

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1139/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Amit B. Chaudhari "Shushanti", Plot No.349, Lane No.4, Mahatma Society, Kothrud, Pune – 411038 PAN : AARPC5118Q	Vs.	ITO, Ward 4(5), Pune
Appellant		Respondent

Assessee by Shri Kishor B. Phadke
Revenue by Shri S.P. Walimbe

Date of hearing 11-08-2021
Date of pronouncement 11-08-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Pune on 09-12-2016 in relation to the assessment year 2012-13.

2. The only issue raised in this appeal is against the denial of exemption u/s 54F of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. Briefly stated, the facts of the case are that the assessee filed his return declaring total income of Rs.3,20,401. During the course of the assessment proceedings, it was observed by the AO that the

assessee entered into a Development agreement on 30.09.2011 with M/s. Srishti Developers in respect of residential property situated at Plot No.37, S.No.125/1B, Girija Co-operative Housing Society, Paud Road, Kothrud, Pune. The transaction under the Development agreement took place between Shri Bhaskar Chaudhari, the assessee's father, the legal owner of the property and M/s. Srishti Developers for sum of Rs.2,70,50,000. The assessee signed as consenting party and received a sum of Rs.60 lakhs through cheque from M/s Srishti Developers under clause 3(A) of the development agreement. This amount was offered as Long term capital gain and thereafter exemption was claimed u/s 54F on depositing the equal amount in Capital gain account scheme with the concerned bank. On being called upon to explain as to on what account the sum of Rs.60 lakh was received, the assessee submitted that his father wanted to sell the property, including the floor which he was occupying for last more than ten years, to which, he was not agreeable. Eventually, the assessee agreed to vacate the premises in lieu of a consideration of Rs.60 lakhs which was received on account of surrender/relinquishment of right to occupy the property which was in the nature of a capital asset u/s 2(14) of the Act. The AO found

that the assessee was not a legal owner of the property, for which a consideration of Rs.60 lakhs was shown to have been received by him. He refused to accept Rs.60 lakhs as consideration for transfer of any capital asset. Resultantly, the exemption u/s 54F was denied. The Id. CIT(A) echoed the assessment order on this point.

4. We have heard both the sides through Virtual Court and gone through the relevant material on record. There is no dispute on the fact that the property in question was in the name of assessee's father and the assessee was staying along with his family on the first floor of the building for the last more than 10 years. The assessee's father wanted to transfer the property to M/s. Srishti Developers, which was objected to by the assessee. Eventually, the assessee agreed for the transfer by acting as consenting party on receipt of Rs.60 lakhs in lieu of vacating the first floor. The MoU entered into between the assessee's father and M/s. Srishti Developers clearly records this fact that a sum of Rs.60 lakhs was given by cheque by the Developer to the assessee. Under such circumstances, a question arises as to whether the authorities below were justified in treating the sum of Rs.60 lakhs as 'Income from other sources' in the hands of the

assessee and thereby denying the benefit of exemption u/s 54F of the Act.

5. On an earlier occasion when this appeal came up for hearing before the Tribunal, the ld. DR was directed to verify from the AO of assessee's father as to how the transaction of Rs.60 lakhs was reflected and assessed in his assessment. The ld. DR, on information from the AO of the assessee's father, stated today in the open court, that his father reduced a sum of Rs.64 lakhs from the stamp value with the remarks "Cost of selling", including a sum of Rs.60 lakhs given to the assessee by the developer directly through cheque and that further the claim of deduction of Rs.64 lakhs got accepted and no addition of Rs.60 lakhs was made on this score. It, therefore, emerges that the total consideration of Rs.2.70 crores was received in two parts, namely, Rs.60 lakhs by the assessee and the remaining amount by his father. The assessee's share was on account of vacating the premises which he was occupying for last more than 10 years. The right to occupy the first floor of the property constitutes a 'capital asset' u/s 2(14) of the Act. On transfer of this right, the assessee received a sum of Rs.60 lakhs which was duly offered as Long term capital gain. Once the AO of the assessee's father

accepted the transaction as correct in accordance with MoU, there can be no question of disputing the same transaction in the hands of the assessee. Here is a case in which the assessee correctly showed a sum of Rs.60 lakhs as full value consideration for the transfer of capital asset and deposited the said amount in Capital gain account scheme for exemption of claim u/s 54F. Considering the totality of the facts and circumstances of the case, it is evident that the amount of Rs.60 lakhs was received by the assessee as consideration for transfer of his right to occupy the property. As such, we are unable to give any other colour to the transaction, which has been accepted by the Department as such in the hands of the assessee's father. Even if for a moment, it is accepted that the sum of Rs.60 lakhs was received by the assessee from his father not towards consideration for transfer of right to occupy the property, at the most, it would amount to a gift in his hands, which is again not chargeable to tax. The authorities below have characterized Rs.60 lakhs as income chargeable to tax under the head 'Income from other sources'. However, no specific clause of section 56 of the Act has been brought to our notice encompassing the prevailing situation within its purview. We, therefore, overturn the impugned order and hold that the assessee

rightly computed long term capital gain of Rs.60 lakhs and then claimed exemption u/s 54F of the equal amount.

6. The Id. AR has brought to our notice that for the A.Y. 2015-16, the assessee offered capital gain of Rs.17.69 lakhs on account of un-utilization of capital gain account scheme from this transaction to that extent.

7. In the result, the appeal is allowed.

Order pronounced in the Open Court on 11th August, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 11th August, 2021
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune
4. The Pr.CIT-2, Pune
5. DR, ITAT, 'A' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	11-08-2021	Sr.PS
2.	Draft placed before author	11-08-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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