

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.982/Del/2017
Assessment Year: 2012-13**

**Rajendra Joshi
B-707, Gatway Apartments,
Sector 51
Noida 201301
PAN No AFRPJ1417L
(Appellant)**

**vs ITO
Ward – 68(2)
New Delhi**

(Respondent)

**Assessee by: Shri Abhishek Mathur, Adv
Department by: Sri Saras Kumar, Sr. DR.**

**Date of Hearing: 06-08-2020
Date of Pronouncement: 14-08-2020**

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 30/11/2016 by the learned Commissioner of Income Tax (Appeals)-32, New Delhi (“Ld. CIT(A)”), in the case of Mrs. Rajendra Joshi (“the assessee”), for the assessment year 2012-13, assessee filed this appeal.

2. Brief facts of the case are that the assessee is an individual and employee of M/s GAIL (India) Ltd. She filed her return of income for the assessment year 2012-13 on 17/7/2012 declaring an income of Rs. 18, 01,752/- under the heads of salary, capital gain and other sources.

Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was complete by order dated 30/3/2015 by making addition of Rs. 39,63,524/- by disallowing the exemption claimed by the assessee under section 54 of the act with regard to the Long Term Capital Gain (LTCG) of sale of residential property, on the ground that the old property was sold in the month of August, 2011 whereas the new property was booked in February, 2012 which was proposed to be completed by December, 2014, i.e., beyond a period of more than 3 years from the date of sale of the house property and therefore the long term capital gains claimed exemption under section 54 of the Act was liable to be added back to the income of the assessee.

3. Assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A) followed the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Kuldeep Singh (2014) 270 CTR 0561 and held that the stipulation in the agreement in respect of proposed date of completion not be construed to reject the claim of deduction under section 54 of the Act. Ld. CIT(A), however, noted that section 54 (2) of the Act stipulates that any amount of capital gain which is not appropriated by the assessee towards purchase of new asset, shall be deposited before furnishing the return of income in an account in a bank and utilised in accordance with a scheme of the government, that is, capital gains account scheme. It was pleaded on behalf of the assessee that due to lack of knowledge the assessee failed to deposit the unutilised amount of capital gain of Rs. 30,10,974/- out of the total capital gain of Rs. 39,63,524/- in capital gain on account scheme, 1988 by the due date of filing of the return of income. Reliance was placed on the decision

of the Hon'ble Karnataka High Court in the case of CIT vs. K.Ramachandra Rao 271 CTR 522.

4. Ld. CIT(A), however, did not agree with the submissions made on behalf of the assessee and while following the decision of the Hon'ble Bombay High Court in the case of Humayun Sulaiman Merchant vs. CCIT (2016) and reached a conclusion that since the assessee failed to deposit the unutilised abortion under the capital gains scheme before the filing of the return, no claim of deduction under section 54 of the Act could be allowed. On this count, Ld. CIT(A) confirmed the addition to the tune of Rs. 30,10,474/- .

5. Aggrieved by the action of the Ld. CIT(A), assessee preferred this appeal stating that the Ld. CIT(A) failed to appreciate the fact that the issue on the basis of which the addition to the tune of Rs. 30,10,474/- was sustained was never raised by the learned Assessing Officer during the course of assessment proceedings and was not the subject matter of the appeal before him and therefore, such an action cannot be sustained. It is further contended that when two views of two different high courts are available before the Ld. CIT(A), namely, one view expressed in the case of Ramachandra Rao (supra) of Karnataka High Court and the other review expressed by the Bombay High Court in the case of Humayun Sulaiman (supra), without assigning any reasons Ld. CIT(A) rejected the view taken in the case of Ramachandra row (supra), instead of considering the view favourable to the assessee.

6. Nextly, it is contended by the Ld. AR that by 30/08/2014 i.e., before the expiry of 3 years from the date of the sale of old asset, the assessee paid an amount of Rs. 46,65,220/-. He further submitted that the date of filing written off income under section 139(1) of the Act for the purpose of utilisation of the amount for purchases/construction of residential house has to be construed with reference to the due date prescribed for filing the return of income under section 139(4) of the Act, and in that case before such date under section 139 (4) of the Act the assessee made payment to the tune of Rs. 39,28,307/- and therefore, the assessee is entitled to claim the benefit of section 54 of the Act. Reliance is placed on the decision of a coordinate Bench of this Tribunal in the case of Smt. Vatsala Asthana vs. ITO in ITA No. 5635/del/2016 for the assessment year 2012-13 vide order dated 06/08/2019.

7. Per contra, Ld. DR placed reliance on the decision of the Bombay High Court in the case of Humayun Sulaiman Merchant (supra) and on that basis justified the order under challenge. According to him section 54F (4) of the Act itself clearly states that the amount not utilised in purchases/construction of flat/home should be deposited in the specified bank notified by the government and that the provision of section 54F (4) of the Act are very clear and there is no ambiguity, and therefore, there is no occasion to play any liberal/beneficial construction while integrating this particular section.

8. Facts are simple and admitted. Assessee sold the property for Rs. 50 Lacs whereas its indexable cost of acquisition was Rs.

10,36,476/- resulting in the capital gains at Rs. 39,63,524/-. Assessee entered into an agreement on 25/02/2012 for purchase of a residential flat, as per which the construction of plot was to be complete by December 2014. Assessee claims to have made payments to the tune of Rs. 39,28,307/- by the time allowable for filing the revised return of income under section 139 (4) of the Act.

9. Assessee is placing reliance on the decision of a coordinate Bench of this Tribunal in the case of Smt. Vatsala Asthana (supra) in support of the contention that for the purpose of utilisation of the amount for purchases/construction of residential house, the date of filing of return of income under section 139 (1) of the Act has to be construed with reference to the due date prescribed for filing return of income under section 139 (4) of the Act. Relevant portion of the said decision needs to be extracted for the sake of ready reference and it reads thus,-

15. Regarding the payment made by the assessee before 31/03/2014, Hon'ble High Court of Rajasthan in the case of Shankar Lal Saini (supra) held that, where assessee, an individual deposited unutilized sale consideration in capital gains scheme within the due date of filing of belated tax return under section 139(4), the capital gains relief under section 54F of the Act would be allowable. In the case of K. Ramachandra Rao (supra), the Hon'ble Karnataka High Court held that assessee having invested entire sale consideration in construction of residential house within three years from the date of the transfer, he could not be denied exemption under section 54F on the ground that he did not deposit said amount in capital gains account scheme before due date prescribed under section 139(1) of the Act. In the case of Kishore H Galaya (supra), the coordinate bench has held that the date of filing return of income under section 139(1) for the purpose of utilization of the

amount for purchase/construction of residential house has to be construed with respect to the due date prescribed for filing return of income under section 139(4) of Act. The relevant finding is reproduced as under:

"Amount exceeding capital gains arising from sale of old residential house having been paid by assessee to a builder within three years for construction of new residential house, assessee was entitled to exemption under s. 54 notwithstanding that assessee obtained possession after three years and also failed to deposit capital gains in the capital gains account scheme before due date of filling return of income under s. 139(1) for relevant year."

16. In view of the above decisions, the payment made by the assessee towards purchase of residential house up to the due date of filing of the return of income prescribed under section 139(4) of the Act i.e. 31/03/2014 is allowable for considering deduction under section 54F of the Act. Respectfully, following the above decisions, we accordingly direct the Assessing Officer to consider amount utilized by the assessee for purchase of the house till 31/03/2014(which includes the payment of Rs.50,36,422/- made up to 31/07/2012) for deduction under section 54F of the Act.

10. Respectfully following the above decision rendered by a coordinate Bench of this Tribunal in the light of the decision of the Hon'ble Karnataka High Court in the case of K.Ramachandra Rao (supra), we are of the considered opinion that in case the assessee paid the amount equivalent to or more than the capital gains derived in the sale transaction of the house, the assessee is entitled to claim the relief under section 54F of the Act.

11. In the circumstances, we set aside the impugned order and direct the assessing officer to consider the amount utilised by the assessee for purchase of the house till the time allowable under

section 139 (4) of the Act for filing the revised return, for deduction under section 54F of the Act.

12. In the result, appeal of the assessee is allowed in part.

Order pronounced in the Open Court on 14th August, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 14th August, 2020.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT NEW DELHI**

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