



IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT

BEFORE SHRI AMARJIT SINGH, JM & SHRI O.P.MEENA, AM

**ITA No.180/SRT/2017
(Assessment Year 2013-14)**

Hemant Ishwarlal Desai 305-306, Mahima Heights, Nr. Shardayatan School, Chandani Chowk, Surat-395007.		Dy. Commissioner of Income Tax Circle-3(1) Aayakar Bhavan, Majura Gate, Surat.
PAN/GIR No.ABKPD0745Q		
Appellant)	..	Respondent)

Assessee by	Shri Rasesh Shah
Revenue by	Ms. Smitha V. Nair (Sr. DR)
Date of Hearing	23/10/2019
Date of Pronouncement	27/11/2019

ORDER

PER AMARJIT SINGH (J.M):

The assessee has filed the present appeal against the order dated 10.08.2018 passed by the Commissioner of Income Tax (Appeals) –3, Majura Gate, Surat [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

2. The assessee has raised the following grounds: -

- (I) On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of AO in partly disallowing Rs.55,28,214/- claimed by the assessee as deduction u/s 54F of the I. T. Act, 1961.
2. It is therefore, prayed that the above disallowance made by assessing officer and confirmed by Ld Commissioner of Income Tax (Appeals) may please be deleted
3. Appellant craves leave to add, alter or delete any grounds either before or in the course of hearing of the appeal.”

3. The brief facts of the case are that the assessee filed his return of income on 29.07.2013 showing total income to the tune of Rs.3,13,39,100/- for the A.Y. 2013-14. The assessment was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee has earned income from Salary, Long Term Capital gain and income from other sources. On verification, it was found that the assessee along with 03 other Co-owners have sold immovable property situated at F.P.61, T.P.6 (Vesu), R.S. 246, Old R.S. 436, Surat, at a total consideration of Rs.13,51,52,760/- on 15.01.2013. Out of total



sale consideration of Rs.13,51,52,760/- assessee has received Rs.3,37,88,190/- The assessee has purchased 03 immovable properties during the year under consideration which are as under:-

- (i) Residential flats No.305 & 306, in Mahima Height, at Chandani Chowk, Piplod Surat.
- (ii) Agricultural land FP-82A at Bamroli, Surat.
- (iii) Agricultural land TP-72 and 73A-B at Bamroli, Surat.

The assessee invested a sum of Rs.1,21,64,154/- in House Property and claimed deduction u/s 54F of the Act of Rs.1,10,56,427/-. Notice was given and after the reply of the assessee, the claim of the assessee was declined because the Section 54 of the Act allows to purchase one residential property. Accordingly, 50% investment in sum of Rs.55,28,214/- was disallowed and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.3,69,90,680/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the addition, therefore, the assessee has filed the present appeal before us.

ISSUE Nos.1 & 2

4. Under these issues the assessee has challenged the disallowance u/s 54F of the Act in connection with the one residential flat of Rs.55,28,214/-. At the very outset, the Ld. Representative of the assessee has argued that the issue has squarely covered by the decision of the Hon'ble ITAT in case titled as **ACIT-16(1) Vs. Ms. Pooja Bedi in ITA. No.4708/Mum/2017 dated 29.03.2019**, therefore in the said circumstances, the claim of the assessee is liable to be allowed. It is specifically argued that the assessee purchased two Units of flats Bearing No.305 & 306 in Mahima Height, at Chandani Chowk, Piplod Surat and converted into the single unit and accordingly the assessee claimed the exemption u/s 54 of the Act but the CIT(A) has wrongly declined the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable and is liable to be set aside and the claim of the assessee is liable to be allowed. However, on the other hand, the Ld. Representative of the revenue has refuted the said contention. The factual position is not in dispute. The assessee along with the 3 co-owners have sold the immovable properties situated at F.P.61, T.P.6 (Vesu), R.S. 246, Old R.S. 436, Surat, at a



total consideration of Rs.13,51,52,760/- on 15.01.2013. Out of total sale consideration in sum of Rs.13,51,52,760/-, assessee has received the share in sum of Rs.3,37,88,190/-. Subsequently, the assessee invested the said amount in 3 properties mentioned as under:-

- (i) Residential flats No.305 & 306, in Mahima Height, at Chandani Chowk, Piplod Surat.
- (ii) Agricultural land FP-82A at Bamroli, Surat.
- (iii) Agricultural land TP-72 and 73A-B at Bamroli, Surat.

The Assessing Officer declined the claim of the assessee on the basis of this fact that the assessee purchased the two flats bearing no. 305 & 306 in Mahima Height, at Chandani Chowk, Piplod Surat and according to section 54 of the Act, the assessee is only entitled to claim u/s 54 of the Act to the extent of one flat only. Accordingly, 50% of the total amount in sum of Rs.55,28,214/- has been disallowed. No doubt the finding of the AO has been confirmed by CIT(A). It is to be seen whether the assessee is entitled to get the exemption u/s 54 of the Act in connection with the above mentioned flats. The facts are not disputed that the assessee has converted two flats into one and invested a sum of Rs.1,21,64,154/-. On the similar facts and circumstances, the Hon'ble ITAT has decided the issue in favour of the assessee in **ITA. No.4708/Mum/2017 dated 29.03.2019**. The relevant finding is hereby reproduced as under:-

"4. All the issues are in connection with the allowance of claim of the assessee u/s 54 of the Income Tax Act, 1961 in respect of both the property i.e. (1) Flat at Chirarichem Bar, Village Anjuna, Goa Rs.2,26,03,562/-(2) Flat at Candolim Apartment, Bardez- Goa Rs.46,51,562/-. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"4.2 I have considered the appellant's submission. Appellant had sold a property and claimed exemption u/s. 54 of Long Term Capital Gain for two residential houses. However, AO had allowed the claim only for one residential house and disallowed the claim u/s.54 for the second residential house for Rs.46,51,562/.

4.3 During the course of appellate proceedings, appellant had relied on the decision of Hon'ble TAT, 'C' Bench, Mumbai in the case of Nilesh Pravin Vora and Yatin Pravin Vora vs. ITO (ITA No.2219/Mum/2013 dated 28.10.2015) wherein in para 5 it is held as under:-

"5. The facts being similar, following the same reasoning the Assessing Officer is directed to allow the claim of the assessee with respect to two flats purchased by the assessee as discussed above. It is pertinent to mention here that the Hon'ble Madras High Court, in the case of CIT v. V. R. Karpagam MANU/TN/1390/2014: (2015)373 ITR 127 (Mad), has clearly held that the amendment to provision of section 54F is effective from April 1, 2015, which makes it clear that benefit of section 54F will be applicable to one residential house in India. Prior to the amendment it was clear that a residential house would include multiple residential



ITA No. 180/SRT/2017
A.Y.2013-14

units." Similar view was held by Hon'ble TAT, Delhi in the case of Brij Bhushan Tayal vs. ACIT.Circle-19(1) (ITA No.3272/DELJ/2014 dated 13.10.2016). In the above two cases of Hon'ble ITAT, it is held that appellant is eligible for claim u/s.54 prior to the amendment for more than one residential house. In the present case, appellant had sold the property before the amendment which was effective from 01.04.2015. Respectfully following the decisions of Hon'ble ITAT, Mumbai in the case of Nilesh Pravin Vora and Yatin Pravin Vora vs. ITO (supra) and Hon'ble ITAT, Delhi in the case of Brij Bhushan Tayal vs. ACIT.Circle-19(1) (supra), appellant's claim for deduction u/s.54 in respect of two residential houses is allowed. Accordingly, AO's disallowance of Rs.46,51,562/- relating to flat at Candolim Apartment, Bardez — Goa is deleted and ground of appeal is allowed."

5. On appraisal of the above said finding, we noticed that the Hon'ble ITAT has decided the matter of controversy on the basis of decision of Hon'ble ITAT in the case of Nilesh Pravin Vora and Yatin Pravin Vora Vs. ITO in ITA. No.2219/M/2013 dated 28.10.2015. The relevant finding has been given by the Hon'ble ITAT in its order. However, at the time of arguments, the Ld. Representative of the assessee has also placed reliance upon the decision of the Hon'ble ITAT in the case of Mr. Ravi Shankar Vs. ACIT dated 17.01.2018. The relevant finding has been given in para no. 9 to 12 which is hereby reproduced 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 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. 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. Rukminiamma 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 there to. 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 (Karn)). " 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."

5. On appraisal of the above mentioned finding, we noticed that the matter of controversy has been decided by Hon'ble ITAT on the basis of the decision of Hon'ble ITAT in the case of **Nilesh Praving Vora Vs. ITO in ITA.**



ITA No. 180/SRT/2017

A.Y.2013-14

No.2219/M/2013 and Mr. Ravi Shankar Vs. ACIT. Further, we find that the case of the assessee pertains to the A.Y.2013-14 and the amendments in Section 54F of the Act came into the existence by virtue of Finance Act (no.2) 2014 w.e.f. 01.04.2015. The said amendment is not applicable in the case of the assessee retrospectively because the case of the assessee belongs to the A.Y. 2013-14. Accordingly, the investment can be done in the residential properties where the limit has not been specified. After the amendment, the exemption u/s 54F of the Act has been confined with a single unit of the residential flat. Moreover, we also find support of the decision in the case of **CIT Vs. D. Ananda Basappa (SLP) 320 ITR 19 (SC)**, **CIT Vs. JeoB. Fernandes (SLP) 322 ITR 8**, **CIT Vs. Gita Duggal (357 ITR 153)**, **CIT Vs. Devdas Naik 366 ITR 12 (Bom HC)** and **Tilokchand & Sons Vs. ITO (105 taxmann.com 151 (Mad HC)**. Taking into account all the facts and circumstances of the case, we set aside the finding of the CIT(A) on these issues and allowed the claim of the assessee. Accordingly, we decide these issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on this 27/11/2019

Sd/-

Sd/-

(O. P. MEENA)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

सुरत/ Surat, Dated: 27/11/2019/Vijay Pal Singh, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat