

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.740/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Ranjana Ajay Chikhale,
B-1502, Mansarovar,
Nilkanth Heights,
Pokhram Road, Road No.2,
Thane, Navi Mumbai.

..... अपीलार्थी /
Appellant

PAN : AGCPC2852J.

बनाम v/s

The Income Tax Officer,
Ward 1, Panvel.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Shrinivas Venkatraman.

Revenue by : Shri Dinesh R. Pardeshi.

सुनवाई की तारीख / Date of Hearing : 11.09.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
---	---

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 2, Pune, dated 01.03.2019 for A.Y. 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual who filed his return of income for A.Y. 2014-15 declaring total income at Rs.Nil. The return was initially processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act

vide order dated 30.11.2016 and the total income was determined at Rs.39,16,385/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dt.01.03.2019 (in appeal No.522/2017-18) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. The Learned CIT appeals erred in sustaining the additions made by the Assessing Officer merely on the basis that the assessee has not joined the two residential flats to make one residential house property without appreciating the judicial precedents.

2. The learned Assessing Officer erred in relying on the decision in case of Sushila M. Jhaveri, wherein the facts are completely different from the present case.

3. The learned CIT Appeals erred in not appreciating the fact that the amendment made in section 54F of the Income Tax Act, 1961 is applicable prospectively and not retrospectively.”

3. All the grounds being inter-connected are considered together.

3.1. During the course of assessment proceedings assessee had sold a plot of land at Nagpur for a sale consideration Rs.85,00,000/- on 23.01.2012 and re-invested the amount for purchasing of two residential houses i.e., Flat No.505 and 506, Building No.14, Mohan Palms, Badlapur, Mumbai and had claimed deduction u/s 54F of the Act for both the residential flats. On perusal of the records, AO found that both the flats are adjacent flats which are not covered into one house and accordingly, he had restricted the claim of deduction u/s 54 of the Act of assessee on one house only by holding that as per the provision of section 54F of the Act, deduction will be given for investment in one of the residential units only. When the matter was

carried before Ld.CIT(A), he confirmed the action of AO holding that assessee is not entitled for deduction u/s 54F on two flats.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

4. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee had purchased two adjoining residential units for residential purposes. It was further submitted that the amendment in Section 54F made by the Finance (No.2) Act, 2014 was w.e.f. from 01.04.2015 i.e., from A.Y. 2015-16 onwards which made the restriction on purchase or construction to one residential house in India meaning thereby that prior to the amendment even on purchase of more than one residential house assessee was eligible to claim deduction. Ld.A.R. relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Gita Duggal wherein it was held that Section 54F the I.T.Act does not require the residential property to be built in a particular manner. Ld.A.R. further submitted that the issue is covered by the decision of Hon'ble Madras High Court in the case of CIT Vs. Gumanmal Jain reported in (2017) 394 ITR 666. From the copy of the decision of Hon'ble Madras High Court, he pointed that the Madras High Court in the case of Gumanmal Jain (supra) has considered the amendment made to Sec.54F of the Act by the Finance Act No.2 of 2014 and after considering the amendment, it has held that prior to the amendment, residential house would include multiple flats / residential house and has held that as long as flats are in the same address/location even though they are located in different blocks / buildings, it was not disentitle the assessee from getting the benefit of deduction u/s 54F of the Act. He therefore relying on the aforesaid

decisions submitted that assessee be allowed the claim u/s 54F of the Act. Ld. D.R. on the other hand, supported the order of lower authorities.

5. I have heard the rival submissions and perused the material on record. It is an undisputed fact that assessee had sold a plot for a consideration of Rs.85,00,000/- and had re-invested the same in purchasing two residential units, being adjoining residential units. It is an undisputed fact that the aforesaid two flats purchased by the assessee are in the same building. It is Revenue's contention that u/s 54F, assessee is eligible for deduction only on one unit and not on two residential units. I find that Hon'ble Madras High Court after considering the amendment made to Sec.54F of the Act by the Finance (No.2) Act, of 2014 has held that even if the flats/apartments were in different blocks/buildings and so long as they are at the same location/address, assessee was eligible for deduction u/s 54F of the Act prior to 01.04.2015. It had further held that prior to the amendment made by the Finance Act (No.2) Act, 2014 w.e.f. 01.04.2015 (from A.Y. 2015-16 onwards), the residential house would include multiple flats / residential units. Before me, Revenue has not pointed out any contrary binding decision in its support. I therefore considering the fact that the impugned year being A.Y. 2014-15 wherein the amendment made by Finance (No.2) of Act, 2014 would not apply and relying on the aforesaid decision of the Hon'ble Madras High Court in the case of Gumanmal Jain (supra), am of the view that assessee is eligible for deduction u/s 54F of the Act on both the flats. I thus hold so. **Thus, the grounds of assessee are allowed.**

6. **In the result, the appeal of assessee is allowed.**

Order pronounced on 16th day of October, 2019.

Sd/--

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 16th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Pune.
4. The PCIT – 2, Thane.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक सदस्य” /
DR, ITAT, “SMC” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.