

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.7557/Del/2017
Assessment Year: 2013-14

Saroj Arora B-85, Swasthya Vihar, New Delhi PAN No.AAEP A0683R (APPELLANT)	Vs	ITO Ward- 59 (3) New Delhi (RESPONDENT)
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Appellant by	Shri Piyush Kaushik, Advocate Shri Ajay Bhagwani, FCA
Respondent by	Shri Umesh Takyar, Sr. DR.

Date of hearing:	16/12/2021
Date of Pronouncement:	13/01/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-19, New Delhi dated 08.09.2017 pertaining to A.Y.2013-14.

2. The grievance of the assessee read as under :-

1. *That on the facts and circumstances and in law, the order passed by the Commissioner of Income-Tax (Appeals), 19, New Delhi is bad in law and void ab-initio.*

2. *That on the facts and circumstances of the case and in law, the Commissioner of Income-Tax (Appeals), 19, New Delhi erred in confirming the order of assessing officer allowing deduction u/s 54 of Income Tax Act, 1961 of Rs.64,05,100/- as against deduction u/s 54 claimed of Rs.1,38,67,143/-.*

2.1 *That on the facts and circumstances of the case and in law, the Commissioner of Income-Tax (Appeals)-19, New Delhi erred in not allowing deduction u/s 54 of Income Tax Act, 1961 in respect of two residential properties claimed by the appellant despite the fact that provisions of Section 54 of Income Tax Act, 1961 were amended with effect from 1.4.2015 prospectively restricting deduction to be allowed u/s 54 of Income Tax Act to only one residential property.*

2.2 *That on the facts and circumstances of the case and in law, the Commissioner of Income-Tax (Appeals), 19, New Delhi erred in not allowing deduction u/s 54 of Income Tax Act, 1961 in respect of residential property apartment at EMAAR MGF, T- 12-05-04, Commonwealth Games Village, NH-24, New Delhi acquired by appellant for Rs.2,35,36,782/- in respect of which sale deed was executed and registered within period of three years from the date of sale of house property despite the fact that appellant had made payment much higher than the Long term Capital Gains earned on sale of residential house property.*

2.3 *That on the facts and circumstances and in law, the Commissioner of Income-Tax (Appeals), 19, New Delhi erred in allowing deduction u/s 54 of Income Tax Act, 1961 of Rs.54,05,100/- in respect of one house as against the deduction u/s 54 of Income Tax Act, 1961 claimed by assessee of Rs.1,38,67,143/- in respect of two residential houses acquired.*

2.4 *That on the facts and circumstances and in law, the learned Assessing Officer and Commissioner of Income-Tax (Appeals), 19, New Delhi erred in not allowing deduction u/s 54 of Income Tax Act, 1961 on the contention that appellant did not deposit unutilized*

amount in Capital Gain account scheme as per section 54(2) of Income Tax Act, 1961 despite the fact that appellant had utilized amounts more than Long term Capital Gain earned by appellant before the filing of return of income.

2.4 *Without prejudice, on the facts and circumstances and in law, the learned Assessing Officer and Commissioner of Income-Tax (Appeals), 19, New Delhi erred in net allowing deduction u/s 54 of Income Tax Act, 1961 In respect of payments made within one year before sale of residential property for acquiring residential property.*

3. That the appellant craves permission to add, amend, alter or vary all or any grounds of appeal on or before the date of hearing of appeal.

3. Representatives of both the sides were heard at length. Case records carefully perused. The judicial decisions relied upon by the Counsel duly considered.

4. During the course of the scrutiny assessment proceedings the AO came to know that the assessee has sold a residential property situated in Noida for which she received consideration of Rs.2.11 crores which resulted in long term capital gain of Rs.1,38,67,143/-. The AO noticed that the assessee has claimed exemption u/s. 54 of the IT Act to the extent of LTCG arising during the year.

5. The assessee was asked to produce the documentary evidences to substantiate the claim u/s. 54 of the Act. The details in respect of exemption u/s. 54 of the Act were submitted.

6. On perusal of the details the AO found that the assessee has invested in two residential houses to set off its LTCG. The AO found that one residential house was at Common Wealth Games village and another was at Priyadarshni Vihar, Delhi.

7. The AO examined the claim in respect of property at CWG and found that the said property was purchased jointly with her husband for purchase consideration of Rs.4,70,73,564/- out of which the assessee has paid Rs.2,35,36,782/-. The AO found that following payments were made after 10.06.2010 :-

<i>Date</i>	<i>Mode</i>	<i>Amount (in Rs.)</i>
02.05.2012	RTGS	21,79,739/-
02.05.2012	RTGS	3,40,495/-
29.11.2012	Cq. No. 244791 (Registration charges)	4,44,190/-
05.12.2012	Cq No. 100385 (Stamp Duty)	22,20,450/-
Total		51,84,874/-

8. The assessee was asked to justify her stand. In her reply the assessee explained that sale deed was executed on 16.01.2013 and she alongwith her husband became owner in respect of EMAAR MGF property on 16.01.2013 and since he purchased of residential property was completed during the assessment year under consideration the assessee was entitled for deduction u/s. 54 of the Act.

9. After considering the submissions of the assessee and referring to the section 54 (2) of the Act the AO was of the opinion that the amount of the capital gain has be invested for purchase or construction of property within specified period and since in the case of the assessee most of the payments have been made and beyond the specified period of one year, therefore, mere execution of sale deed within the period as mentioned in section 54 of the Act is not sufficient and concluded by holding that only Rs.2592437/- is eligible for exemption in respect of CWG property.

10. In so far as the investment in another residential house at Priyadarshni Vihar for Rs.6405100/-, the AO was of the opinion that the assessee is entitled for exemption only in respect of one residential house property accordingly concluded by holding that the claim of the assessee u/s. 54 against investment in two residential house property at two different places is hereby rejected and allowed to the extent of the purchase value of only one flat/ residential house having higher value of Rs.6405100/- of Priyadarshani Vihar, Delhi property and made addition of Rs.7462043/-.

11. Assessee carried the matter before the CIT(A) but without any success.

12. Before us the counsel for the assessee vehemently stated that this controversy of investment in two residential property

situated at different location have been well settled by the Hon'ble High Court in favour of the assessee and against the revenue. Strong reliance was placed on the decision of the Hon'ble Madras High Court in the case of Trilok Chand and Sons 105 taxman.com 151.

13. Per contra the DR strongly supported the findings of the AO. It is the say of the DR that the explanatory note to the provisions of the findings No.2 Act 2014 with regard to capital gain exemption in case of investment in a residential house property clearly show that the explanatory note is merely clarificatory in nature and, therefore, as per the amended provision the assessee is not entitled to claim exemption in investment made in two residential house property.

14. We have given a thoughtful consideration to the orders of the authorities below. The dispute whether the assessee has purchased property at CWG or has constructed has been decided by the CIT(A) in favour of the assessee. The relevant findings of the CIT(A) read as under :-

“4.5 From the various decisions of Hon'ble Courts, it is clear that the investment or payment for construction or purchase of the new house property must be made within the prescribed time limit. Further, since the assessee has paid the instalments to EMAAR MGF for flat at CWG Village which was allotted on the basis of first instalment paid on 22.08.2008, therefore, following the CBDT circulars and decisions of Hon'ble Courts, the case of the assessee

would be a case of construction for the purpose of section 54. There is no dispute that the payment of Rs. 51,84,874/- only was made for the purchase of the above property within the time frame specified under section 54. Therefore, Rs. 25,92,437/- i.e. 50% of the above payments being the share of the assessee is eligible for deduction under section 54 in respect of CWG Village property.”

15. Since the revenue is not in appeal before us the above findings of the CIT(A) has attained finality.

16. The solitary issue to be decided now whether the assessee is entitled for exemption u/s. 54 of the Act in respect of purchase of two residential house property. We find that this controversy has been considered at length by Hon'ble High Court of Madras High Court in the case of Trilok Chand (*supra*). The relevant findings of the Hon'ble Madras High Court read as under :-

*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 in 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 *u. Ananda Bcisappa (supra) & Khoobchand M.Makhija {supra}* cited at bar by the learned counsel for the **Assessee** apply **on all fours** to the facts to 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 case (supra)* on facts, without expressing contrary opinion in detail, held that no Substantial

Question? 9RILaw arose, renders little help to the arguments advanced by the learned counsel for the Revenue.

17. The Hon'ble High Court has also considered the amendment brought into the statute by way of explanatory note. The relevant findings of the Hon'ble High court read as under :-

17. *The purpose*

The very need to amend the later part of Section 54(l)"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(l) 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." r*

19. *A closer and bare reading the aforesaid Explanatory Notes to the provisions the*

said Act, clearly shows that the said amendment was intended to be specifically applied only prospectively with effect from A.Y.2015-16. It took note of the judicial precedents for the period prior 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. 2005-06 in the present case.

The order is pronounced in the open court on 13.01.2022.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 13.01.2022

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
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Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	13.01.2022
Date on which the file goes to the Bench Clerk	
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