

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6510/Mum/2019
(A.Y: 2016-17)

DCIT – 8(1)(2) Room No. 625, 6 th Floor Aayakar Bhavan, MK Marg, Mumbai – 400 020.	Vs.	Shri Ashok Santu Bhavnani 22, New pushpamilan, 67 Worli Hills, Worli, Mumbai – 400018
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEUPB2016F		
Appellant	..	Respondent

Appellant by :	Mr.Mehul Jain.Sr.DR
Respondent by :	Mr.Ajit Jain.AR

Date of Hearing	18.02.2022
Date of Pronouncement	25.02.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) – 14, Mumbai passed u/s 143(3) r.w.s 250 of the Act. The revenue has raised the following grounds of appeal:

1. *Whether, on the facts and in the circumstances of the case, and in the law the learned CIT(A) has erred in allowing deduction u/s.54F in relation to the LTCG invested into two*

different residential flats despite of the fact that the said section stood amended w.e.f. 01.04.20 15 making it mandatory that deduction under the section is to be allowed for LTCG, to the extent of, utilized for purchase of one residential House.

2. Whether, on the facts and in the circumstances of the case, and in the law the learned CIT(A) has erred in not considering the intent and purpose of legislation behind the amendment brought to section 54F by virtue of which the expression "a residential house" has been replaced by the words "one residential house in India"

3. Whether, on the facts and in the circumstances of the case, and in the law the learned CIT(A) has erred in construing that two separate flats constitute single residential house without calling for approved architectural plan in that respect and not appreciating the fact that the flats were originally owned by two different persons and each flat has separate sale deed, different sized carpet area, different car parking and separate share certificates issued by society office.

4. Whether, on the facts and in the circumstances of the case, and in the law the learned CIT(A) has erred in relying on decision of Hon'ble ITAT in the case of Sanjay B Pahariya Vs ACIT [ITA No.6099/Mum/20 14] and Deepak S Bheda Vs ACIT [23 taxmann.com 159 Mum] and Sudha Gurtoo Vs ACIT [15 taxmann.com 231 Delhi] that have been pronounced prior to the amendment made to section 54F of the Income Tax, Act, and not appreciating decision of jurisdictional High Court in the case of Prakash Vs /TO [173 taxmann.com 311 (2008)].

2. The brief facts of the case are that, the assessee is an individual and director in M/s Sapiens Technologies India Pvt Ltd. The assessee has filed the return of income for the A.Y 2016-17 on 28.07.2016

disclosing a total income of Rs.67,39,010/-. Subsequently, the case was selected for limited scrutiny under the criteria being “whether deduction from capital gains has been claimed correctly”. The Assessing Officer (A.O) has issued notice u/s 143(2) and U/sec142(1) of the Act. The A.O found that the assessee has sold shares of M/s Ibexi Solutions Pvt Ltd of Rs.5,86,35,866/- and worked out the long term capital gains of Rs.5,65,61,162/-. Whereas, the A.O. is of the opinion that the assessee has utilized the capital gains for purchase of two residential properties No 801 and 802 in Kritika Apartments, Santacruz (West) Mumbai for a consideration of Rs. 10,16,19,000/- and issued show cause notice on 13.12.2018 referred at Para 4 of the A.O order. In compliance, the assessee has filed detailed letter dated 15-12-2018 explaining that the assessee has purchased only one residential property and furnished the documents and clarifications referred at Para 5 of the order. Further, due to amendment in Sec. 54F of the Act applicable from 01.04.2015 where the definition of a residential house is replaced by one residential house in India. Finally the A.O. has

observed that the assessee has purchased two adjacent houses and treated as one residential house and cannot be accepted as per the amendmend made after 01.04.2015 and exemption u/s 54F of the Act is restricted to one residential house only and determined the long term capital gains of Rs. 2,48,85,866/- and assessed the total income of Rs. 3,16,24,870/- and passed the order u/s 143(3) of the Act dated 20.12.2018.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee, findings of the AO and dealt on the provisions and observed at Para 4 of the order and granted the relief considering the judicial decisions. The CIT(A) has observed that the residential property is one residential house and the assessee is entitled for exemption u/s 54F of the Act for investment made in residential house and allowed the assessee's appeal. Aggrieved by the CIT(A)order, the revenue has filed an appeal before the Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in allowing the deduction u/s

54F of the Act in respect of investment of long term capital gains invested in two residential houses. And the post amended applicable from 01.04.2015, the deduction u/s 54F of the Act is restricted to only one residential house. The Ld. DR further submitted that the CIT(A) erred in considering the two separate flats treating as a single unit without calling for the architectural plan and prayed for allowing the appeal. Contra, the Ld. AR supported the order of the CIT(A) and referred to the judicial decisions and the paper book in respect of purchase transaction of one residential property and substantiated with material evidences.

5. We heard the rival submissions and perused the material available on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in granting exemption u/sec 54F of the Act in respect of two residential flats irrespective of amendment which has come into effect from 01.04.2015 and is applicable to the assessee for investment in one residential house in India. The Ld. DR further submitted that the flat No s 801 and 802 are two separate units and as per amendment only

one residential unit is eligible for exemption u/sec54F of the Act. Whereas, the Ld. AR referred to the page 25 of the paper book explaining the transactions with respect to purchase of the property was disclosed and to substantiate that the payment was made by one person referred to page 26 clause -4 as under:

“4. It is clarified that the said consideration payable by the Transferees to the transferor for the purchase of the premises has been borne and paid by the Transferee No. 1 alone and that the name of the Transferee No. 2 has been added for the sake of convenience only.”

6. Further, as per the registered deed of transfer dated 14.08.2015, it is clearly mentioned that the name of the transferee No. 2 has been added for the sake of convenience only and further at page 40 the consideration was mentioned at Para 3 to 4 as under:

*3“(a) A sum of Rs. 90,00,000/- has been paid by the transferees to the Transferor, prior to the execution here to earnest money,(the payment and receipt whereof the transferor admits and acknowledges and of and from the payment of the same and every part thereof acquits, releases and discharges the transferees each of them fore ever) and
(b) balance sum of Rs. 4,70,00,000/- has been paid by the transferees, simultaneously against the execution of these presents, making in the aggregate Rs. 5,60,00,000/- being the full and final consideration payable by the Transferees to the Transferor in respect of the premises, (the payment and receipt whereof the transferor hereby admits and acknowledges and of and from the payment of the same and*

every part thereof acquits, releases and discharges the transferees (and each of them forever)

4. It is clarified that the said consideration payable by the transferees to the transferor for the purchase of the premises has been borne and paid by the transferees in the following portion

<i>Parties</i>	<i>Amount</i>	<i>% of share in the premises</i>
<i>Transferee No. 1</i>	<i>Rs. 3,89,40,000</i>	<i>69.54%</i>
<i>Transferee No. 2</i>	<i>Rs. 1,70,60,000</i>	<i>30.46%</i>

7. The main contentions of the Ld.DR that the flat No. 801 and 802 are two separate flats and as per the amendment only one flat is granted exemption u/s 54F of the Act and the A.O. has granted exemption to flat No. 801. Whereas, the Ld. AR referred to the plan at page No. 194 of the paper book which shows the 8th floor plan and page No. 185 to 187 clearly display the entrance and the lobby. The Ld. AR emphasizes that it is only one residential property and relied on the letter issued by the housing society at page 185 of the paper book specifying that residential flat no 801/802 comprise of one residential flat with one entrance, one kitchen, one electricity meter and one gas connection. We find the CIT(A) has dealt on the facts and provisions of law. We consider it appropriate to refer to the observations of the CIT(A) at page 11 to 15 as under:

4. Decision:

I have considered the submissions made by the appellant and the reasons recorded by AO. The first ground of appeal is general in nature, therefore, no separate adjudication is required in respect of the same.

4.1 So far as the second ground of appeal is concerned, I am in agreement with the contention of the appellant that it is entitled for deduction of indexed cost of acquisition while computing long-term capital gains, under provisions of section 48 of the IT Act, in respect of the shares sold by it which are a long term asset. The AG is directed to allow the same to the appellant. Accordingly, the second ground of appeal is treated as allowed.

4.2 So far as the third ground of appeal is concerned, I am in agreement with the submission of the appellant that the whole residential unit is required to be treated as one residential house because it has one common entrance, one kitchen, one electricity meter, one piped gas connection, one property tax bill and one Society bill. Even though, the property was purchased by way of two agreements, the appellant has received the same as one single unit. The appellant has also pointed out that the whole building has been constructed similarly. There is one residential flat on each floor and two separate agreements have been entered into by the builder for each residential flat on each floor. Reliance for this conclusion is placed on the decisions of Hon'ble ITAT, Mumbai in the cases of Sanjay B Pahariya vs Asst CIT Mumbai [ITA No. 6099/Mum/2014] and Deepak S. Bheda v/s ACIT [2012] 23 taxmann.com 159 (Mum.) and the decision of Hon'ble ITAT, Delhi in the case of Sudha Gurtoo vs. ACIT 15 taxmann.com 231 [2011] which have been quoted by the appellant in his submission.

I am also in agreement with the submission of the appellant that the decision in the case of Shri Hemchandra R Gavankar Vs ITO, ITA no. 7451/Mum/2017 relied upon by the AG is not applicable to the facts of the case of the appellant because in

that case the property was not in the name of the assessee rather it was in the names of assessee's wife and adult daughter whereas the property under consideration is in the name of the assessee and his wife. For this reason, the decision of jurisdictional High Court in the case of Prakash Vs ITO 173 taxman 311 (2008) is also not applicable to the facts of the case of the appellant.

In the case of the appellant, the property is in the name of the appellant and his wife and out of total purchase consideration of Rs. 11,87,50,000/- the purchase consideration paid by the appellant is Rs. 10,16,90,000. Even if the fact of property being held in joint names is considered and the appellant is allowed benefit of 50% of the total purchase cost of the property, there would be no long-term capital gains taxable in the hands of the appellant. However, in view of the following decisions, I'm of the opinion that the appellant is entitled for deduction under section 54F of the IT Act to the extent of investment made by it in the jointly held residential house: -

- The decision in the case of Ravinder Kumar Arora vs CIT 15 taxmann.com 307 (2011) by the Hon'ble Delhi High Court wherein Honourable High Court has held that

"The Hon'ble High Court Judge witnessed that all the payments were made by the assessee towards a residential house which was purchased jointly in the names of the assessee and his wife. Thus, it was concluded that the assessee would be the real owner of the residential house in question. As per the aforesaid facts, the court was of the view that the conditions stipulated in Section 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women."

The Appellant would also like to place reliance on the principal that for the purposes of Section 54F, the new residential house need not be purchased by the appellant in his own name nor is it necessary that it should be purchased exclusively in

assessee's name provided that the entire investment has come out of the sale proceeds of sale of long term capital asset which were held by assessee and that there was no contribution from assessee's wife or any other person.

- *The decision in the case of Kamal Wahal Vs CIT 30 taxmann.com 34 (2013) by Hon'ble Delhi High Court wherein the Honourable High Court in has held that*

"The assessee sold his joint property which gave rise to proportionate capital gains. He claimed deduction under section 54F by investing sale proceeds in acquisition of vacant plot and purchase of a residential house in the name of his wife. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife."

The Hon'ble Madras High Court decision in the case of V.Natarajan vs CIT 154 TAXMAN 399 (2006) wherein the Honourable High Court has held that "It was admitted by the assessee that he sold a house property at Bangalore. Therefore, it was clear that the assessee owned a house property and sold the same. He also admitted that he purchased a property at Madras in the name of his wife out of the money obtained by the sale of the property at Bangalore. Section 54 clearly says that if the assessee is the owner of the property, he is entitled to exemption. In the instant case, the assessee purchased a house property at Madras, in the name of his wife after selling the property at Bangalore, but the same was assessed in the hands of the assessee. Hence, as correctly held by the Commissioner (Appeals) as well as the Tribunal, the assessee was entitled to exemption under

section 54."

• The decision of hAT, Bangalore in the case of Bhatkal Ramarao Prakash Vs ITO[2019] 102 taxmann.com 145 (Bangalore - Trib.)[2019] 175 ITD 144 (Bangalore - Trib.), the head note of which reads as under: -

i. Section 2(47), read with sections 2(42A), 54 and 54F, of the Income-tax Act, 1961 - Capital gains - Transfer (Immovable property) - Assessment year 2015-16 - Assessee acquired a property from a building society under a lease-cum-sale agreement dated 22-3-2001 - As per terms of agreement, assessee had to construct building on site within two years from date of agreement and assessee could not alienate site for a period of 10 years - Assessee complied with aforesaid terms of lease-cum-sale agreement and put up construction on site on date of agreement and subsequently property was conveyed to assessee by society by registered sale deed dated 31-8-2014 - Assessee sold site as well as building constructed thereon under a sale deed dated 3-12-2014 and computed long-term capital gain on sale of this property by taking date of lease-cum-sale agreement viz., 22-3-2001 as date of acquisition of property - He invested capital gain in acquisition of another property and claimed deduction under section 54F - Assessing Officer, however, construed date of acquisition of property by assessee as 31-8-2014, and construed capital gain on sale of property as a short-term capital gain and accordingly disallowed deduction claimed under section 54F - Whether assessee having paid cost of site and being in possession of property as lessee-cum-Agreement holder with right to obtain conveyance of absolute interest over land that was leased as early as in 22-3-2001, claim of assessee that it held property from 22-3-2001 had to be accepted - Held, yes - Whether thus, capital gain in question in instant case had to be treated as LTCG as claimed by assessee - Held, yes [Paras 10, 11 and 14] [In favour of assessee]

ii. Section 54F, read with section 2(47), of the Income-tax Act, 1961 - Capital gains - Exemption of, in case of investment in residential house (One house property) - Assessment year

2015-16 - Assessee sold a house site in previous year and invested sale proceeds in another property and claimed exemption under section 54F - Assessing Officer denied deduction on ground that as per description of property purchased by assessee it consisted of two doors and he was of view that assessee purchased two house properties, hence could not be allowed deduction under section 54F - However, it was found that entire property constituted single house but was bifurcated with two door numbers for ground and first floor with common entrance in ground floor only to earmark share of beneficiaries - Whether therefore, assessee would be entitled to claim deduction under section 54F in respect of investment - Held, yes [Paras 20 and 21][In favour of assessee]

III. Section 54F of the Income-tax Act, 1961 - Capital gains - Exemption of in case of investment in a residential house (Purchase) - Assessment year 2015-16 - Whether to claim deduction under section 54F it is not necessary that new asset should be purchased in name of assessee only - Held, yes - Whether thus, where assessee purchased new asset in joint names of himself,

IV. Accordingly, it is held that the subject property is one residential house and the appellant is entitled to deduction under section 54F of the IT Act to the extent of investment made by it in the residential property. The AO is directed to recalculate the total income of the appellant accordingly. For statistical purposes, the third ground of appeal is treated as allowed.

v. 4.3 The fourth ground of appeal challenging the levy of interest under section 234B of the IT Act is consequential in nature and the AO is directed to recalculate the interest chargeable under this section after giving effect to this appellate order. For statistical purposes, this ground of appeal is treated as allowed.

VI. 5. In the result, the appeal of the appellant is treated as allowed.

8. We find that the CIT(A) has considered the facts provisions of law, submissions, and judicial decisions and observed that the assessee has invested in one residential property. Further the Ld.AR has substantiated with the copy of structural plan and the society letter dated 8-04-2019 that it is only one residential unit. Whereas, the provisions of sec54F of the Act are beneficial provisions and are to be construed liberally. The Ld.DR could not controvert the finding of the CIT(A) with new cogent material information or evidence and the CIT(A) has passed a reasoned and logical order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 25.02.2022.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.02.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai