

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VP AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.998/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2018-19)

ACIT-24(1) Room No.601, Piramal Chambers, Jeejeebhoy Lane, Lalbaug, Parel, Mumbai-400012.	बनाम/ Vs.	Bhavesh Surendra Shah 34/P, Laxmi Industrial Estate, New Link Road, Andheri-W, Mumbai- 400058.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEPS0265M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Mr. Dalpat Shah
Revenue by:	Mr. Chetan Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 01/09/2022

घोषणा की तारीख /Date of Pronouncement: 22/09/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 12.03.2022 for AY. 2018-19.

2. The grounds of appeal of the revenue reads as under: -

“1. Whether on the facts and in the circumstances and in law, the Ld. CIT(A) erred in allowing deduction u/s 54(1) of Rs.2,29,33,659/- of the I. T. Act, 1961.

2. Whether on the facts and in the circumstances and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee is eligible for deduction u/s 54(1) of the I. T. Act, 1961 provided the assessee invests in a new capital asset within a period of one year before or two years after the date transfer of old house, the taxpayer should acquire another residential house or should construct a residential house within a period of three years from the date of transfer of the old house.



*ITA No.998/Mum/2022
A.Y. 2018-19
Bhavesh Surendra Shah*

3. Whether on the facts and in the circumstances and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee has claimed deduction on capital gains on purchase of asset for which payment was made prior to one year of the sale of the old asset.
4. The appellant prays that the order of the National Faceless Appeal Centre (NFAC), Delhi on the above grounds be reversed and that of the Assessing Officer be restored.”

3. Brief facts of the case is that the assessee filed the return of income on 09.10.2018 declaring total income of Rs.26,03,140/-. Later, the case was selected for limited scrutiny. The AO noted that the assessee has sold a residential house on 24.10.2017 for Rs.7,18,50,000/- and claimed exemption u/s 54 of the Income Tax Act, 1961 (hereinafter “the Act”) for capital gain of Rs.5,49,49,099/- on sale of the said house property. And the assessee, in respect of the exemption claimed brought to AO’s notice that he had purchased a new asset (Flat) and so, is entitled to exemption u/s 54 of the Act. The AO noted that new asset i.e. flat has come in possession of assessee only on 17.06.2019, even though the agreement for purchase of flat was made as early as on 05.08.2016. The AO acknowledged that the assessee has uploaded the payment details in the form of a chart which AO made part of the assessment order. But, he did not fully allow the assessee’s claim of exemption u/s 54 of the Act. The AO after reproducing Section 54 of the Act for examining the exemption claimed by the assessee u/s 54 of the Act in respect of capital gain, [which arose in respect of the sale consideration he received on sale of



*ITA No.998/Mum/2022
A.Y. 2018-19
Bhavesh Surendra Shah*

the house property], the AO noted that the basic condition for qualifying for exemption u/s 54(1) of the Act was as under: -

“(i) For purchase of one residential house (new asset) the time period is one year before to within two years from the date of sale of original asset.

(ii) For construction of one residential house (new asset) the time period is within three years from the date of sale of original asset.”

4. Thereafter, the AO noted that the assessee has got registered agreement for purchase of the new asset (Flat) on 05.08.2016 for Rs.7,92,00,000/-. And the AO noted that Possession of this flat has been taken by the assessee on 17.06.2019. Thus the AO noted that the possession of the new asset the assessee got within two (2) years from the date of sale of original asset i.e. from 24.10.2017. However the AO noted from the payment chart uploaded by the assessee that payments were made by the assessee in two (2) parts i.e. 1st part show that payments were made from 20.04.2016 to 13.10.2016; and 2nd part shows payments from 09.06.2017 to 06.02.2018.

5. From the aforesaid fact, according to the AO, the assessee’s claim of exemption is covered under the first condition of Section 54(1) of the Act i.e. purchase of new asset within one year before to two (2) years after the sale of original asset. In this regard, the AO noted that the agreement to purchase the new asset (flat) was made by assessee on 05.08.2016 which according to him is out of the period of one year before from the sale date of original asset i.e. 24.10.2017. According to the AO, the payments made by assessee to the builder of



*ITA No.998/Mum/2022
A.Y. 2018-19
Bhavesh Surendra Shah*

flat prior to one year before the date of sale of original asset does not qualify for exemption as it is not falling within the period of one year before (the date of sale of house property on 24.10.2017). However, considering that the possession certificate was produced by the assessee in respect of new asset (Flat) which was within the period of two (2) years from the date of sale of original asset, according to him the payments made within the specified period of one year before to two (2) year after is only allowable expense towards purchase of new asset. And therefore, according to him, only Rs.3,20,15,440/- is allowable as expenses incurred towards purchase of new asset within stipulated time i.e. within one year before to two (2) years after the sale of original asset; and balance claim of exemption of Rs.2,29,33,659/- (Rs.5,49,49,099 – Rs.3,20,15,440) was disallowed. And thereafter he calculated the total income of the assessee at Rs.2,55,36,796/- (Rs.26,03,137/- + Rs.2,29,33,659/-). Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC who/which was pleased to delete the addition by taking note of the relevant facts & relying on the judicial precedents cited before him. While giving relief to the assessee the Ld. CIT(A) took note of the fact that the agreement of the assessee with the developer dated 05.08.2016 was for construction of new flat [and not purchase of flat as held by AO]; and since the possession of the same was given to assessee within the three (3) years from the date of transfer of old house property which was sold on 24.10.2017, the assessee was entitled to the exemption claimed u/s 54 of the Act and so he allowed the entire cost of the



ITA No.998/Mum/2022
A.Y. 2018-19
Bhavesh Surendra Shah

construction paid by the assessee. Against the impugned action of Ld. CIT(A)/NFAC, the revenue is before us.

6. We note that in this case, the assessee had booked a new residential flat at Flat No. 801, Kabra Prathna, Juhu Prathna C.H.S. Ltd. Vidyanidhi Marg, JVPD Scheme, Vile Parle (W), Mumbai on 20.04.2016 for a total value of Rs.7,92, Crores in a New Construction Project and Agreement was registered on 05.08.2016. The assessee sold his old residential flat at Nilgiri Building on 24.10.2017 for Rs.7.19 crores on which LTCG of Rs.5,49 crores arose after indexation of cost. The assessee paid towards cost of Construction of new flat as under: -

Date	Events	Remark	Rupees
20.04.2016	Booking of a new residential flat in a new building project		
20.04.2016 To 23.10.2016	Amount paid towards cost of new construction of flat booked in a new building project	Period prior to one year from date of sale of old flat	4,38,26,000
23.10.2016 to 06.02.2018		Allowed by AO u/s 54	3,20,15,440
24.10.2017	Sale of old Flat		
06.02.2018 to 24.10.2020	Balance amount paid towards cost of new construction of flat booked in a new building project		91,87,400
	Total amount paid towards cost of new construction of flat		8,50,28,840

And assessee claimed deduction u/s 54 of Rs.5,49 crores against the said LTCG out of total cost of Rs.7,92 crores for the new flat constructed in the new building project at Kabra Prathna. The AO restricted deduction u/s 54 of the Act by Rs.3,20 crores and disallowed the deduction u/s 54 of the Act by Rs.2,29 crores on the ground that the assessee has purchased new house and not constructed a new house and therefore, payment made one year prior to the date of transfer of



*ITA No.998/Mum/2022
A.Y. 2018-19
Bhavesh Surendra Shah*

the old flat sold is not allowable u/s 54 of the Act. The Ld. CIT(A)/NFAC, Delhi has deleted the addition accepting the fact that assessee has constructed the new flat and by relying on the judicial precedents on the subject.

7. We note that the AO partially disallowed the deduction claimed u/s 54 of the Act by Rs.2,29,33,659/- in respect of payments made prior to one (1) year from the date of sale of his residential house property; and the Ld. CIT(A) deleted the addition and allowed deduction claimed by the assessee u/s 54 on the ground that the assessee's case falls in the second limb of exemption u/s 54 of the Act i.e. construction of house within three (3) years from the date of sale of original asset. The Ld. CIT(A) took note of the fact that the assessee's agreement for construction of flat was dated 05.08.2016 and that assessee had paid to the builder for construction of a new flat which assessee got possession on 17.06.2019. (i.e. within two (2) years from sale of original asset. So the Ld. CIT(A) relying upon the various judicial decisions and taking note that the action of assessee was for construction of new flat and that assessee got possession of the new asset within three (3) years, held that he was entitled to exemption u/s 54 of the Act. The Ld. CIT(A) has rightly held that there is no time limit prescribed u/s 54 for commencement of new construction and therefore, exemption claimed u/s 54 of the Act is allowable on the entire cost of construction paid by the assessee. For that proposition the following decisions was brought to our notice:

(i) CIT v Mrs. Hilla J B Wadia 69 Taxman 114 (Bom)



ITA No.998/Mum/2022

A.Y. 2018-19

Bhavesh Surendra Shah

(ii) Mustnsir I Tehsildar v ITO 168 ITD 523 (Mum)

(iii) CIT v Smt. Sundar Kaur Sujan Singh 3 SOT 206 (Mum)

(iv) Kishor H Galaiya v ITO 137 ITD 229 (Mum)

Thus, we note that in this case, the condition provided u/s 54 (1) regarding construction of a new house that it should be completed within three years from date of transfer of old house, have been fulfilled; and further we note that there is no bar provided for disallowance of cost of construction paid prior to one year from the date of sale of old flat u/s 54(1) of the Act. In this case the construction was completed and possession was received on 17.06.2019 which is within three years from date of transfer of old house on 24.10.2017 and relying upon following judicial decisions: (i) Ms. Moturi Lakshmi v ITO 274 Taxman 286 (Mad) (ii) C. Aryama Sundaram v CIT 258 Taxman 10 (Mad) (iii) Mustansir Tehsildar v ITO 168 ITD 523 (Mum), we note that the Ld. CIT(A) rightly allowed the claim of assessee.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 22/09/2022.

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/ 09/2022.
Vijay Pal Singh, (Sr. PS)



*ITA No.998/Mum/2022
A.Y. 2018-19
Bhavesh Surendra Shah*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**