

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.5566/M/2018
Assessment Year: 2015-16**

ACIT 16(3), Room No.446, 4 th Floor, Aayakar Bhavan, Mumbai - 400020	Vs.	Shri Niranjan Bhadang, C-4801, Lodha Bellisimo, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 PAN: AAIPB3650P
(Appellant)		(Respondent)

Present for:

Assessee by : Shri D. Nishant Thakkar, A.R. &
Ms. Jasmin Amalsadwala, A.R.

Revenue by : Shri Vijay Kumar Soni, D.R.

Date of Hearing : 13.10.2021

Date of Pronouncement : 05.01.2022

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 09.07.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2015-16.

2. The only effective ground raised by the assessee is as under:

“On the facts and in circumstances of the case and in law , whether the Id CIT(A) has erred in allowing the assessee’s claim of Rs. 2,40,03,938/- u/s 54F of the Income Tax Act,1961”

3. The facts in brief are that the assessee has filed the return of income on 24.08.2015 declaring total income of Rs.3,12,91,040/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The assessee is an advocate by profession and is having income from profession, house property, capital gain and other sources. The AO noticed during assessment proceedings that assessee has sold two flats and invested the capital gain arising therefrom in flat no.4801 and thus claimed deduction u/s 54F of the Act. Accordingly, the AO called upon the assessee to furnish the details of sale of flat nos. 601 and 701 along with their agreements which were duly furnished before the AO. The chronology of events and the relevant dates are reproduced for the sake of ready reference:

Sr. No.	Date	Particulars
1.	31-10-2013	Full payment for purchase of Flat No. C-4801 in Lodha Bellissimo and possession received pursuant to agreement dated
2.	18.07.2014	Consent Terms documenting sale of duplex flat comprising of Flats 601 & 701 in Bhagtani Krishang for 9.75 crores
3.	18.07.2014	Payment of 5 Crores in part performance (51.3% of total consideration)
4.	22.07.2014	Consent Decree passed by Hon'ble Bombay High Court (agreement of sale) w.r.t. duplex flat comprising of Flats 601 & 701 for 9.75 crores.
5.	01.08.2014	Rs.50 Lakhs received in further part performance (56.4% of total consideration received)
6.	24.11.2014	Rs.4.5 crores, balance consideration received

4. According to the AO, while the gain arising from sale of one flat no. 601 is allowed to be off-set against the investment in another property i.e. flat no. 4801, but the gain resulting from sale of second flat No. 701 could not be allowed to be off-set against the investment in flat no. 4801 as the flat was transferred on 24.11.2014 being the date when the last and final instalment of

the full consideration was received, which obviously falls beyond the period of one year and thus is against the provisions of section 54F of the Act. Accordingly, the AO issued show cause notice to the assessee as to why the deduction u/s 54F of the Act should not be restricted to Rs.2,15,75,949/- being the gains arising from that portion of the sale consideration relating to Flat 601 and the deduction of Rs.2,40,03,298/- in respect of flat no. 701 should not be rejected. The assessee submitted before the AO that the date on which the transfer of Flat No. 701 took place was 22.07.2014 when the court decree was passed and not when the last instalment of sales consideration was received. However the reply of the assessee did not find favour with the AO and he rejected the claim of the assessee u/s 54F of the Act to the extent of gain arising from sale of flat No. 701.

5. In the appellate proceedings, the ld. CIT(A) allowed the appeal of the assessee by observing that the sale of the whole of the under-construction immovable property (i.e. duplex flat comprising of both flat no. 601 and 701) was as decreed by the Hon'ble High Court vide its order dated 22-07-2014 and hence the date of transfer of the said under-construction immovable property was 22-07-2014 and if the assessee has purchased a residential house on or after 22-07-2013, the purchase consideration paid for such a flat would be allowed to off-set the as per the provisions of section 54F of the Act. Since the assessee had purchased Flat No. C-4801 in Lodha Bellissimo on 31-10-2013, it obviously falls "within a period of one year before" as contemplated under section 54F of the Act. The ld CIT(A) further held that hence the amount paid for the purchase of new flat no. 4801 of Rs. 11,90,72,511/- should

off-set against the capital gains arising out of the sale proceeds of Rs.9.75 crores earned on sale of the said under construction immovable property i.e. flats no.601 and 701 on 22-07-2014.

6. We have heard the rival parties and perused the materials on records. The undisputed facts are that the decree of the Hon'ble High Court is dated 22-7-2014 and provided for sale of the flats viz. 601 and 701 for a consideration for which viz. Rs.9.75 crores to be paid to the Assessee on or before 30-10-2014. The purchaser under the High Court decree paid Rs.5 cores on 18-07-2014 and Rs 50 Lakhs on 01-08-2014 (i.e. 56.4% of the total consideration) within one year, but delayed in making the balance final payment by 20 days, i.e. on 24-11-2014. Now the issue before us is whether the date of sale/transfer is 22.70.2014 or the date when the final installment of sale consideration was received on 24.11.2014 and whether amount of Rs.9,37,94,130/- paid by the assessee on 31-10-2013 under agreement dated 19-09-2013 for acquisition of immovable property at Lodha Bellissimo can be off set against the gains earned by him on the sale of under construction immovable property (a duplex flat bearing no. 601 & 701) at Bhagtani Krishang on 22-07-2014 under a decree of the Hon'ble Bombay High Court u/s 54F of the Act. For the sake of ready reference and better understanding the provisions of section 54F of the Act are extracted below:

"54F. (1) ... the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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 the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,
(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45,
(b)..."

7. We also note that the ld. CIT(A) has allowed the appeal of the assessee by holding that the date of transfer was the date of the Court Decree i.e. 22-7-2014 whereunder the flats 601 and 701 were sold for a consideration of Rs.9.75 crores and since such date was within the period of one year 'contemplated under section 54F, the whole of the amount paid by the assessee of Rs.9,37,94,130/- was allowed to be set off against the gains resulting from sale of flats no. 601 and 701 and the short delay in payment of the final instalment would not defer the date of transfer for the purposes of section 54F of the Act. In arriving at the said conclusion, the CIT(A) has followed the law laid down by the Hon'ble Apex Court in the case of Sanjeev Lal vs CIT (365 ITR 389) which has held that date of transfer for the purposes of section 54 is the date of agreement of sale and the Hon'ble Delhi High Court in CIT vs Bharti Mishra (222 Taxman 2) has held that section 54 is pari materia to section 54F. During the course of the hearing Departmental Representative reiterated the stand of the AO and has relied on the assessment order whereas the assessee's counsel in addition to supporting the findings of CIT(A) on the basis of the decisions relied upon by the CIT(A) also placed reliance on a recent decision of the Hon'ble Gujarat High Court in the case of Kishorebhai Harjibhai Patel vs. ITO (417 ITR 547) which, after following the decision of the Apex Court in Sanjeev Lal (supra) and after considering the decisions several other High Courts across the country including the jurisdictional High Court in the case of CIT vs Girish Raghya (239 Taxman 449), held that the date of transfer for the purposes of section 54F was the date of the agreement of sale. The ld AR therefore pleaded before us that it is a settled position of law that the date of transfer for the purposes

of section 54F was the date of agreement of sale, which in the present case was 22-07-2014 and hence purchase of Flat No. C-4801 in Lodha Bellissimo on 31-10-2013, falls “within a period of one year before” as contemplated under section 54F of the Act. He therefore submitted that the amount paid for it viz. Rs.9,37,94,130/- should off-set the capital gains arising out of the sale proceeds of Rs.9.75 crores earned on sale of the said under-construction immovable property on 22-07-2014. He further highlighted that in the present case more than 50% of the sale consideration had been received prior to the expiry of one year from the date of purchase and the assessee could not be faulted for the delay by the purchaser in breaching the deadline of 31-10-2014, and, for that reason also a meaningful and schematic interpretation of the provisions of the exemption under section 54F ought to be given. After careful perusal of the provisions of section 54F of the Act and also the various case law as cited by the ld AR in additions to ones as relied by ld CIT(A) while passing the appellate order, we are of the considered view that for the purpose of section 54F of the Act, the date of sale is the date of agreement to sell and not when the full and final consideration is received by the seller. In the present case the Hon’ble High Court passed consent decree providing for sale of both flats i.e. flat nos. 601 and 701 on 22.07.2014 which is, in our considered opinion the date of sale of flat and not 24.11.2014 when Rs.4,50,00,000/- was received. Therefore, we are inclined to uphold the order of CIT(A) by dismissing the appeal of the Revenue.

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

Order pronounced in the open court on 05.01.2022.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 05.01.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.