

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.1846/Mum/2018
(Assessment Year :2010-11)**

Shri Mahendra Hastimal Mehta 604, Shantikamla CHSL BBA Road, Fawalwadi Chinchpokli Mumbai – 400 012	Vs.	ITO – 20(2)(2), Mumbai Room No.212, Piramal Chamber, 2 nd Floor Lalbaug, Mumbai – 400 012
PAN/GIR No.AABPM2932J		
(Appellant)	..	(Respondent)

Assessee by	Shri Fenil Bhatt
Revenue by	Shri D.G. Pansari
Date of Hearing	05/09/2019
Date of Pronouncement	11/09/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1846/Mum/2018 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-32, Mumbai in appeal No.CIT(A)-32/IT-60/20(2)/2015-16 dated 15/07/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 09/03/2015 by the Id. Income Tax Officer – 20(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. At the outset we find that the appeal filed by the assessee is delayed by 554 days. We find that in order to address this delay, the basic preliminary facts involved in this appeal should also be considered first.

3. The brief facts involved in this appeal are that the assessee is an individual deriving income from business, short term capital gains on shares and income from other sources. The business income derived is by way of remuneration from a partnership firm where assessee is a partner. The return of income for the A.Y.2010-11 was filed by the assessee on 06/01/2011 declaring total income of Rs.4,28,120/-. The return was processed u/s.143(1) of the Act. Later, the case was reopened on the basis of information received from ITO-16 (2)(2), Mumbai. During the course of assessment proceedings of assessee's wife, it was noticed that assessee had sold immovable property for consideration of Rs.2 Crores. The capital gains received from sale of the said property was not offered for taxation by the assessee. Hence, assessment was reopened. During the year under consideration, the assessee computed long term capital gains of Rs.99,93,552/- and claimed deduction u/s.54 of the Act of Rs.99,93,552/- and declared nil capital gains. The assessee vide letter dated 13/08/2014 submitted copy of sale agreement and two purchase agreements for justifying the claim of deduction u/s.54 of the Act. The Id. AO observed that assessee had reinvested the sale consideration from sale of other property in purchase of two new residential properties. The Id. AO observed that assessee is entitled for deduction u/s.54 of the Act only in respect of re-investment made in one house property, accordingly re-computed the taxable long term capital gains thereon in the assessment completed u/s.143(3) r.w.s. 147 dated 09/03/2015. The Id. CIT(A) in first appeal upheld the finding of the Id. AO that assessee is not

entitled for deduction u/s.54 of the Act in respect of two properties. The Id. CIT(A) also upheld the action of the Id. AO on the entire computation of long term capital gain. The assessee being an individual and considering the litigation cost involved in preferring further appeal to this Tribunal and considering the Counsel's fees to be paid by him, chose not to prefer any appeal before this Tribunal and in order to put a quietus to the entire litigation in hand. There was absolutely no mala fide intention on the part of the assessee in this regard. But the assessee later was served with a penalty notice u/s.271(1)(c) of the Act on 08/03/2018 at which point in time, the assessee had to approach the Counsel who had advised him to prefer this appeal against the quantum order of Id. CIT(A) with a delay condonation stating all these facts. It was pleaded by the authorised representative of the assessee and further strengthened by the affidavit of the assessee that assessee was not aware of the fact that penalty provisions would follow on him pursuant to the order of the Id. CIT(A). The assessee being an individual was not conversant with the provisions of the Income Tax Act and never in the past he had been subjected to scrutiny proceedings to understand the nuances and intricacies of income tax assessment. With this background, the condonation of delay prayed by the assessee need to be looked into. We find that the Id. DR had vehemently argued that delay should not be condoned in the instant case in as much as assessee had sought advice of Chartered Accountant who had advised the assessee not to file any appeal before this Tribunal against the order of the Id. CIT(A). Hence, according to the Id. DR, the assessee was conscious of this fact and a proper decision had been taken after due consideration by him but we are not inclined to agree to this argument of the Id. DR in view of the fact that the relevant portion of the affidavit relied upon by the Id. DR had to be read in toto. We find the assessee had chosen not to prefer any appeal considering the litigation cost involved therein ; considering the age of the

assessee and in order to buy peace of mind. These facts are duly reflected in para 4 of the affidavit of the assessee. Hence, by placing reliance on the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST. Katiji and Others reported in 167 ITR 471, we are inclined to condone the delay in the peculiar facts and circumstances of the instant case and admit the appeal of the assessee for adjudication.

4. We find that the facts of the issue in dispute have already been narrated hereinabove. The only dispute is with regard to eligibility of claim of deduction u/s.54 of the Act in respect of two new residential properties purchased by the assessee out of sale consideration of old property. We find that the issue in dispute is squarely covered in favour of the assessee by the Co-ordinate Bench of this Tribunal in case of Ravishankar vs. ACIT in ITA No.3270/Mum/2016 dated 17/01/2018 wherein it was held as under:-

“9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that Sec. 54 of the Act which provides for a deduction to an assessee in respect of the capital gain that arises from transfer of a long term capital asset being a residential house, as was available on the statute during the year under consideration, viz. A.Y 2012-13, clearly provided that the deduction would be available to an assessee either where he had within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed „a residential house“. We find that the legislature in all its wisdom had come up with a prospective amendment to Sec. 54 of the Act, vide the Finance (No. 2) Act, 2014 with effect from 01.04.2015, as per which the term "a residential house" was substituted by "one residential house in India". We are of the considered view that the pre-amended Sec. 54 as would be applicable to the case of the present assessee, by using the term "a

residential house" though characterized the nature of investment and thus required that the investment was to be made towards purchase or construction of a residential house, but however, it did not place any restriction as regards the number of residential houses in which the assessee could invest for claiming deduction under the said statutory provision. We are of the considered view that the amendment made available on the statute, vide the Finance(No.2) Act, 2014, with effect from 01.04.2015, pursuant whereto the term "a residential house" had been substituted by "one residential house in India", rather supports the fact that the restriction of making the investment in only one residential house had been made available on Page |8 ITA No. 3270/Mum/2016 AY: 2012-13 Mr. Ravi Shankar Vs. ACIT-16(3) the statute only with effect from A.Y 2015-16, and as such cannot be extended to the years prior to that. We find that our aforesaid view is fortified by the judgment of the High Court of Karnataka in the case of Commissioner of Income tax Vs. Khoobchand M. Makhija (2014) 223 taxman 189 (Kar), wherein the High Court after deliberating at length on the issue under consideration, had observed as under:

9. The word "a" is not defined in the Act. When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnishes a different denotation. A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and to the legislative history. Words and expressions at times have a „technical“ or a legal meaning“ and in that case they are understood in that sense, Judicial decisions expounding the meaning of words in construing statutes in parimateria will have more weight than the meaning furnished by dictionaries. (Principles of Statutory Interpretation by Justice G.P.Singh - pages 279 and 280). It is in this background, it is necessary to understand the meaning

of the word "a" in the context in which it is used in the said Section.

10. The words "a" or "an" and "the" are called Articles. They come before nouns. There are two Articles - a (or an) and the. "a" or "an" is called the Indefinite Article, because it usually leaves indefinite the person or thing spoken of. "The" is called the Definite Article, because it normally points out some particular person or thing. The indefinite article is used before singular countable nouns. The definite article is used before singular countable nouns, plural countable nouns and uncountable nouns. The indefinite Article is used in two contexts, firstly, in its original numerical sense of one. Secondly, in the vague sense of a certain. It is also used in the sense of any, to single out an individual as the representative of a class. It is also used to make a common noun of a proper noun.

11. In the Strouds Judicial Dictionary of Words and Phases dealing with this letter „a“, it is said „a“ is sometimes read as the“. „a“ may sometimes be read as „some“. But, more frequently “a” is the equivalent of „any“. However, it is difficult to read “a” as “all”.

12. In the Concise Oxford Dictionary of Current English, dealing with the letter „a“ is stated that, „a“ sometimes called indefinite article, used with apparent plurals of number.

13. Section 13 of the General Clauses Act, 1897 deals with gender and number. It reads as under : -

"13. Gender and number.-In all Central Acts and Regulations, unless there is anything repugnant in the subject or context.-

(1) words importing the masculine gender shall be taken to include females; and (2) words in the singular shall include the plural, and vice versa.

14. This Court in the case of Commissioner of Income-Tax and Another -vs- Smt. K.G. Rukminamma reported in (2011) 331 ITR 211 (Karn), had an occasion to consider Section 54 of the Act and had held as under:

"For a proper appreciation of the aforesaid contention, it is necessary to have a careful look at Section 54 of the Income Tax Act, which reads as under:

"54. Profit on sale of property used for residence - (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head „Income from house property“ (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say, -....."

9. A reading of the aforesaid provision makes it very clear that the property sold is referred to as original asset in the section. That original asset is described as buildings or lands appurtenant thereto and being a residential house. Therefore, it is not mere "a residential house". The residential house may include buildings or lands appurtenant thereto. The stress is on the use to which the property is put to. Only when that asset was used as a residential house, which may consist of buildings or lands appurtenant thereto, the income derived from the sale of such a residential house is chargeable under the head "Income from house property." If the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed a residential house, then, instead of the capital gain being charged to income-tax as income of the previous years in which the transfer took place, it shall be dealt with in accordance with the aforesaid provisions. In this part of the section also, the words "a residential house" is again used. The said residential house necessarily has to include buildings or lands appurtenant thereto. It cannot be

construed as one residential house. In this context, it is useful to refer- to Section 13 of the. General Clauses Act, 1897, which reads as under:

"13. Gender and number. - In all Central Acts and Regulations, unless there is anything repugnant in the subject or context -

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa"

10. The context in which the expression "a residential house" is used in Section 54 makes it clear that, it was not the intention of the legislation to convey the meaning that it refers to a single residential house. If that was the intention, they would have used the word "one." As in the earlier part, the words used are buildings or lands which are plural in number and that is referred to as a residential house", the original asset. An asset newly acquired after the sale of the original asset also can be buildings or lands appurtenant thereto, which also should be "a residential house." Therefore the letter "a" in the context it is used should not be construed as meaning "singular." But, being an indefinite article, the said expression should be read in consonance with the other words "buildings and lands" and, therefore, the singular "a residential house" also permits use of plural by virtue of Section 13(2) of the General Clauses Act. This is the view which is taken by this court in the aforesaid Anand Basappa's case in I.T.A.No. 113/2004, disposed of on September 20, 2008([2009] 309 ITR 329 (Kam)). "

15. That was the case where the assessee gave his property for joint development agreement for putting up flats. Under the terms of the agreement, out of eight flats to be put up, four flats had to be given to the assessee, representing 48%, the consideration for the said four flats was consideration for selling 52% of the site. It was held that, though under the joint development agreement, the assessee received four residential flats, it constituted a residential house for the purpose of Section 54 and therefore, entitled to the said benefit.

16. *In the instant case, one residential house is sold. Out of the sale consideration, it was open to the assessee to purchase a big residential house so as to accommodate both his sons, in which event in terms of Section 54 (1), he would have been entitled to the benefit of the said Section. However, instead of purchasing one big house, having regard to the fact that both his sons are grown up, have families and in order to see that in future there won't be any litigation or disharmony, he chose to purchase two small residential houses to accommodate both his sons.*

17. *It is clear that the assessee was not attempting to evade tax. In fact, after purchasing two residential houses, still there remained unutilized capital gain, which he has offered for tax. Therefore, as held in the aforesaid Rukminiamma's case, the context in which the expression "a residential house " is used in Section 54 makes it clear that it was not the intention of the legislature to convey the meaning that it refers to a single residential house. The letter "a" in the context, which is used, should not be construed as meaning singular, but being an indefinite article, the said expression should be read in consonance with the other words "buildings and lands" and therefore, the singular "a residential house" also permits use of plural by virtue of Section 13(2) of the General Clauses Act.*

18. *Therefore, we are of the view, in the facts and circumstances of this case, the acquisition of two residential houses by the assessee out of the capital gains falls within the phrase "residential house" and accordingly, the assessee is entitled to the benefit conferred under Section 54(1) of the Act. However, we make it clear that while interpreting this word, the Court or the Tribunal or the authorities have to keep in mind the facts of the particular case. When we have held "a" cannot be read as singular, it also cannot be read as multiples and so as to avoid paying tax under Section 45 of the Act. Therefore, in the facts and circumstances of this case, we answer the first substantial question of law raised in favour of the assessee and against the Revenue."*

11. *We further find that the Hon'ble High Court of Madras in the case of CIT Vs. Smt. V. R. Kampagn had further clearly held in context of a similar amendment that was made available to Sec.54F, that the same was effective from 01.04.2015, which thus made it clear that prior to the said amendment the assessee was entitled the claim deduction in respect of investments made in more than one*

residential house. We find that a similar view had also been taken by the Hon'ble High Court of Andhra Pradesh in the case of CIT Vs. Syed Ali Adil (2013) 352 ITR 418 (AP).

12. We have given a thoughtful consideration to the facts of the case in context of the issue under consideration. We are of the considered view that in the backdrop of our aforesaid observations and the judgment of the Hon'ble High Courts as had been deliberated upon by us hereinabove, it can safely be concluded that prior to A.Y 2015-16 no restriction was placed by the legislature in respect of investments in the residential houses that an assessee could make for claiming deduction under Sec. 54 of the Act. We thus are of the view that the claim of deduction raised by the assessee under Sec. 54 in respect of investment made towards purchase of residential house at Mumbai and Pune was well in order. We thus in context of the issue under consideration set aside the order of the CIT and uphold the claim of deduction as was raised by the assessee. The Grounds of appeal Nos. 1 to 3 are allowed in terms of our aforesaid observations. The Ground of appeal No. 4 being general in nature is dismissed as not pressed.

13. The appeal of the assessee is allowed."

4.1. We find that the reliance placed by the Id. CIT(A) on the Special Bench decision of this Tribunal in the case of ITO vs. Sushila M Jhaveri reported in 107 ITD 327 is not applicable to the facts of the instant case in view of the decision of Hon'ble Karnataka High Court referred to in the order of this Tribunal supra. Moreover, we find that the Section 54 of the Act uses the expression "a residential house". This expression has been interpreted by the Courts to include investment being made in residential house / houses in order to be eligible to claim deduction u/s.54 of the Act and it does not restrict the claim of deduction u/s.54 of the Act to one house only. We also find that the amendment which had been brought in the Act is only w.e.f. A.Y.2015-16 and cannot be made applicable to the year under consideration as has been held in the aforesaid decision supra. Hence, by all force, we hold that assessee is entitled for deduction u/s.54

of the Act in the instant case. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 11/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

11/09/2019

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai