54/54F of the Act is that capital gain realized from capital asset should have been invested either in purchase of residential house or in constructing the residential house. If it is established that the consideration was received on alienation property has been invested for purchase of residential house, the assessee would be entitled to benefit of section 54F of the Act irrespective of the fact that the transfer was not*

*completed in all respect. In case of CIT vs. Sambandam Udaykumar 345ITR 389 the Hon'ble High Court has in para 10 and 11 as under:-*

- “10. A reading of the aforesaid provision makes it very clear that if a capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within the period of one year before or two years after the date on which transfer took place purchased or has within a period of three years after that date constructed a residential house, if the cost of the new asset is not less than the net consideration in respect of the original asset the whole such capital gain shall not be charged under section 45 of the Act. However, if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to be whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration shall not be charged under section 45 of the Act.*
- 11. Section 45 of the Act makes it very clear that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save or otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H is chargeable to income tax under the head 'capital gains' and shall be deemed to be income of the previous year in which the transfer took place. The aforesaid sections which form part of section 54 of the Act are cases where capital gain on transfer of capital asset not to be charged in those cases. Section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the said provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law.*

*The words used in the section are 'purchased' or 'constructed'. For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under section 54F of the Act. The essence of the said provision is whether the assessee who received capital gains has invested in a residential house. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from the said benefit."*

*Therefore, in view of the facts and circumstances of the case when the investment was made within the time period even counted from the date of transfer to be considered on the date of agreement dated 13.09.2004 then the assessment of capital gain tax either for the assessment year 2006-07 or for the assessment year 2005-06 would be Revenue neutral as the benefit of section 54F is available to the assessee. In view of the above discussion, we do not find any reason to interfere with the impugned order of the Id. CIT(A)."*

*Therefore, once the investment was made for purchase of new residential house within the time period as prescribed under section 54F, then the non-deposit of the entire amount in the Capital Gain Account cannot be a reason for disallowance of deduction. This Tribunal in the said case has followed the decision of Hon'ble Karnataka High Court in case of Principal CIT vs. c. Gopaldaswamy, 384 ITR 307 (Kar.). Therefore, following the earlier decision of this Tribunal, we allow the full claim of deduction under section 54F of the Act."*

6. In the instant case, I found that the assessee had sold a residential property jointly with Shri Puran Mal &, Shri Mohandas Kurani (Brothers) for total consideration of Rs. 45,00,000/- vide registered sale deed dated 09.11.2010. The assessee received consideration of Rs.15,04,256/-towards his 1/3rd share. The property was valued at Rs.45,12,768/- by the Sub-Registrar. however, subsequently was enhanced to Rs.1,03,51,323/-. The assessee objected to such valuation and requested the AO to refer the matter to the Departmental Valuation Officer (hereinafter referred as DVO') u/s 50C(2)(a) of the Act. Accordingly, the AO referred the matter to DVO, who in response valued the said property vide valuation report dated 27.01.2016 at Rs.53,04,800/- (assessee's share Rs.17,68,267/) as against Rs. 15,04,256/- as declared. I also observe that the assessee made a claim of

exemption u/s 54 or 54F in as much as against the declared sale consideration of Rs.15,04,256/- on dated 09.11.2010, the assessee purchased a plot (situated at Khasra No. 936, Gram Boraj, Foy Sagar Road Scheme, Ajmer) for Rs. 3,51,360/- and further constructed a residential house costing Rs.6.80,750/- up to 15.10.2011 (PB 86-90) totaling to Rs. 10,32,100/-. Thus, part of the sale consideration having been invested within one year only i.e. much prior to the stipulated period of 3 years from the date of the sale (falling on dated 08.11.2013). However claim U/s 54 was denied by the AO on the reasoning that the property so sold was a commercial cum residential property whereas such a benefit u/s 54 is meant only for a capital asset being a residential house and that the assessee did not invest in the new property within stipulated period nor deposited the same in the capital gains account. Thus, denying the deduction claimed u/s 54, the AO finally assessed the LTCG at Rs.8,75,887/-, as he proposed.

7. From the record, I found that the assessee sold a capital asset on 09.11.2010 for Rs. 15,04,256/-, and with a view to save capital gain tax, claimed deduction u/s 54 of the Act and hence constructed a residential house by 15.10.2011, i.e. much before

the period of 3 years from the date of sale as provided in the Act, but also before the end of the time provided u/s 139(4) i.e. 31.3.2012 itself. The assessee invested Rs. 10,32,100/- (Plot Rs. 3,51,350/- + Construction 6,80,750/-). Though the same did not exceed the total amount of sale consideration as per Section 50C of Rs. 17,68,267/- yet however, the assessee was fully entitled to get proportionate deduction u/s 54F up to the investment of Rs. 10,32,100/-. Though the AO denied deduction u/s 54 saying that what was sold was not a residential house but in the first appeal, the assessee made the claim u/s 54F also, as an alternate claim. But the Id. CIT(A) summarily denied. In a similar fact situation, in the case of the joint owner Shri Mohandas Kurani, who also sold his 1/3 share of the property, made a claim u/s 54F. In that case, the Id. CIT(A) duly admitted the claim u/s 54F and directed the AO to consider the same. Later on. the ITO himself accepted the claim u/s 54F vide his order u/s 154 dated 06.01.2017. Moreover, this Hon'ble ITAT also in that case (i.e. Mohandas Kurani vs ITO) accepted the claim u/s 54F in ITA No. 655/JP/2016 vide their order dated 08.03.2019 in Para 5 and onwards, without going into the controversy of allowability or

otherwise of deduction u/s 54 of the Act. The facts and circumstances are similar in the instant case in so far as the assessee is 1/3<sup>rd</sup> owner of the very same property. Respectfully following the proposition laid down by the Tribunal in the case of joint owner, I direct the A.O. to allow proportionate claim of deduction U/s 54F of the Act up to the investment of Rs. 10,32,100/- as against the value adopted U/s 50C at Rs. 17,68,267/-. I direct accordingly.

8. The other grounds raised by the assessee are dismissed.
9. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 21<sup>st</sup> August, 2019

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21<sup>st</sup> August, 2019

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Geeta Devi, Ajmer.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(3), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 351/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar