आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./**I.T.A. No. 431/Chny/2018**
निर्धारण वर्ष/**Assessment Year:2008-09**

The Assistant Commissioner of Income Tax, Non Corporate Circle 18(1), Chennai 600 034.	Vs.	Shri B. Sundararajan, No. 34, Umapathy Street, West Mambalam, Chennai 600 033. **[PAN:AASPS3969C]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**I.T.A. No. 95/Chny/2018**
निर्धारण वर्ष/**Assessment Year:2008-09**

Shri B. Sundararajan, No. 34, Umapathy Street, West Mambalam, Chennai 600 033.	Vs.	The Deputy Commissioner of Income Tax, Non Corporate Circle 18(1), Chennai 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Mrs. V.S. Sreelekha, CIT
Assessee by	:	Shri N. Arjunraj, CA for Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing	:	08.09.2021
घोषणा की तारीख /Date of Pronouncement	:	16.09.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the cross appeals filed by the Revenue as well as assessee are directed against the order of the ld. Commissioner of Income Tax (Appeals) 15, Chennai, dated 31.10.2017 relevant to the assessment year 2008-09.

The only effective ground in this appeal raised by the Revenue is that the Ld. CIT(A) has erred in directing the Assessing Officer to allow the assessee's claim of deduction under section 54F of the Income Tax Act, 1961 (in short "the Act").

2. The appeal filed by the Revenue is delayed by one day, for which, the Revenue has filed a petition for condonation of the delay, to which; the ld. Counsel for the assessee has not raised any serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay of one day in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. When the appeals were taken up for hearing, at the outset, by filing copy of the order of the Tribunal in the case of ITO v. Smt. B. Vathsala in I.T.A. No. 1112/Chny/2019 dated 27.12.2019 for the assessment year 2008-09, the ld. Counsel for the assessee has submitted with regard to the claim of 54F of the Act that similar issue raised by the Revenue was subject matter in appeal before the Tribunal and prayed that the same order may be followed in the present case. On the other hand, the ld. DR strongly supported the assessment order.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including the case

law relied upon and relevant portions of the order of the Tribunal in the case of Smt. B. Vathsala [mother of Shri B. Sundararajan, assessee] are reproduced as under:

> *"2. Brief facts of the case are that the assessee filed her return of income for the assessment year 2008-09 on 14.08.2008 declaring income of ₹.20,21,760/- from house property and other sources. The return of income was processed under section 143(1) of the Act. As per the information available with the Department regarding sale of immovable property at T. Nagar by one Shri B. Sundararajan and Smt. B. Vatsala (mother of Shri Sundararajan) of ₹.45 crores. The total consideration of ₹.45 crores was divided between the two as ₹.25 crores for Shri B. Sundararajan and ₹.20 crores for Smt. B. Vathsala, assessee. Accordingly, the case reopened under section 147 of the act and notice under section 148 of the Act was issued. Upon the request, the assessee was intimated the reasons for reopening of assessment. After considering the submissions of the assessee and disposing the objections, the Assessing Officer completed the assessment under section 143(3) r. w s. 147 of the Act by assessing the total income at ₹. 6,59,56,280/- after making the disallowance under section 54F of the Act of ₹. 6,39,34,520/-. On appeal, by following the decision in the case of CIT vs. Smt. V.R. Karpagam [2015] 373 ITR 127 (Mad.) and CIT vs. Gumanmal Jain [2017] 394 ITR 666 (Mad.), the Ld. CIT(A) directed the AO to allow assessee's claim of deduction under section 54F of the Act.*
>
> *3. The Revenue is in appeal before the Tribunal. The ld. DR submitted that even before the amendment to section 54F of the Act by the Finance Act, 2014, the section did not envisage the reinvestment in multiple properties located in different addresses. Moreover, the case law relied on by the ld. CIT(A), the multiple reinvested properties were located in the same building or address and thus, the both the case law have no application to the facts of the present case and pleaded for reversing the findings of the ld. CIT(A). On the other hand, by filing copy of the decision in the case of Tilokchand & Sons v ITO [2019] 413 ITR 189 (Mad), the ld. Counsel for the assessee has submitted that the issue raised in the appeal of the Revenue is squarely covered in favour of the assessee besides, supporting the order passed by the ld. CIT (A).*
>
> *4. We have heard the rival submissions, perused the material placed on record and gone through the orders of authorities below including the paper book. Out of the total consideration of ₹.20 crores, an amount of ₹.1,51,00,000/- was deposited in CG Scheme and the balance of ₹.18.49,40,160/- was invested in purchase of house. As per two separate purchase deeds both dated 19.03.2008 the assessee purchased the two*

properties one at New Door No.2, Vasan Street, T. Nagar, Chennai from Mr. Raghunathan Krishnan for a consideration of ₹. 6,00,00,000/- and the other property at bearing New Door No.4, Vasan Street, T. Nagar Chennai from Mr. P. Mahaveer Chand Jain & Mrs. Santosh Kumari for a consideration of ₹. 11,00,00,000/- and after including stamp duty and registration fees, the total cost for purchase of both the houses comes to ₹.18,49,40,160/- and claimed deduction under section 54F of the Act for both the properties. The Assessing Officer observed by combined reading of sub-section (1) and sub-section (2) of section 54F of the Act that the assessee is eligible for claiming deduction under section 54F of the Act only for one property. Since the assessee purchased two properties on 19.03.2008 one for an amount of ₹.11,97,00,180/- and the other one for an amount of ₹.6,52,39,980/-, the claim of deduction under section 54F of the Act was restricted for only one property in which the assessee invested for ₹.11 crores and disallowed her claim for the second property which was invested for ₹.6.52 crores. In nutshell, the Assessing Officer held that the assessee is entitled to reinvest in only one residential property.

4.1 The AR of the assessee has submitted before the ld. CIT(A) that the assessee reinvested in the assessment year 2008-09 in which there was no restriction that an assessee should reinvest in only one residential property. It was also pointed out that the amendment restricting the reinvestment to one residential property was introduced prospectively w.e.f. the assessment year 2015-16.The AR of the assessee has relied on two decisions in the case of V.R. Karpagam and Gumanmal Jain (supra). By reproducing the head-notes of both the above decisions, the ld. CIT(A) held that both the case law squarely applies to the assessee's case in her favour and directed the Assessing Officer to allow the claim of deduction under section 54F of the Act for reinvestment in both the residential properties.

4.2 The contention of the Department is that the reinvestment in multiple properties located in different addresses is not eligible for claiming deduction under section 54F of the Act even before the amendment to the said section. However, as relied on by the assessee in the recent decision in the case of Tilokchand & Sons v ITO (supra), the Hon'ble Jurisdictional High Court has held that profit on sale of property used for purchasing more than one residential houses within stipulated time limit, the assessee would be entitled to the benefit of exemption under section 54 of the Act and relevant portion of the decision is reproduced as under:

> *"14. We have heard the learned counsel at length and perused the decisions relied by them at the bar.*
>
> *15. Section 54 of the Act, to its relevant extent, is quoted below for ready reference:*

"Profit on sale of property used for residence.
54. [(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, one residential house in India, 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,—

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or
(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain."

[Prior to amendment by Finance (No. 2) Act, 2014 w.e.f. 01.04.2015 amendment, the aforesaid words in brackets read like this. Constructed, a residential house]

16. We are conscious of the fact that the questions posed for our consideration have to be answered in the context of an Assessee which is a HUF, which has a special character. It is only by deeming fiction of law that a HUF, is treated as a separate assessable entity by including the same in the definition of the word 'person' under Section 2 (31) of the Act. The definition of the word "Assessee" under Section 2(7) of the Act means a 'person' by whom any tax or sum of money is payable under the Act. Thus, the HUF is also a 'person' and a separate assessable entity under the Income Tax Act, 1961.

17. The purpose of Section 54 appears to allow a deduction to an Assessee, being an individual or HUF, to the extent of investment made in residential house as against the Capital Gains accruing on the sale of original residential house or sold capital asset. The word 'a' has been used in the said provisions of Section 54 (1) of the Act at more than one place and such word 'a' was not replaced by way of amendment by Finance (No.2) Act 2014 with effect from 01.04.2015 at all such places in the said provision. In the first part of Section (1) of the Act, the words 'being a Residential House' coupled with the words 'Buildings or Lands" (plural) appurtenant purchased thereto both clearly indicate the plural sense. The sale being of a residential house does not necessarily restrict the meaning of 'a' to one. If the capital gains arise out of sale of plural of Capital Assets also, including the residential house, it would give rise to taxable capital gains. There is no reason to restrict the benefit of deduction upon investment in residential houses even though such units of residential houses are plural, which is not always so. The word 'a' would normally mean one. But it can in some circumstances include within its ambit and scope plural number also. It may be two or three or even more. The very need to amend the later part of Section 54(1) seems to have been to restrict such plurality to be included in word 'a' by inserting word "one residential house" with effect from 01.04.2015.

18. It would be of interest to refer to the Explanatory notes along with the Finance Bill by which the said amendment was incorporated in Section 54, which is quoted below for ready reference:

> *"20.Capital gains exemption in case of investment in a residential house property*
>
> *20.1. The provisions contained in sub-section (1) of Section 54 of the Income Tax Act, before its amendment by the Act, inter alia, provided that where capital gain arises from the transfer of long-term capital asset, being buildings or land appurtenant thereto, and being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house, then, the amount of capital gains to the extent invested in the new residential house is not chargeable to tax under section 45 of the Income-tax Act.*
>
> *20.2. The provisions contained in sub-section(1) of section 54F of the Income-tax Act, before its amendment by Act, inter-alia, provided that where capital gains arises from transfer of a long-term capital asset, not being a residential house, and*

> *the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house, then, the portion of capital gains in the ratio of cost of new asset to the net consideration received on transfer is not chargeable to tax.*
>
> *20.3.Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-section (1) of Section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.*
>
> *20.4. Similarly, sub-section (1) of Section 54F of the Income-tax Act has been amended to provide that the exemption is available if the investment is made in one residential house situated in India.*
>
> *20.5. Applicability:-These amendments take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years."*

19. A closer and bare reading of the aforesaid Explanatory Notes to the provisions of the said Act, clearly shows that the said amendment was intended to be specifically applied only prospectively with effect from A.Y.2015-2016. It took note of the judicial precedents for the period prior to 01.04.2015, giving a different and contra interpretation. Therefore this amendment cannot be held to be mere clarificatory so as to be applied retrospectively for A.Y.2005-2006 in the present case.

20. We have discussed about the two decisions from the Karnataka High Court, which, in our opinion, dealt with similar controversy as is raised before us herein. The only difference which we find is that the purchase of the residential houses in the present case is at different address in the same city of Madurai. In D.Ananda Basappa case stated (supra), two flats in question were admittedly adjacent to each other and which were joined to become one residential house. In the case of Khoobchand M.Makhija (supra), two door nos are given viz., 623 and 729, but the complete addresses and even the name of the city is not clear in the facts narrated in the said Judgment. But in our considered opinion, the difference of location of the newly purchased residential house(s) will not alter the position for

interpretation of the word 'a residential house' to the effect that it may include more than one or plural residential houses, as held by Karnataka High Court, with which we respectfully agree. The location of the newly purchased houses by the same assessee viz., HUF out of sale consideration received on the sale of original capital Asset or a residential house in the given circumstances of availability of such residential houses as per the requirement of the HUF will not alter the position of interpretation.

21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the words 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y.2015- 2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same Assessee should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee-HUF in the present case, in our opinion, complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in CIT Vs. D. Ananda Basappa ((2009) 309 ITR 329 (Karn)) & Khoobchand M.Makhija (supra) cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case.

22. The decision of Punjab and Haryana High Court relied upon by the learned counsel for the Revenue, in which the Division Bench of the said Court finding a distinction with D.Ananda Basapaa's case (supra) on facts, without expressing contrary opinion in detail, held that no Substantial Questions of Law arose, renders little help to the arguments advanced by the learned counsel for the Revenue.

> *23. Therefore, we are of the considered opinion that the present Appeal filed by the Assessee deserves to be allowed and the same is accordingly allowed and the questions of law framed above are answered in favour of the Assessee and as against the Revenue. No order as to costs."*

> *4.3 The ld. DR could not controvert the above decision of the Hon'ble Jurisdictional High Court by filing higher Court decision having modified or reversed. In view of the above decision of the Hon'ble High Court, the contention of the Revenue is devoid of merits and thus, the ground raised by the Revenue stands dismissed."*

5. Respectfully following the above decision of the Tribunal, we find no infirmity in the appellate order, wherein, the ld. CIT(A) has held that the assessee is entitled for deduction under section 54F of the Act. Thus, the ground raised by the Revenue is dismissed.

6. The only effective ground raised in the appeal of the assessee relates to confirmation of cost of acquisition being the fair market value as on 01.04.1981 at ₹.75,000/- as against the claim made by the assessee at ₹.14 lakhs in the recomputation of long term capital gains. The assessee has adopted the fair market value of the property at ₹.14 lakhs on estimation basis. However, the Assessing Officer estimated and adopted the FMV at ₹.75,000/-. On appeal, the ld. CIT(A) confirmed the assessment order.

6.1 On being aggrieved, the assessee is in appeal before the Tribunal. By filing the decision in the case of CIT v. J. Chelladurai (2012) 204 Taxman 258, the ld. Counsel for the assessee prayed for following the method adopted by the Hon'ble High Court for fixing the market value of the

property. Per contra, the ld. DR has submitted the property is located within the city limits and therefore, the case law relied upon by the ld. Counsel has no application.

6.2 We have considered the rival submissions and gone through the orders of authorities below including case law relied upon. The assessee has sold the property of 4.5 grounds of land and building at Usman Road, T. Nagar. The assessee has estimated the cost at ₹.25,00,000/- and 5/9th of the assessee's share comes to ₹.77,14,400/- by applying index ratio viz., 551/100. Since the Assessing Officer was of the opinion that the estimation of cost of acquisition appears on the higher side, after verification of SRO's letter, the Assessing Officer estimated the cost at ₹.30,000/- per ground as on 01.04.1981 and the difference was brought to tax. On appeal, the ld. CIT(A) confirmed the assessment order. Admittedly, the date of sale was on 19.03.2008 for a consideration of ₹.25,00,00,000/-. Without any valid document, the assessee has estimated the cost of acquisition of the property at ₹.25,00,000/- per ground, which appears to be on the higher side, but, at the same time, the value adopted by the Assessing Officer is only ₹.30,000/- per ground and that is also not correct value since the property is located at T. Nagar, Chennai. The decision in the case of CIT v. J. Chelladurai (supra) relied on by the ld. Counsel for the assessee has no application since the property in that case was located in mofussil area, whereas, in the present

case, the property is at prime locality of Chennai city. Thus, to meet the ends natural justice and considering the facts and circumstances of the case, we fix the value of the property at ₹.45,000/- per ground as on 01.04.1981 i.e., 45,000 x 4.5 = 2,02,500x5/9 comes to ₹.1,12,500/- and direct the Assessing Officer to adopt the value and allow relief to the above extent and recompute the capital gains. Thus, the ground raised by the assessee is allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is dismissed and appeal of the assessee is allowed for statistical purposes.

Order pronounced on the 16th September, 2021 in Chennai.

Sd/-	Sd/-
(S. JAYARAMAN)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 16.09.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.