

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 257/JAB/2016
(Asst. Year: 2012-13)

Bhag Chand Jain, through its Legal Heir (Vikrant Kumar Jain), Jabalpur. [PAN : ACHPJ 1110 D]	vs.	Deputy Commissioner of Income Tax Circle -1(1), Jabalpur (M.P.)
(Appellant)		(Respondent)

Assessee by : Shri Abhijeet Shrivastava, Adv.
Revenue by : Shri Ravi Mehrotra, Sr. DR

Date of hearing : 13/10/2022
Date of pronouncement : 09/11/2022

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-1, Jabalpur ('CIT(A)', for short) dated 06/09/2016, partly allowing his appeal contesting his assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for Assessment Year (AY) 2012-13 vide order dated 26/03/2015 (typed mistakenly as 26/03/2013 in the assessment order).

2. The assessee having expired on 03/05/2021, his son and legal heir, Shri Vikrant Kumar Jain, stands brought on record as his legal representative u/s. 159 of the Act, filing revised Form 36 (memorandum of appeal) before the Tribunal, adopting the same grounds as per the original Form 36, as under:-

1. The learned CIT (Appeals) has not appreciated that order has been passed by DCIT, Circle-1(1) by violating rule of natural justice.

2. The learned Commissioner of Income Tax (Appeals) failed to appreciate that benefit of section 54C cannot be given in parts.
3. The learned Commissioner of Income Tax (Appeals) failed to appreciate the relevant material or evidence on record regarding house property, and partly disallowed exemption u/s. 54F of the I.T. Act which is arbitrary and unjustified.
4. The learned Commissioner of Income Tax (Appeals) erred in law in giving relief only to the extent of constructed area of the house whereas as per section 54F cost of complete house including garden open space and parking space other etc. are exempted.
5. The learned Commissioner of Income Tax (Appeals) erred in law in not appreciating the documents produced before him as copy of agreement property tax payment receipt, receipt of municipal corporation, Nagar Nigam lease deed, electricity bill, certified copy of lease deed, copy of diversion Khasra, which clearly shows that the complete unit of houses are for residential purpose.
6. That the ld. CIT (Appeals) failed to appreciate that there is no provision u/s. 54F of the IT Act to allow exemption up to the limit of constructed area or in part.
7. The appellant craves for leave to amend, add or omit any ground upto the time of hearing of appeal.

3. The issue, as would be apparent from the foregoing, is the exigibility to tax of the capital gain arising to the assessee during the relevant previous year, which is on the sale of agricultural land and two residential flats and, for the purpose, the eligibility to deduction, if any, u/s. 54F of the Act in view of the investment of the transfer proceeds. The reference to s.54C in Ground 2 of the Grounds of Appeal (GoA) is clearly a typing error; the correct provision being s. 54F.

4.1 It shall be relevant to discuss the background facts of the case, leading to the instant appeal, in brief. The assessee during the relevant previous year sold the following assets for Rs. 87.36 lacs, and purchased (along with Smt. Divya Jain, with 50% share each) a plot of land at Golebazar, Jabalpur, for a consideration of Rs. 85 lacs on 26/03/2012, claiming exemption u/s. 54F in respect of the entire capital gain, returned at Rs. 46.93 lacs:

Particulars of the capital asset	Amount in Rs.	Date of transfer
Flat	5,50,00/-	29/03/2012
Flat	11,75,000/-	30/03/2012
Agricultural land	70,11,000/-	23/03/2012
Total	87,36,000/-	

The claim u/s. 54F by the assessee was on the premise of purchase of a residential house, denied by the Assessing Officer (AO) with reference to the sale deed, which reflected the subject property as a plot of land (refer pg. 4 of the assessment order). Before the first appellate authority, it was contended that what was purchased was in fact a residential house, also furnishing the house numbers. As the assessee, however, wanted to build a new house thereon, the structure was dismantled. In fact, the dismantling could not be completed by 18/04/2012, the date of spot inspection directed by the Sub-Registrar, before whom the sale-deed dated 26/03/2012 was presented for registration, and, therefore, levied stamp duty on the super-structure as well. The Id. CIT(A) allowed part relief to the assessee on that basis. That is, the part of the land on which the house stood was regarded by him as purchased by him as a residential house, while treating the balance land as a plot of land, on which, therefore, no exemption u/s. 54F could be allowed, and which the assessee agitates before us, as apparent from the GoA, on the basis that the said, balance land is the land appurtenant to the residential house and, thus, forming part thereof.

4.2 Before us, at the very outset, with reference to the detail of the assets sold (refer table at para 4.1 above), Shri Shrivastava, the Id. counsel for the assessee, was questioned by the Bench as to how could the assessee, irrespective of the merits of the issue raised, be allowed exemption u/s. 54F in view of the fact that the assessee admittedly had, at the time of sale of the agricultural land, the only capital asset sold qualifying for deduction u/s. 54F on the capital gain arising on its sale, more than one residential house, income of which is chargeable under the

head 'income from house property'. This is as the same represents the primary condition for deduction u/s. 54F, which exempts capital gain on the investment of the sale proceeds on the transfer of a capital asset on the purchase or construction of a residential house within a defined period (*proviso* to s. 54F(1)). Annual value of any house property, other than that which the owner occupies for the purpose of the business or profession carried on by him, is assessable as income from house property (s. 2(2) r/w s. 23). In fact, as it appears, the assessee owns, apart from the two flats sold subsequent to the sale of the agricultural land, another residential house at Ganjipura, Jabalpur, i.e., the house in which he resides, constituting his residential address at Jabalpur. Shri Shrivastava sought time to respond, which was granted. He, subsequently, made an oral plea for withdrawal of the appeal, stated to be for purchasing peace of mind. We are not at all impressed. The revised Form 36 (Memo of Appeal) was filed by the legal representative on 15/9/2022, and the query afore-said was raised by the Bench during hearing on 16/9/2022, after which adjournments were sought on 20/9/2022 and 11/10/2022. The assessee has apparently been allowed unmerited relief u/s. 54F. In fact, again, the merits of the issue raised apart, the assessee has been allowed u/s. 54F exemption on the entire investment of Rs. 85 lacs even as he owns only half share therein, another fact glossed over by the Id. CIT(A) inasmuch as there is neither any dispute with regard to the assessee's share in the purchased property nor any reference to this fact in the impugned order. There is no estoppel against law (see, *inter alia*, *CIT v. Durga Prasad More* [1971] 82 ITR 540 (SC)). The law in the matter is trite, and once an appeal, otherwise valid, is filed with the Tribunal, it is bound to decide the same as per law (*Rani Paliwal v. CIT* [2004] 268 ITR 0220 (P&H)). The proceedings under the Act, it may be appreciated, are not in the nature of a *lis* between two parties (*S.S. Gadgil v. Lal & Co.* [1964] 53 ITR 231 (SC)). The Act is a public law, administered by the Income Tax Department, and the purview of the appellate authorities thereunder, subject to the limitations placed thereon by the Act itself, is the correct determination of tax chargeable thereunder, i.e., as per law, in the given

facts and circumstances of the case. The permission for withdrawal of the appeal, which was also objected to, and only rightly so, by Shri Mehrotra, the ld. Sr. DR, was accordingly denied and Shri Shrivastava requested to argue the matter, placing on record the documents for which he had sought time to address the issue raised, i.e., the non-satisfaction of the primary condition for deduction u/s. 54F. He, however, instead of arguing the matter, would reiterate the plea of withdrawal, emphasizing that this fact be duly recorded in the ensuing order. We were, accordingly, left with no option but to proceed in the matter, and decide on the basis of the material on record.

4.3 We may, however, before we do so, clarify that the Tribunal is not, in deciding an appeal before it, confined to the grounds set forth in the memorandum of appeal or even that taken with its leave. The only caveat is that the party which may be affected is to be allowed sufficient opportunity of being heard, i.e., observing the principles of natural justice (rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963). The reason is not far to seek: there is no estoppel against law and, therefore, the Tribunal is at liberty to, on an examination of the facts and circumstances of the case, and in view of law impinging thereon, raise issues or questions which need to be addressed or arise for determination of the matter before it, i.e., the subject matter of appeal, being the correct determination of capital gain chargeable to tax in the facts and circumstances of the case. In fact, as explained by the Apex Court time and again, even rules 11 & 27 of the Tribunal Rules are not exhaustive the powers of the Tribunal, being only procedural in character, which do not control or circumscribe its power (*Hukumchand Mills Ltd. v. CIT* [1967] 63 ITR 232 (SC)). The said power is, as afore-noted, confined to the subject matter of appeal. In the facts of that case, the issue arising before the Tribunal was discerned by it as the proper written down value (WDV) of the assets of the assessee-company for calculating the depreciation allowance under the Act.

4.4 Coming to the facts of the case, none of the facts impinging adversely on the primary condition for a claim u/s. 54F have been denied by the assessee; he, rather admitting capital gain on the two Flats sold on 29/03/2012 & 30/03/2012. Exemption u/s. 54F is, as afore-noted, not exigible on transfer thereof. No material as to the residential house at Ganjipura, Jabalpur, the assessee's residence, as being not his house, has been furnished despite availing time for the same. Whichever way one may look at it, the assessee is not entitled to any exemption u/s. 54F. Without prejudice, even on the merits of the issue raised, we find no substance in the assessee's case. The plot purchased surely had a super-structure thereon. The purpose of purchasing the plot, however, by own admission, was to build a residential house thereon, with the super-structure thereon being only incidental. It is for this reason that the assessee intended to pay stamp duty only on the value of the plot and not the super-structure thereon which, unless being acquired for user, is valued at nil/nominal value; the scrap also entailing demolition cost, while striking a bargain for purchase and sale of IP, which also explains the non-mention thereof in the sale deed. No wonder, the dismantling thereof followed immediately after purchase, and it is admittedly only per chance that the dismantling was not complete at the time of spot inspection, resulting in stamp duty being also levied on the super-structure part. The whole premise of allowing exemption on acquisition of a residential house, whether by purchase or through construction, is an addition to the stock of inventory of residential house property of the Nation, so that capital gain to that extent is not subject to tax. Legislative intent is the foundational basis of any interpretive exercise and, therefore, the Courts are to keep the object in view while interpreting a provision (*CIT v. Baby Marine Exports* [2007] 290 ITR 323 (SC)). What has been in effect and substance purchased in the instant case, as also evidenced by the sale deed, is only a plot of land for construction of a residential house thereon. Rather, but for the demolition having been completed by the date of inspection, no stamp duty would have been paid on the structure part. No case for construction of a residential house has been

preferred or pressed at any stage, including before us. The assessee is, accordingly, not entitled to any exemption u/s. 54F on the purchase of plot. Further still, the very fact of returning nil capital gain, determined at Rs. 46.93 lacs, implies the claim of exemption u/s. 54F *qua* the entire investment of Rs. 85 lacs, even as, as apparent, and not disputed at any stage, is the assessee's share in the property purchased being at one-half, so that only an investment of Rs. 42.50 lacs, if at all, could be taken into account for claim for exemption u/s. 54F, even as noticed by the AO. That apart, the same is exigible only in respect of capital gain arising on transfer of a long-term capital asset/s other than a residential house, so that it would not be entitled on capital gain arising on the sale of residential flats. This is being stated, as afore-said, without prejudice to the foregoing findings.

4.5 In view of the foregoing, the assessee's claim u/s. 54F is without any merit whatsoever. The AO's action in denying the same is, for the reasons stated, which include that appealed to the AO, upheld. We decide accordingly.

5. In the result, the assessee's appeal is dismissed on the afore-said terms.

Order pronounced in open Court on November 09, 2022

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 09/11/2022

vr/-

Copy to:

1. The Assessee: Shri Bhag Chand Jain, Through its Legal Heir (Vikrant Kumar Jain) M/s Modern Pipe Industries, 1174, Ganjipura, Lohia Ward, Jabalpur (M.P.)
2. The Revenue: Deputy Commissioner of Income Tax Circle-1(1), Jabalpur, (M.P.).
3. The Principal CIT-1, Jabalpur (MP)
4. The CIT(Appeals)-1, Jabalpur.
5. The Sr. D.R., ITAT, Jabalpur.
6. Guard File.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur.