

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE HON'BLE PRESIDENT, SHRI G.S. PANNU
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No.3135/Del./2018
(ASSESSMENT YEAR : 2013-14)**

Sunandan Kumar Minocha, vs. ITO, Ward 63 (1),
C/o Shri Kapil Goel, Advocate New Delhi.
F-26/124, Sector 7, Rohini,
Delhi – 110 085.

(PAN : ADVPM4777E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kapil Goel, Advocate
REVENUE BY : Shri Harpal Singh, Senior DR

Date of Hearing : 25.10.2021
Date of Order : 23.12.2021

ORDER

PER AMIT SHUKLA, JM :

Aforesaid appeal has been filed by the assessee against impugned order dated 26.02.2018, passed by the ld. CIT (Appeals)-27, New Delhi for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2013-14.

2. In the grounds of appeal, the assessee has raised the following grounds :-

“1. That assessment order passed by ITO Ward 63 (1), New Delhi dated 04.03.2016 on basis of purported order u/s 127 dated 03.09.2015 passed by Pr.CIT 21, Delhi is void ab initio as neither assessee has

been served with copy of that order nor the reasons for that order etc. which makes the entire proceedings as nullity including orders passed by Ld CIT-A.

2. That Ld CIT-A erred in sustaining the disallowance made by Ld AO of deduction u/s 54 of Rs.49,62,490 on faulty reasoning that assessee has invested in three residential house properties at three different places without appreciating that assessee has admittedly sold three separate units/houses which makes the claim of assessee u/s 54 as completely correct and valid and amendment made by Finance No.2 Act 2014 which is effective prospectively from AY 2015-2016 and has nothing to do with present case where three houses/units are sold separately.”

3. At the outset, ground no.1 has not been argued, therefore, we are not adjudicating the same and the same is treated as dismissed as not pressed.

4. Insofar as disallowance of deduction u/s 54 of Rs.49,62,490/-, the facts in brief are that, the assessee has constructed 4 flats consisting of 4 units, i.e., one flat at each floor in a building which was purchased in the FY 1995-96. Out of these 4 units, the assessee had sold 3 units for a net consideration of Rs.2,29,70,000/- during the year under consideration. The indexed cost of acquisition of property was calculated at Rs.75,20,79,796/- which resulted in long term capital gain of Rs.1,54,49,203/-. The assessee claimed that it has purchased new residential property worth Rs.1,70,83,921.50 and claimed deduction u/s 54 which resulted into ‘nil’ long term capital gain. AO observed that assessee has invested the receipts of sale proceeds of its 3 units on 3 different locations of the city and, therefore, deduction u/s 54 is not available, because the same is available only “a” residential house and not for every residential properties in addition to the first house.

AO, after considering various judgments and Explanatory Note to Finance Act, 2014, amending the statute w.e.f. 01.04.2015, i.e., AY 2015-16. He restricted the claim of deduction u/s 54 to only one flat having higher value of Rs.1,04,86,714/- and accordingly, he worked out the disallowance of Rs.49,62,490/-.

5. We have heard the rival submissions and gone through the impugned order as well as material placed on record. The case of the assessee is that the expression “**a residential house**” is to be understood in a sense that the building should be residential one and the word “a residential” should not be construed as a singular number. Before us, ld. counsel has relied upon various judgments which we shall discuss hereinafter.

6. On the other hand, the case of the Revenue is that “a residential house” should be treated as one residential house and the amendment brought in the statute w.e.f. 01.04.2015 is mere clarificatory.

7. It is an undisputed fact that the assessee has claimed exemption under long term capital gain after selling 3 units of residential property and thereafter has purchased another 3 units in the same city. The only issue is whether exemption is available in respect of one residential house or more than one on facts of the present case.

8. There are various judgments, as relied upon by the ld. counsel for the assessee, wherein Hon'ble Courts has held

that exemption u/s 54 is available even for more than one residential unit are purchased which are used for residential purpose and the amendment brought in the statute w.e.f. 01.04.2015 is not retrospective. Prior to the amendment, there were various judgments wherein favourable view has been taken by the Hon'ble High Courts, viz.,:-

- **CIT & ANR. vs. D. ANANDA BASAPPA - 309 ITR 329 (Karnataka High Court)**

Capital gains-Exemption under s. 54-Investment in more than one residential units/houses - Expression "a residential house" should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number- That apart, the apartments purchased by the assessee are situated side by side and the builder has effected modification of the flats to make it as one unit-Fact that the flats were found to be occupied by two different tenants is no ground to hold that the apartment is not one residential unit-Therefore, assessee is entitled to exemption under s. 54.

- **CIT vs. GITA DUGGAL ITA -1237/2011 (Delhi) HC (21.02.2013)**

Expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number; Residential house consisting of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54/54F, it is neither expressly nor by necessary implication prohibited

- **CIT & ANR. vs. SMT. K.G. RUKMINIAMMA - 331 ITR 211 (Karnataka High Court)**

Capital gains-Exemption under s. 54-Investment in more than one residential houses/flats Assessee entered into a joint development agreement with builder to develop her property under which builder agreed to construct and agreed to deliver 48 per cent of the super built area to the assessee in the form of residential apartments-Builder constructed eight flats and handed over four flats to the assessee=-Assessee claimed exemption of capital gain under

s. 54F which was rejected by the AO - Not justified - Expression "a residential house" should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number- Four residential flats cannot be construed a' four residential houses for the purpose of s. 54 but it has to be construed only as "a residential house" and the assessee is entitled to the benefit accordingly.

- **NILESH PRAVIN VORA & YATIN PRAYIN YORA VS. ITO (2016) 045 ITR (Trib) 0228**

Capital gains - Exemption under section 54 Purchase of two flats - In the course of assessment proceedings, AO asked as to why exemption under section 54 in respect of one house might not be withdrawn as deduction was available in respect of only one house. Assessee had submitted that both flats were taken in the same Vile Parle, Mumbai for residential purpose hence the same might be treated as one residential unit. AO, however, denied deduction in respect of one flat. CIT(A) confirmed the order of AO. Held: AO was directed to allow the claim of the assessee with respect to two flats purchased by the assessee as it was pertinent to mention that in the case of CIT v. Smt. V R. Karpagam (2015) 373 ITR 127 (Mad), it was clearly held that the amendment to provision of section 54F is effective from 1-4-2015, 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 units. Thus, assessee was entitled to claim deduction under section 54.

- **BRIJ BHUSHAN TAYAL VS. ACIT, CIRCLE 19(1), ITA NO. 3272/DEL/2014 DTD 13.10.2016, [DELHI ITAT]**

That the intention of legislature before 1.4.2015 was not to restrict the exemption to one residential property only and therefore investment could be made in multiple residential properties before 1.4.2015.

This issue came up before ITAT Mumbai in the case of Nilesh Pravin Vora and Vatin Pravin Vora (Legal Heirs of Late Pravin Laxmidas Vora) Vs ITO 2016 (5) TM164 and it has been held that exemption u/s 54F will be allowed for purchase of more than one residential unit as the amendment to section 54F is effective from 1.4.2015.

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. Smt. V. R. Karpagarn [2015J 373 TTR 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 units.

Since tile issue is squarely covered by the judgement of ITAT Mumbai in the case or Nilesh Pravin Vora and Yatin Pravin Vora (Supra) and also the exemption is withdrawn in the subsequent year by the assessee himself exemption claimed by the assessee cannot be disallowed."

- **CIT VS. SYED ALI ADIL (AP)(HC) (2013) 260 CTR 219 DATED 20.12.2012**

Held that the expression "a residential house" in section. 54 (1) has to be understood in the sense that the building should be of residential nature and "a" should not be understood to indicate a singular number. Where an assessee had purchased two residential flats. he is entitled to exemption under section 54 in respect of capital gains 011 sale of its property on purchase of both the flats, despite the fact that the flats were purchased by separate sale deeds. Deduction is allowable even if the flats are on different floors. On facts, as the two flats purchased by the assessee are adjacent to one another and have a common meeting point, the deduction cannot be denied.

The final conclusion drawn after studying the above mentioned judgements of various authorities is that the expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number.

Also, section 54/54F uses the expression "a residential house" and not "a residential unit" Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should

be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans, requirements and compulsions. A person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement.

The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54/54F, It is neither expressly nor by necessary implication prohibited,

Hence, it can be reasonably inferred that even after the amendment of Section 54 and 54F, providing for exemption from long-term capital gains tax, only if the investment is made in one residential house property, one can still invest in more than one house and claim the tax: exemption, provided the taxpayer can prove that all such flats are used as a single residential nit by the family, In the abovementioned case, two residential units were purchased, which were separated by a strong wall and were purchased from two different vendors under two separate Sale deeds, The exemption was still granted to the tax payer, because both the flats were capable of being used as a single residential unit.

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."

9. Since there are favourable judgments in support of the contention raised by the assessee, therefore, we hold that assessee is eligible for claim of exemption u/s 54 in respect of purchase of 3 different residential houses and amendment brought in the Finance Act, 2014 w.e.f.

01.04.2015 will not be applicable in AY 2013-14.
Accordingly, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 23rd day of December, 2021.

**Sd/-
(G.S. PANNU)
PRESIDENT**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Dated the 23rd day of December, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-27, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.