

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

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2002/Del/2019 : Asstt. Year : 2012-13

Andrey Andreev, C/o Sushil Budhia Associates, CA, 1103, Level 11, universal Majestic, Behind RBK International School, Ghatkopar Mankhurd, Link Road, Chembur, Mumbai-400043	Vs	CIT(Intl. Taxation)-03, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AGLPA5288P		

**Assessee by : Sh. Y. K. Kapur, Adv. &
Sh. Bhushan Kapur, Adv.
Revenue by : Ms. Sapna Bhatia, CIT DR**

Date of Hearing: 29.06.2022	Date of Pronouncement: 13.07.2022
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (International Taxation)-3, New Delhi dated 14.01.2019.

2. The assessee, a non-resident of India has filed return of income declaring an income of Rs.7,38,040/- for the relevant Assessment Year. During the year, the assessee has sold his property, the proceeds amounting to Rs.27,37,93,924/- have been remitted abroad as per the details of 15CA certificate. The Assessing Officer treated this amount under the head "short term capital gains" and taxed accordingly vide Assessment Order dated 31.03.2015. Later, a rectification order u/s 154 of the Income Tax Act, 1961 dated 28.07.2016 was passed

wherein deduction claim u/s 54 of Rs.4,86,22,366/- has been allowed resulting into refund of Rs.76,44,140/- owing to computation of the taxable capital gains as NIL. The computation of capital gains was as under:

- Sale cost of the residential cost of - Rs. 7,05,00,000/-.
- Indexed cost of acquisition – Rs.3,45,92,417/-
- Exemption u/s 54 claimed – Rs.3,59,07,583/-
- Taxable capital gains – Rs. Nil

3. Owing to the fact that the assessee has claimed exemption u/s 54 against purchase of residential property at Kuala Lumpur, Malaysia, the Id. CIT set aside the order of the Assessing Officer on the grounds that the marginal note to Section 54F inserted by the Finance Act, 1982 w.e.f. 01.04.2003 which has been further explained in the Circular No. 346 dated 30.06.1982 doesn't allow the assessee, the exemption u/s 54F.

4. The Id. CIT relied on the Explanatory Notes on the provisions of Finance Act, 1982 in para 20.2 which reads as under:

"with a view to encouraging house construction, the Finance Act, 1982, has inserted a new Section 54F" held that the assessee was not eligible for exemption u/s 54F as the reinvestment of the capital gain was made in a residential house outside India, i.e. in Malaysia."

5. Quoting the provisions of sub-section (3) of Section 54F, the Id. CIT also held that *"while it is true that the words 'in India' have not been mentioned in express terms in the section, I am of the opinion that the words 'Capital gain on transfer of*

*certain capital assets not to be charged in case of investment in residential house' occurring in section 54F of the Act means 'investment in residential house in India' and not 'residential house anywhere else in the world'. As stated earlier the words 'in India' may not occur in the relevant provisions but subsection 3 of section 54F refers to imposition of capital gains tax, if the asset is transferred within a period of three years and such contemplated transfer can be of a house existing in India. Since the word 'new asset' i.e. new residential house has been used together with the words '**shall be deemed to be** income chargeable under the head 'Capital gains' relating to long term capital assets, the implication is that the 'new asset' should not be situated outside India."*

6. Aggrieved the assessee filed appeal before us.

7. We have gone through the issue. The pertinent issue involved is "*whether the assessee is eligible for exemption u/s 54F in case of investment of capital gains through purchase of residential property outside India or not?*".

8. The similar issue stands adjudicated by the Co-ordinate Bench of ITAT Bangalore in the case of Vinay Mishra Vs. ACIT in ITA No. 895/Bang/2012 vide order dated 12.10.2012 wherein it was held that the acquisition of house property in USA was eligible for claiming u/s 54F provided all the conditions laid down for exemption are met by the assessee.

9. Similarly, the Hon'ble High Court of Gujarat in the case of Leena J. Shah Vs ACIT in ITA No. 483 of 2006 vide order dated 14.06.2016 held that once the assessee fulfilled conditions stipulated in Section 54F of the Act as there is no condition in Section 54F of the Act that capital gain arising out of transfer

of capital asset should be invested in residential house situated in India, therefore, benefit of Section 54F of Act before its amendment could be extended to residential house purchased outside India too.

10. Owing to the judgments, an amendment has been brought in Section 54F vide Finance Act, 2014.

11. We have gone through the amendment brought out by the legislature wherein it was mentioned that with effect from 01.04.2015 for claiming benefit of exemption from payment of capital gain accruing on account of sale of property, the assessee must invest in a residential house in India. Thus, this amendment provides that prior to 01.04.2015 the investment made by assessee in residential property outside India were eligible for exemption under section 54/54F of the Income Tax Act. For the sake of ready reference, the relevant portion of the provisions of the Act is reproduced hereunder:

"Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) *Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date ***constructed, one residential house in India** (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Substituted for constructed, a residential house by Finance (No. 2) Act, 2014 w.e.f. 01.04.2015

12. Further, we have gone through EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE (No.2) ACT, 2014, Circular No. 1 of 2015 dated 21st January, 2015 F. No. 142/13/2014-TPL, Government of India, Ministry of Finance, Department of

Revenue wherein the issue has been explained in detail. The relevant explanatory note is as under:

"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 a long-term capital asset, being buildings or lands 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 (1) of section 54F of the Income-tax Act, before its amendment by the 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."

13. Since, the amendment is not said to be retrospective in nature, as the amendment was brought by Finance Act, 2014 and made applicable in relation to Assessment Year 2015-16 and subsequent Assessment Years and since all the conditions laid down u/s 54F are satisfied by the assessee to avail the exemption, we hereby allow the claim of the assessee for exemption u/s 54F.

14. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 13/07/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 13/07/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR