

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1594/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

Shri Venkatesharaiyer Subramanian No.B-33 Thally Housing Board Colony, Thally Road, Hosur-635 109.	बनाम/ Vs.	ACIT Circle-1, Hosur.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. ACPPS-8184-E		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri V. Justin (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	20-06-2022
घोषणा की तारीख / Date of Pronouncement	:	13-07-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals), Salem [CIT(A)] dated 07-03-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-11-2017. The assessee has filed concise grounds of appeal which read as under: -

1. The order of Ld. CIT(A) is contrary to law, facts, evidence on record; opposed to principles of natural justice, fair procedure and legitimate expectation; erred in denying relief u/s 54 F of the Act
2. Deduction u/s 54F of the Act in respect of construction of residential house.
 - (a) The Ld. CIT(A) ought to have appreciated that the appellant qualifies for relief u/s 54F of the Income Tax Act since he has constructed only one house and did not own more than one house u/s 54F(b) of the Act at the time of sale of property.
 - (b) The Ld. CIT(A) ought to have appreciated the decisions in the cases of – Gita Duggal, V.R.Karpagam, Abhijit Bhandari, Ms. Sushma M.Jhaveri (ITAT Mumbai).
3. The CIT(A) ought to have appreciated that the section 54 was amended under which the appellant can purchase of two different properties which provision is retro-active.

As evident, the assessee is aggrieved by denial of deduction u/s 54F. To understand the issue, it would be imperative to consider the statutory provisions of Sec.54F.

2. The provisions of Sec.54F of the Act provide that any capital gains arising from the transfer in long term capital assets (other than a residential house) is eligible for deduction to the extent of investment made in purchase or construction of a residential house within a specified period. The expression 'a residential house' as envisaged under the provisions has been a matter of litigation since the assessee would make investment in more than one residential house and claim that the deduction would be available on all such investments. Considering the fact that the provisions are beneficial provisions, majority of the courts have held that 'a residential house' as occurring in the provisions was not to be construed as 'one residential house'; but the expression may be extended to mean multiple houses or units also considering the facts of the case.
3. To end this controversy, Finance Act, 2014 has brought material change in the aforesaid provisions and substituted the expression 'a residential house property' with the words 'one residential house' with

effect from 01/04/2015. The rationale of the amendment, as explained in clause 20.3 of the explanatory notes to the Finance Bill was as follows: -

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.

The Finance Act, 2019 has further amended the said provision with effect from 01/04/2020 to provide that in case of capital gain not exceeding Rs.2 Crores, deduction shall be available even against investment in two residential houses in India.

4. Interpreting the provisions of Section 54, Hon'ble Madras High Court in its decision titled as **Tilokchand & Sons V/s ITO [105 Taxmann.Com 151 14/03/2019]**, applying the decisions of Hon'ble Karnataka High Court in **CIT V/s D. Ananda Basappa [309 ITR 329] & CIT V/s Khoobchand M. Makhija [43 Taxmann.com 143 18/12/2013]**, held that 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 then there was no need to amend the said provisions by Finance Act No.2 of 2014 which the Legislature specifically made it clear to operate only prospectively from AY 2015-16. Once it is held that the word 'a' employed can include plural residential houses also within the meaning of Section 54 prior to its amendment, then such interpretation will not change merely because the purchase of new assets in the form of residential houses is at different addresses. So long as the same

Assessee 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 u/s 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. It was also held that the amendment made by The Finance Act, 2014 was intended to be specifically applied only prospectively with effect from AY 2015-16 since it took note of the judicial precedents for period prior to 01/04/2015.

5. On the basis of above, it could be observed that post amendment, the deduction has specifically been restricted by legislature to the extent of investment made in one residential house only, notwithstanding the facts and circumstances of the case.

Proceedings before lower authorities

6.1 In the instance case before us, the assessee sold an industrial shed along with land for Rs.260 Lacs and invested the same for construction of residential house at Koramangala, Bangalore. The assessee was already owner of a residential house in Hosur in which he was residing. After perusal of documents, it was noted by Ld. AO that the assessee constructed stilt floor and three other floors. The stilt floor had three car parking whereas each of the three floors consist of a living room, 2 bed rooms, toilets and a kitchen. In floor-wise plan approval, it was mentioned that there are three tenements in the building one each on ground, first and second floor. Accordingly, the approval was taken for construction of 3 residential houses. The building plan approval was also granted for 3 units of residential house, Further, the assessee had taken 6 domestic electricity connections. As

per valuation report, the ground floor was occupied by the owner whereas the each of the other two floors were occupied by two tenants. In the above factual matrix, Ld. AO held that residential house would mean that it should have one hall / room, one toilet and one Kitchen which could be used for stay of one family. Thus, the assessee had acquired more than one residential house.

6.2 The assessee defended the same on the ground that it had constructed only one residential house only which could be verified from building plan approval, property tax assessment etc. For all purposes, the house was considered as a single residential house only. The basic idea of making three separate dwellings was to live with the two daughters as a joint family post retired life. Since the daughters could not shift immediately, the floors were temporarily let out and rental income was earned which was offered to tax.

6.3 However, relying upon the amended provisions of Sec.54F, Ld. AO held that the deduction would not be available to the assessee. The alternative submissions to allow proportionate deduction was also denied on the grounds that the assessee had constructed 5 residential houses (one house occupied by the assessee and 4 houses occupied by the tenants) apart from one residential house already in the possession of the assessee at Hosur.

6.4 Lastly, as against sale consideration of Rs.260 Lacs, the assessee had invested only Rs.249.98 Lacs. Therefore, the assessee would have otherwise eligible for proportionate deduction of Rs.244.30 Lacs as against the claim of Rs.249.98 Lacs. Finally, the deduction of Rs.249.98 Lacs was denied to the assessee. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

Our findings and Adjudication

7. There could be no quarrel on the fact that post-amendment to Sec.54F, as applicable from AY 2015-16, deduction u/s 54F could not be claimed on purchase / construction of more than one residential house. However, the factual matrix would reveal that the assessee has made investment in one residential building which consist of three floors. For all the three floors, the land tax is paid as a single unit. All the three floors have the same door number. The Ld. AO has denied the claim merely on the ground that the assessee has made three independent floors and the stilt parking has three car parking. Further, the assessee has taken 6 electricity connections. However, in the light of the fact that units have been constructed on a single piece of land, these factors would not be of much relevance to determine the eligibility to claim deduction u/s 54F.

8. It is also evident that the ground floor has been occupied by the assessee himself whereas each of the other two floors are occupied by two tenants each. The same is one of the factors as considered by Ld. AO to deny the deduction. However, the conclusion of Ld. AO would necessarily mean that the assessee was debarred from making separate units on a single piece of land and secondly, it raises a presumption that complete building should have been used by the assessee for its own residential purposes as a single unit. However, the same is not the intention of the legislature. The only requirement is that the assessee should make investment in one residential house. The conclusion of Ld. AO overlooks the fact that the multi-storied building was subjected to one property tax assessment and pertinently, it has one door number only. In our considered opinion, there is

nothing in the statutory provisions which debar the assessee to make separate independent livable units on a single piece of land or obtain more than one electricity connection to claim the deduction. There is also not a condition that the property should be, at all times, used exclusively by the owner himself for his own residential purposes and the same could not be let out. As long as the property is one residential house, the fragmentation of the same into different livable units and to let them in part would not make the assessee ineligible to claim the deduction. Accordingly, the lower authorities, in our considered opinion, has misconstrued the statutory provisions. We would hold that the assessee is eligible to claim the deduction on investment of Rs.249.98 Lacs which shall proportionately stand reduced to Rs.244.30 Lacs as held by Ld. AO in para-14 of assessment order in view of the fact that full sale consideration was not invested in the new house. As per the provisions, the assessee is eligible to claim proportionate deduction only. We order so. The Ld. AO is directed to re-compute the assessee's income.

9. The appeal stands partly allowed in terms of our above order.

Order pronounced on 13th July, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 13-07-2022

EDN/-

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF