

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1783/PUN/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Safique Sadruddin Balsarra,
Prop. M/s. New Balsara Foot Wear,
1082, Budhwar Peth,
Pune – 411002

PAN : ACIPB6988J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 6(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 22-08-2022

घोषणा की तारीख / Date of Pronouncement : 24-08-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 15-10-2019 passed by the Commissioner of Income Tax (Appeals)-4, Pune [‘CIT(A)’] for assessment year 2014-15.

2. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in confirming the order of AO in denying exemption u/s. 54F of the Act.

3. Brief facts relating to the issue on hand are that the assessee is an individual and derives income from retail business in footwear and from commission. The assessee filed its return of income declaring a total income of Rs.2,10,900/- and the same was processed u/s. 143(1) of the Act. Under scrutiny, notices u/s. 143(2) and 142(1) of the Act issued. In response to the said notices, an authorized representative representing the assessee attended before the AO and filed necessary information, documents etc. On an examination of such details filed by the assessee, the AO was of the opinion that the assessee is not entitled to claim exemption u/s. 54F of the Act as the assessee failed to invest the capital gains towards purchase of a new flat before due date of filing of return of income u/s. 139 of the Act or further, failed to deposit the capital gains in the capital gain account. Having not satisfied with the submissions of assessee, the AO added an amount of Rs.10,05,777/- on account of long term capital gains to the income of the assessee and determined the total income of the assessee at Rs.12,16,670/- vide its order dated 30-09-2016 passed u/s. 143(3) of the Act. The CIT(A) confirmed the order of AO in denying the claim of exemption u/s. 54F of the Act. Aggrieved by the order of CIT(A), the assessee is before me.

4. The ld. AR, Shri M.K. Kulkarni submits that sub-section (4) of section 54F of the Act is not to be strictly interpreted and the provisions u/s. 54F is a beneficial legislation. The said provisions should be liberal construed. Further, he submits that the assessee invested his share of capital gains in purchasing a new flat at Kalyaninagar, Pune on 06-02-2015 within stipulated time as contemplated in provisions u/s. 54F(1) of the Act. He argued that the denial of exemption u/s. 54F of the Act is not justified as the assessee invested the capital gains within one year from the date of sale of a shop belonging to the assessee and his brother. The ld. AR drew our attention to the judgment of Hon'ble High Court of Karnataka

in the case of CIT Vs. K. Ramachandra Rao reported in [2015] 56 taxmann.com 163 (Karnataka) and by referring to relevant paragraphs, he argued that sub-section (4) of section 54F of the Act is not attracted if the assessee invests the sale consideration derived from the transfer either in purchasing the property or constructing the residential house within the period stipulated in section 54F(1) of the Act. He submits that the assessee invested the capital gains in a new flat within the period of one year from the date of sale of capital asset. He argued that the order of CIT(A) in confirming the AO in denying the claim u/s. 54F of the Act is not justified and drew our attention to the order of Kolkata Tribunal in the case of Sunayana Devi Vs. ITO reported in [2017] 86 taxmann.com 72 (Kolkata-Trib.) and argued that the assessee is entitled to claim exemption u/s. 54F of the Act and prayed to allow the grounds of appeal raised by the assessee.

5. On the other hand the ld. DR, Shri M.G. Jasnani drew our attention to the decision of Hon'ble High Court of Bombay in the case of Humayun Suleman Merchant Vs. CCIT reported in [2016] 387 ITR 421 (Bombay) and argued that when the provisions under statute is clear and no necessity arises to give beneficial construction to the said provisions. He argued that the Hon'ble High Court of Bombay held there is no ambiguity in the provisions of section 54F of the Act and no occasion arises to apply liberal/beneficial construction while interpreting the said section. He submits that the assessee sold his share of property on 21-02-2014 and invested capital gains on 06-02-2015, which clearly shows that the assessee did not deposit capital gains before due date of filing of return of income. He argued that no interference from this Tribunal requires that the AO discussed the issue in detail in assessment order and was rightly confirmed by the CIT(A) at Para No. 6.3 of the impugned order. He

supported the order of CIT(A) and prayed to dismiss the grounds raised by the assessee.

6. Heard both the parties and perused the material available on record. I note that the assessee along with his brother sold a shop on 21-02-2014 for a total consideration of Rs.35 lakhs and the assessee received Rs.17.5 lakhs as his share out of the said total consideration. The assessee invested the entire sale consideration received by him towards purchase of a new flat on 06-02-2015 which is undoubtedly within the stipulated period i.e. two years after the date on which the transfer took place u/s. 54F(1) of the Act, but, according to the AO the assessee must have deposited the capital gains in the account specified by the Central Government before the due date for filing return of income u/s. 139(1) of the Act. The contention of ld. DR is that the assessee has to deposit the said capital gains in the capital gain account before filing the return of income failing which provisions under sub-section (4) of section 54F of the Act is attracted. Further, he contends that the assessee did not appropriate the net consideration towards the purchase of a new asset within one year before the date on which the transfer of original asset took place and sub-section (4) of section 54F of the Act is rightly invoked by the AO which was correctly confirmed by the CIT(A). I note that admittedly the due date for filing of return of income u/s. 139(1) of the Act is 31-07-2014 and the time limit available for assessee for filing of return of income u/s. 139(4) of the Act is 31-03-2015. Admittedly, there is no dispute that the assessee made investment in purchasing a new flat on 06-02-2015 and it is evident from the assessment order that the assessee filed e-return of income on 27-02-2015 which is u/s. 139(4) of the Act. I note that sub-section (4) of section 54F of the Act is also clear that the net consideration which is not utilized for the purpose or construction of a new asset before due date of furnishing return of income u/s. 139 of the Act, the assessee

has to mandatorily deposit before furnishing such return of income. It is clear from the record that the assessee made investment on 06-02-2015 i.e. before furnishing the return of income u/s. 139(4) of the Act on 27-02-2015. Thus, the assessee cannot be held to be ineligible for claiming exemption u/s. 54F of the Act on the reason that the investments are not made before due date for filing of return of income u/s. 139(1) of the Act. Thus, the order of CIT(A) is not justified and it is set aside. I hold that the assessee made investments from capital gains arising out of transfer of original capital asset towards purchase of a new asset within specified period before filing of return of income u/s. 139(4) of the Act. Thus, the grounds raised by the assessee are allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 24th August, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th August, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune
4. The Pr. CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune