

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT AND
SHRI N. K. PRADHAN, ACCOUNTANT MEMBER
ITA No.2311/Mum/2019 (Assessment Year 2013-14)

ACIT- 35(1), Room No.902, 9 th Floor, Kautilya Bhawan, G. Block, BKC, Bandra(E), Mumbai-400051.	Vs.	Shri Himanshu Chakrawarti, 2207/2208, Ashok Towers, Tower 'D', Dr. S. S. Rao Road, Parel, Mumbai-400012. PAN: ACGPC5033K
--	-----	---

Appellant

Respondent

Appellant by

: Shri R. Bhoopathi (DR)

Revenue by

: Shri Dr. K. Shivaram with
Shri Rahul Hakani (AR)

Date of Hearing

: 21.10.2020

Date of Pronouncement

: 11.01.2021

ORDER

PER MAHAVIR SINGH, VICE-PRESIDENT;

1. This appeal by revenue is arising out of the order of Commissioner of Income Tax (Appeals)-46, Mumbai [for short 'the Id. CIT(A)] in Appeal No. CIT (A)-46/ACIT-35(1)/298/2016-17 order dated 31.01.2019. Assessment was framed by the ACIT Circle-35(1), Mumbai for Assessment Year 2013-14 vide his order dated 30.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').
2. The only issue in this appeal of revenue is against the order of CIT(A) for allowance of exemption under section 54 of the Act in regard to the capital gains arising out of sale of flat invested in the flat situated at Crescent Bay

apartments at Parel, Mumbai. For this revenue has raised following effective grounds 1 & 2.

- 1. On the facts and in circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the assessee had made payment of Rs. 1,06,85,199/- in Crescent Bay Flat, Mumbai and has deposited Rs. 319050001/- in the Capital Gain Account Scheme for the A. Y 2013-14 and hence only Rs. 42590199/- is eligible for the exemption u/s. 54 of the Act.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that relief allowed by him has reduced the total income of the assessee as against the returned income offered for the A. Y 2013-14.*
3. Brief facts are that the assessee is an individual and during the year under consideration sold a house property vide agreement dated 01.11.2012 for a consideration of Rs. 6.5 crores on which capital gain of Rs. 5,35,39,112/- arose. The assessee before the Assessing Officer as well as before CIT(A) claimed that he has purchased a residential house being Flat No. 3604 in Crescent Bay apartments at Lower Parel, Mumbai for a total consideration of Rs. 5,45,52,225/- and thus invested this amount in purchase of house under allotment vide letter dated 05.01.2013 and formal agreement was executed and registered on 01.01.2014. It was claimed by the assessee before the Assessing Officer that the cost of residential house was more than the amount of capital gains and the amount of capital gain which was not appropriate towards the purchase cost of the new residential house till the due date of filing of return of income, was deposited in a separate capital gain account opened for this purpose. The Assessing Officer while framing assessment under section 143(3) of the Act allowed exemption under

section 54 of the Act on the claim of Rs. 37,80,170/- against the purchase of house property at Lucknow. However, the Assessing Officer has not considered or allowed exemption under section 54 of the Act in regard to purchase of house by assessee i.e. residential house at Crescent Bay project at the cost of Rs. 5.45 crores. The Assessing Officer restricted the claim to the extent of Rs. 37,80,170/- invested in purchase of flat at Nirala Nagar, Lucknow by observing as under:

The assessee deducted the amount of Rs. 4,96,70,369/- from the net capital gains of Rs. 5,35,39,112/- towards the claim of Sec 54 deduction and paid tax on the balance sum of Rs.38,68,743/.

On closer examination of the computation, it becomes clear that assessee has unduly availed all the monies invested in different projects/ flat/ account as deduction from net capital gains to reduce his tax liability. Hence vide order sheet noting dated 17.02.2016, the assessee was show-caused to explain why balance capital gains remaining after executing the purchase agreement for purchase of flat at Nirala Nagar, Lucknow for a consideration of 37,80,170/- was not offered to tax as Sec 54 allows deduction towards purchase of only one house property which was exhausted when the agreement for the Lucknow flat was executed. Moreover, depositing the sum of Capital gains accrued in a Capital Gains account as per Capital Gains Scheme, 1988, is envisaged only if the capital gains remains unutilized at the time of filing of return whereas in the case of the assessee, the Lucknow agreement had already been executed by 29.07.2013 Moreover, the assessee cannot claim deduction towards monies invested in projects when a house property (Lucknow) has already been purchased. Hence after accounting for the purchase consideration of the Lucknow flat, the balance capital gains as computed below is added to the total income of the assessee for the A.Y 2013-14.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) after considering the submission of assessee and going through the facts that

the assessee has purchased a residential flat in Crescent Bay apartment at Parel, Mumbai on 04.12.2012 by making a payment of Rs. 11,00,000/- initially and thereby further making payments as scheduled below:

DATE	NAME OF BANK	GROSS AMOUNT	BANK CHARGES	NET PAID
06.12.2012	HSBC BANK	1,100,000	-	1,100,000
05.01.2013	HSBC BANK	9,585,199	-	9,585,199
25.09.2013	SBI CAPITAL GAIN A/C	6,173,753	12,733	6,161,020
17.12.2013	SBI CAPITAL GAIN A/C	545,578	56	545,522
17.12.2013	SBI CAPITAL GAIN A/C	2,728,056	56	2,728,000
	Stamp duty paid			
19.12.2013	SBI CAPITAL GAIN A/C	2,891,039	56	2,891,039
24.12.2013	HSBC BANK	35,240	-	35,240
04.12.2013	SBI CAPITAL GAIN A/C	2,828,807	56	2,828,751
07.05.2014	SBI CAPITAL GAIN A/C	3,111,681	56	3,111,625
10.07.2014	SBI CAPITAL GAIN A/C	3,111,681	56	3,111,625
10.09.2014	SBI CAPITAL GAIN A/C	3,111,681	56	3,111,625
01.12.2014	SBI CAPITAL GAIN A/C	3,111,681	56	3,111,625
26.03.2015	SBI CAPITAL GAIN A/C	3,111,681	56	3,111,625
14.06.2015	TDS-HSBC BANK	124,465	-	124,465
14.06.2015	TDS-HSBC BANK	31,117	-	31,117
16.06.2015	TDS-HSBC BANK	118,808	-	118,808
23.06.2015	TDS-HSBC BANK	31,117	-	31,117
26.06.2015	HSBC BANK	3,080,509	-	3,080,509
06.08.2015	TDS-HSBC BANK	31,264	-	31,264
14.08.2015	HSBC BANK	3,095,124	-	3,095,124
06.11.2015	HSBC BANK	3,095,124	-	3,095,124
28.11.2015	TDS-HSBC BANK	31,264	-	31,264
05.02.2016	HSBC BANK	<u>3,099,580</u>	-	3,099,580
		54,184,449	13,237	54,171,212

5. The CIT(A) finally allowed the claim of assessee vide para-6.6 as under:

6.1.6. *Since the appellant had invested in the flat situated at Crescent Bay Apartment at Parle, Mumbai first and it was the choice of the appellant to*

claim exemption on one flat. The investment in flat at Crescent Bay Apartment Parle, Mumbai fulfilled all the necessary conditions which are required for claiming exemption u/s. 54. Therefore, the AO is directed to allow exemption u/s. 54 in respect of flat situated at Crescent Bay, Parle, Mumbai and re-compute the long term capital gain after taking value of investment in the flat at Crescent Bay Apartment, Parle, Mumbai.

6. Aggrieved, the revenue came in appeal before the Tribunal.
7. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has sold a house property for a consideration of Rs. 6.50 crore on which a capital gain of Rs. 5,35,39,112/- was realized. This fact is undisputed. It is also a fact that assessee has booked a residential flat in Crescent Bay apartments at Parel, Mumbai by making an application money of Rs. 11,00,000/- to M/s L&T Parel Project LLP by cheque no. 622032 dated 04.12.2012 on 04.12.2012. The assessee has also made further payments i.e. earnest money of Rs. 95,85,199/- by cheque no. 622039 dated 08.01.2013 in favour of M/s L&T Parel Project LLP. Accordingly, an allotment letter-cum-agreement was entered into between the builder M/s L&T LLP and the assessee on 05.01.2013 made the payments as reproduced in above paragraph and a schedule is given above paragraph no.4. It is also a fact that the property at Lucknow was purchased vide agreement executed by assessee on 29.07.2013, which is later date. Original purchase was of residential flat in Crescent Bay apartments at Parel, Mumbai. It is a fact that the assessee has kept the money either in capital gain account scheme or made part payment

for purchase of residential flat in Crescent Bay apartments at Parel, Mumbai and this has a direct nexus that the consideration received from sale of residential property was invested in purchase of this property. Hence, it is the choice of the assessee to claim exemption on one flat and CIT(A) rightly restricted the same to the investment made in purchase of residential flat at Crescent Bay apartments at Parel, Mumbai. The CIT(A)'s direction to the Assessing Officer is perfectly within the provisions of law. We find no infirmity in the order of CIT(A) and hence, the same is confirmed.

8. In the result, appeal of revenue is dismissed.

Order pronounced in the open court on 11.01.2021

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
MAHAVIR SINGH
VICE - PRESIDENT

Mumbai, Date: 11.01.2021

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "H" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai