



IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 604/PUN/2019 : A.Y. 2013-14

John Thomas
S.No. 28, B-25 Ashwini Apartment,
Aundh Road,
Pune-411 020
PAN: BBPPT 7027 G

Appellant

Vs.

The Income-tax Officer Ward 13(5) Pun

Respondent

Appellant by : Shri M.N. Kulkarni

Respondent by : Shri Ramnath P. Murkunde

Date of Hearing : 25-08-2022

Date of Pronouncement : 26-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

This appeal preferred by the assessee emanates from the order of the Id. Commissioner of Income Tax (Appeals) – 5, Pune dated 22-02-2019 for the Assessment Year 2013-14 as per the following grounds of appeal.

“1. CIT(A) has erred in confirming the disallowance of appellant's claim u/s 54F of Rs. 1,16,75,175/- made by the A.O. Appellant prays to allow the said claim for deduction u/s 54F in computing the capital gain.

2. CIT(A) has erred in not granting just and equitable relief to the appellant.

3. CIT(A) has erred in not cancelling interest charged u/s 234B. Appellant prays for cancellation of interest charged u/s 234B

4. Appellant prays to add, alter, amend, take additional ground/s and/or withdraw the ground/s during appeal proceedings. Appellant prays to allow the same.”

2. The brief facts in this case are that the assessee claimed exemption u/s 54F of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) from long term capital gain on sale of shares in a private limited company by purchase of new flat. Full details were furnished in the return to the statement furnished with the return and during the assessment proceedings. The assessee and his



wife are co-owners jointly owning two flats where the assessee was having 50% share in each flat. Before the sale of shares of a private limited company, the assessee made a gift of his share in one flat by registered gift deed to his wife. Therefore, his wife became the full owner of the flat in respect of one flat and for the other flat the assessee was having 50% share while his wife was having the other 50% share. That from the long term capital gain on sale of shares of a private limited company, the assessee purchased another flat and claimed exemption u/s 54F of the Act. This exemption was claimed since the assessee on the date of sale of shares of a private limited company was owning only 50% share in one flat. Therefore, the assessee was not the owner of even one full residential flat. However, during the assessment, the A.O found from the return of income that the assessee was owner of more than one house property and hence as per provisions of section 54F, he was not liable to get such exemption. It is also on record that before the A.O as well as before the Id. CIT(A), the assessee has filed a registered gift deed stating that he has gifted his 50% share in one flat to his wife. In this backdrop the Id. A.O resorted to section 27 stating that such gift to spouse will still make the assessee deemed owner. The Id. CIT(A) had upheld the findings of the Id. A.O.

3. Before us, the assessee has submitted a copy of registered gift deed and has also reiterated the submissions placed before the subordinate authorities. The Id. A.R of the assessee submitted that for the purpose of section 27(i) of the Act which is a deeming provision is limited to sections 22 to section 26 of the Act and not for capital gain. The assessee further submits that he is satisfying the conditions laid down u/s 54F proviso (a) wherein on the date of transfer of capital asset the assessee was not even owner of one full house property. The assessee in this regard places strong reliance on the decision of



Hon'ble Madras High Court in the case of CIT Vs. Ajit Thomas in Tax Case Appeal No. 497 of 2016. In this case, the Hon'ble Madras High court observes that undisputedly one house property originally belonged to the assessee and thereafter it was transferred in the name of the assessee's wife by execution of settlement deed during the year 2003. The case of the revenue was that the assessee was not entitled for exemption under proviso (b) of section 54F clause (1) of the Act as it states that the income from such residential house property other than one residential house owned on the date of transfer of the original asset is chargeable under the head "income from house property". The Tribunal has considered the provisions of section 54F by observing that the A.O had passed the impugned assessment order without taking into consideration the provisions of section 27 clause (i) of the Act which is a deeming provision only applicable for sections 22 to 26 of the Act. Section 54F is a provision granting deduction to the assessee and so the other provisions of the Act which are relied on by the A.O cannot be construed that section 27 clause (i) can also be read with sec. 54F for the purpose of ownership of the property. The Tribunal had also observed that the assessee was not owner of the residential house in question and so as per section 54F the assessee is entitled to get exemption. In view of these facts, the Tribunal dismissed the appeal filed by the Revenue. The Hon'ble High Court thereafter observes that in the instant case, it has been categorically held by the CIT(A) as well as by the Tribunal that section 27 clause (i) of the Act is a deeming provision applicable only for sections 22 to 26 of the Act in computing annual value of the property and as such the deeming provision cannot be extended to deny exemption u/s 54F of the Act. Their Lordships were of the considered view that section 54F of the Act for granting exemption applies for the purpose of capital gain of transfer of certain capital assets not to be charged in investment



in residential house. In the context of present case, section 54F would apply as an independent provision. Therefore, view of the Tribunal cannot be held to be at fault.

4. Before us, the assessee had filed a registered transfer deed wherein 50% of the share of the assessee in one flat has been transferred in favour of his wife. That apart, we find as per the observations of the Hon'ble Madras High Court (supra), the application of section 27 of the Act in this case is misplaced so far as the department is concerned since it has been categorically observed in the aforestated judicial pronouncement that the deeming provisions are for the purpose of computation of income from house property and are applicable for provisions of sections 22 to 26 of the Act for computing annual value of the property. However, section 54F is an independent provision for granting exemption in respect of capital gain of transfer of certain capital asset. The assessee in this case satisfies the condition provided under the said provision. Therefore, placing reliance on the aforestated decision and the facts of this case we do not find any reason why the assessee should not be granted exemption u/s 54F of the Act. In view thereof, we set aside the order of the Id. CIT(A) and allow the appeal of the assessee.

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

Order pronounced in the open Court on this 26th August 2022.

Sd/-

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 26th August , 2022
Ankam



ITA No.604/PUN/2019
John Thomas
A.Y. 2013-14

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT – (A)-5 Aurangabad .
4. Pr. C.I.T. 4, Pune
5. D.R. ITAT 'A' Bench
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.



1	Draft dictated on	25-08-2022	Sr.PS/PS
2	Draft placed before author	25-08-2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	26-08-2022	Sr.PS/PS
7	Date of uploading of order	26-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	26-08-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		