

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.9407/Del/2019  
(Assessment Year : 2013-14)

ITO Ward – 52(4) New Delhi  <b>PAN No. AAAHV 1954 N (APPELLANT)</b>	Vs.	V. C. Chandiook HUF L-41, Connaught Circus, New Delhi – 110 001  <b>(RESPONDENT)</b>
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Assessee by	Shri Vinod Kumar Bindal, C.A.
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	30.06.2022
Date of Pronouncement:	07.07.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

The present appeal filed by the Revenue is directed against the order dated 04.09.2019 of the Commissioner of Income Tax (Appeals)-35, New Delhi relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a HUF who electronically filed its return of income for A.Y. 2013-14 on 05.08.2013 declaring total income at

Rs.5,84,910/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 16.03.2016 and the total income was determined at Rs.3,05,99,040/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 04.09.2019 in Appeal No.77/18-19 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *On the facts and circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.3,00,14,134/- made by the AO on account of business income without appreciating the detailed findings of the AO.*
2. *On the facts and circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.3,00,14,134/- without appreciating the fact that the total sale consideration was further invested for purchase of new property through M/s. AA Walker Estate Pvt. Ltd., a real estate company, wherein the Karta's son Mr. Ashwin Chander Chandiok is one of the Directors and thus having business connection on the whole of the transaction, which clearly establishes that the same is in the nature of business income and not income from long term capital gains as claimed by the assessee HUF.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO to the tune of Rs.3,00,14,134/- without considering the fact that the notice issued u/s 133(6) of the Act to M/s. AA Walker Estate Private Chandiok is one of the Directors remained uncomplied and no cognizance of this fact was taken even during the appellate proceedings.*
4. *On the facts and circumstances of the case, Ld CIT(A) has erred in deleting the addition made by the AO to the tune of Rs.3,00,14,134/- inspite of the fact that the assessee had declared rental income from the six flats (original asset) under the head 'income from house property' from A.Y. 2009-10 onwards only, whereas the occupation certificate was obtained by the assessee HUF on 06.05.2005.*

4. Before us, at the outset, Learned DR submitted that though the Revenue has raised various grounds but the sole controversy is with respect to the deletion of addition of Rs.3,00,14,134/- that was made by AO but deleted by CIT(A).

5. During the course of assessment proceedings, AO noticed that assessee had sold six flats for a total consideration of Rs.4,10,00,000/-. He also noticed that assessee had claimed exemption u/s 54 of the Act on account of the purchase of property. He noted that the investment in property was made by purchasing flat from AA Walker Estate Private Ltd. in which Ashwin Chander Chandiok, the son of Mr. V. C. Chandiok was the Director. He also noted that neither possession of new house property was handed over to the assessee nor registration of the flat was done in the name of the assessee. He also noted that information notice u/s 133(6) from AA Walker Estate Private Ltd. was sent but no reply was received from it. AO therefore concluded that the intention of the assessee from the beginning was to engage in the business activity of construction of flats and the profit earned from the sale of flats was income from business and not Long Term Capital Gains. He accordingly treated the profit of Rs.3,00,14,134/- (Rs.4,10,00,000 – Rs.1,09,85,866/-) as business income of the assessee.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) decided the issue in favour of the assessee by observing as under:

4.4 “After considering the assessment order as well as explanation offered by the appellant it emerges that the appellant HUF purchased two adjacent plots in 1986 for approximately Rs.46,000/- each. In 1998 the construction was started by engaging a private Contractor and the occupation certificate was issued by the Senior Town Planner cum Chairman Building Composition Committee, Gurgaon on 06.05.2005. The property constructed comprised of Ground Floor, First Floor, and Second Floor in respect of both the Plots i.e. N-1/17 and N-1/18 DLF Phase-II, Gurgaon. These six flats were let out during 2009 to 2012 after which they were sold in Nov, 2012 (A.Y.2013-14) for total consideration of Rs.4.10 crores. The said amount is shown to be invested for purchase of property at Goa for Rs.6.84 crores. The entire sale consideration received was invested within the same financial year i.e. F.Y. 2012-13 and another Rs. 2 crores was paid during F.Y. 2015-16 totaling to Rs.6.08 crores.

4.5 The first observation of the AO was that the earning from the sale of six flats was in the nature of Business Income and not Capital Gains. It was stated that the flats were not for self use and were constructed only for earning income or profit. Further, that the payment for investments/purchase of new property (Asset) was made to M/s. A.A. Walker Estate Pvt. Ltd. in which the Karta's Son (Mr. Ashwin Chandet Chandiok) was director and that neither possession of the new house property was handed over nor the registry of the new property was done. It was also stated that notice u/s. 133(6) dated 22.01.2016 which was sent to M/s. A.A. Walker Estate Pvt. Ltd, remained uncomplined with. Accordingly, the AO treated the difference in sale and cost of acquisition of property (original asset) (Rs.4,10,00,000 - Rs. 1,09,85,866) i.e Rs.3,00,14,134/- as Business Income.

4.6 It is noted that the objection that it was not for self use is not a pre-condition as far as provisions of Section 54 of the Act are concerned. What is relevant is whether the asset was in the nature of stock in trade or an investment. Considering the long holding period of the property from 1986 till 2012 (28 years), it cannot be treated as stock in trade as there would be no commercial prudence in holding on to 2 plots of land for nearly 3 decades. It was also not established by the AO that the transaction was adventure in the nature of trade, so as to be treated as Business Income. The various Judicial pronouncements relied upon, support the claim of the appellant. Hence, the profit earned by sale of property for Rs.4.10 crores is to be treated as Capital Gains.

The AO has stated that since the possession has not been handed over and the sale has not been registered it cannot be treated as Capital Gains and accordingly, the benefit of Section 54 of the Act, was also not allowed. As per the provisions of section 54(2) of the Act, the important condition for claiming of exemption is the utilization of capital gain arising from the sale of old asset in the purchase of new residential house on or before the due date of filing of return of income. If the capital gain is not utilized on or before the due date of filing of return of income then the same has to be deposited in the Capital Gain Account Scheme and the same has to be utilized within the stipulated period of two years/three years, as the case may be, prescribed under the Act. At the end of two years in the case of purchase of new asset/three years in the case of construction of new asset, as the case may be, if, there is any amount left to be utilized by the assessee then the said amount shall be treated as income of the assessee under section 45 of the Act in the year of expiry of period of two/three years. In recent times it has been noted that despite payment by buyers, not only registration of sale, even possession of house/property etc. is not handed over to buyers within time, infact there is a long time gap Involved for completion of the transaction. This cannot be held against the buyer, unless there is a malafide attempt on his part to evade taxes in the process. No such issue has apparently emerged in this case.

4.7 In light of the facts of the case and judicial pronouncements relied upon by the appellant, it is clear that the appellant has fulfilled the conditions for claiming exemption u/s 54 of the Act, since the sale proceeds of the

*property sold were utilized for purchase of another property for which the entire required amount (capital gains) was invested/ paid to the seller. The fact that the purchase was made from the company in which the Karta's son was a director is apparently not a violation, as far as eligibility of section 54 is concerned. Similarly, registration of the purchase transaction is also not mandatory for claiming exemption u/s 54 of the Act as has been held by various higher Judicial Authorities. In fact the appellant was asked to furnish the proof of investment by way of receipts issued by the seller (M/s. A.A. Walker Estate Pvt. Ltd.). The appellant has produced a receipt dated 19.04.2016 for sum of Rs.6,74,15,000/- from the appellant as an initial deposits, towards allotment purchase of four Bedroom Villa at Baale Private Villas and Spa, Arpora, North Goa, GOA-403516 received between 20.01.2012 to 18.04.2016 by way of RTGS. A copy of letter dated 18.10.2016 by the seller has been issued to confirm soft possession of Villa no. B-3 referring to a completion order dated 10.10.2016 (reference no.TPBZ/2964/ARP/JCP-16/2930 issued by office of the Sr. Town Planner, Town and Company Planning Department, North Goa district office, 302, Govt. Building Complex, Mapusa-Goa with reference to the above property. Hence, it is satisfactorily established that the investment in the new asset had been made as per provisions of Section 54(2) of the Act. Accordingly, the addition of Rs.3,00,14,134/- under the head Business Income is hereby deleted and the AO is directed to treat the transaction and resulting earnings as Capital Gains and work out the income accordingly.*

*5. In the result, the appeal is **allowed**. The A.O. is directed to take consequential action at the time of giving effect within the stipulated time as per law.”*

7. Aggrieved by the order of CIT(A), Revenue is now before us.

8. Before us, Learned DR took us to the observation of the AO and supported his order.

9. Learned AR on the other hand reiterated submissions made before the lower authorities and supported the order of CIT(A).

10. We have heard the rival submissions and perused the material available on record. The issue in the present appeal is the taxability of Rs.3,00,14,134/-. AO has considered it to be a business income where as it is the case of the assessee that the gains earned are capital gains. We find that CIT(A) while deciding the issue in favour of the assessee has given a finding that the six flats were sold in Nov 2012 for a total consideration of Rs.4,10,00,000/- and assessee had invested the capital gains for purchase of property at Goa for Rs.6.84 crores. The entire sale consideration received was invested within the same financial year. CIT(A) also noted that the objection of the AO was that the flats that were sold was not for self use and were constructed only for earning income. He has noted that the property not being self use is not precondition as far as the provision of Section 54 of the Act are concerned. He has further given a finding that assessee had held property for 28 years and no evidence has been placed by the AO to demonstrate that the transaction of purchase of property was in adventure in the nature of the trade so as to be treated as business income. With respect to the objection of the AO that the possession of the property was not handed over and the sale has not been registered, he has given a finding that as per the provision of Section 54(2) of the Act, the important condition for claiming of exemption is the utilization of capital gain arising from the sale of old asset in the purchase of new

residential house on or before the due date of filing of return of income. In case the assessee is unable to purchase the residential house before the due date of filing of return then the amount needs to be invested in Capital Gain Account Scheme and has to be utilized within the period stipulated therein. He thus while deciding the issue in favour of the assessee has given a finding that assessee has fulfilled the required conditions for claiming exemption u/s 54 of the Act, as the sale proceeds of the property sold were utilized for purchase of another property for which the entire required amount (capital gains) was invested and paid to the seller. He has further noted that the purchase made from the company in which the Karta's son was a director was apparently not a violation as far as eligibility of section 54 is concerned. He has further given a finding that the registration of the purchase transaction was also not mandatory for claiming exemption u/s 54 of the Act. He has further noted that assessee had produced the proof of investment by producing the receipts issued by the seller towards the purchase of the flats, assessee had also produced the copy of the letter issued by the seller to confirm the soft possession of the property. Considering the aforesaid facts, he deleted the addition made by AO.

11. Before us, Learned DR has not pointed any fallacy in the findings of CIT(A). We therefore find no reason to interfere in the order of CIT(A) and **thus the grounds of appeal of the Revenue are dismissed.**

12. **In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 07.07.2022**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 07.07.2022

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI