

आयकर अपीलिय अधिकरण  
मुंबई पीठ "बी"  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एमबालगणेश ., लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
आअसं. 2727/मुं/2019 (नि. व. 2014-15 )  
ITA NO.2727/MUM/2019(A.Y.2014-15)

Shri Bipin S. Sanghvi,  
203 to 205, Business Classic,  
Chincholi Bunder Road, Malad (West),  
Mumbai 400 064  
PAN: AAJPS-1042-B

..... अपीलार्थी /Appellant

बनाम Vs.

The ITO-13(3)-2, Mumbai  
Room No.229, 2<sup>nd</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020 .

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Reepal Tralshwala

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh Anand

सुनवाई की तिथि/ Date of hearing : 11/02/2022

घोषणा की तिथि/ Date of pronouncement : 09/05/2022

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-21, Mumbai [ in short 'the CIT(A) ] dated 31/01/2019, for the assessment year 2014-15.

2. Shri Reepal Tralshwala appearing on behalf of the assessee submitted that the assessee in appeal has raised two grounds. The first ground

is against addition of Rs.13,47,925/- u/s. 50C of the Income Tax Act, 1961 [ in short ' the Act'] and the second issue is with regard to disallowance of claim of deduction u/s. 54F of the Act, Rs.54,96,900/-.

2.1 The Id.Authorized Representative for the assessee narrating facts in respect of Ground No.A submitted that the assessee was co-owner of a property comprising in Survey No.124, Village Kaman, Taluka Vasai, Dist.Thane, admeasuring 57050 sq.fts. The assessee was having 19.70% share in the said property. The assessee and other Co-owners jointly sold the land vide registered Deed of Conveyance dated 08/7/2013 for a total consideration of Rs.1,19,79,240/-. While executing the Deed of Conveyance inadvertently the area of road admeasuring 16862 sq.fts. adjacent to the plot of assessee was also added in the total area of land. The assessee paid stamp duty on the total area i.e. plot of land sold plus the area of the road, For the stamp value purpose, the area of road was also included, hence, stamp duty was paid on the value of Rs.1,88,21,500/-. Thereafter, when the mistake was identified a registered Deed of Clarification dated 13/03/2018 was executed, wherein it was specifically mentioned that the total area of plot as mentioned in the deed of conveyance included common road area admeasuring 1567.10 sq.metres (16867 sq.ft). The mistake had crept while drafting the Conveyance Deed. The purchasers do not have any exclusive right over the approach road comprising in Survey No.124, hence, the area of the road has wrongly included in the conveyance deed. The value of the road which has been inadvertently included in the deed of conveyance is Rs.81,18,000/-. A copy of the Deed of Conveyance is at page 10 to26 of the paper book and copy of deed of clarification is at page 51 to 67 of the paper book. The Assessing Officer in assessment order made addition of Rs.14,81,950/- under section 50C of the

Act by taking the Stamp Value as the market value of the property. Whereas, the Stamp Value, at the time of registration of Conveyance Deed was determined on the value of property jointly owned by the assessee + value of road. All these facts were furnished before the Assessing Officer and CIT(A), however, the authorities have failed to appreciate the facts of the case. The Id. Authorized Representative for the assessee submitted that this issue can be restored back to the file of Assessing Officer for verification of facts.

2.2 In respect of ground No.B, the Id. Authorized Representative for assessee submitted that the assessee had invested capital gains towards purchase of Flat No.801A and Flat No.801B, Adarsh Harmony CHS Ltd., Malad (W), Mumbai. Both the flats were purchased on same dated i.e. 19/03/2014 for a total consideration of Rs.1,17,00,000/-. The assessee claimed deduction u/s. 54F of the Act in respect of the investment in flats. The Assessing Officer allowed deduction u/s. 54F of the Act in respect of one flat i.e. Flat No.801A having sale consideration of Rs.95,00,000/- and denied deduction in respect of Flat No.801B on the premise that deduction u/s. 54F can be availed only in respect of one residential property. The Id. Authorized Representative for assessee submitted that both the Flats i.e. Flat No.801A & 801B are interconnected and is only a single residential unit. Hence, the assessee is eligible for deduction u/s. 54F for investments in both the flats. To support his submissions the Id. Authorized Representative for the assessee placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Devdas Naik reported as 366 ITR 12.

3. Per contra, Shri Tejinder Pal Singh Anand representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the Deed of Conveyance vide which the land

was sold was executed in the year 2013, whereas, the Deed of Clarification was made in 2018 i.e. almost five years after execution of Deed of Conveyance. This clearly shows that the Deed of Clarification is an afterthought. In respect of second issue the Id. Departmental Representative submitted that as per the provisions of section 54F the benefit of deduction can only be availed in respect of one residential unit. Therefore, the Assessing Officer and the CIT(A) have rightly restricted the deduction u/s. 54F to one flat.

4. Both sides heard, orders of authorities below examined. The first issue in appeal is with regard to addition made u/s. 50C of the Act. The short contention of the assessee is that in registered Deed of Conveyance the total area mentioned includes the area of public road. The road is not for exclusive use of the purchaser of property. The area of the road which has been wrongly included in the total area of land is 16862 sq.fts. The assessee has also placed reliance on Deed of Clarification which has been registered to substantiate that the area of road has inadvertently been included in the total area of plot in the Deed of Conveyance. The Stamp Valuation Authorities for the purpose of registration has determined the value of property on the total areas as mentioned in the Deed of Conveyance including the area of road. With the inclusion of area of road the consideration disclosed by the assessee for sale of property falls below the stamp valuation, hence, the Assessing Officer made addition u/s. 50C of the Act. This issue requires verification of facts. It is pertinent to mention here that the assessee was Co-owner of property having 19.70% share. It is not emerging from documents on record as to what happened in the case of other two Co-owners who are similarly placed. Therefore, we deem it appropriate to restore this issue back to the file of Assessing Officer for fresh adjudication after ascertaining the facts. The

Assessing Officer shall decide this issue afresh after affording reasonable opportunity for making submissions to the assessee, in accordance with law. Ground No.A is allowed for statistical purpose.

5. The second issue in appeal is with regard to part disallowance of deduction u/s.54F of the Act. The contention of the assessee is that the assessee had made investments of capital gains in Flat No.801A and 801B, Adarsh Harmony CHS Ltd., Malad (West), Mumbai. Though there were two separate flats but both the flats were joined and were made a single residential unit, hence, the assessee is eligible for deduction u/s. 54F in respect of both the flats. Reliance has been placed on the decision rendered in the case of CIT vs. Devdas Naik (supra). After taking into consideration the submissions of the assessee and the aforesaid decision by the Hon'ble Jurisdictional High Court we deem it appropriate to restore this issue back to the file of Assessing Officer for verification of facts. In case it is found that Flat No.801A and 801B have been converted into a single residential unit, the assessee is eligible for deduction u/s. 54F of the Act on the second unit as well. Consequently, ground No.B of appeal is allowed for statistical purpose.

6. In the result, appeal by assessee is allowed for statistical purpose.

Order pronounced in the open court on Monday the 9<sup>th</sup> day of May, 2022.

Sd/-

( M. BALAGANESH )

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 09/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**