

**IN THE INCOME TAX APPELLATE TRIBUNA
[DELHI BENCH: 'A' NEW DELHI]
BEFORE Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER
I.T.A. No. 2626/DEL/2017 (A.Y. 2009-10)**

Smt. Anu Gera, S-505, Greater Kailash-II, New Delhi – 110 048. PAN No. ADGPG7714G (APPELLANT)	Vs.	Income Tax Officer, Ward : 22 (1) New Delhi. (RESPONDENT)
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Assessee by : Ms. Rano Jain, Advocate &
Ms. Mansi Jain, C. A.

Department by : Shri Kanv Bali, Sr. D. R.

Date of Hearing	02.03.2023
Date of Pronouncement	05.04.2023

ORDER

PER YOGESH KUMAR US, JM

1. This appeal is filed by the assessee against the order dated 27.12.2016 of the ld. Commissioner of Income Tax (Appeals)-10 [(hereinafter referred to CIT (Appeals)] New Delhi, for assessment year 2009-10.

2. The assessee in the appeal has raised the following substantive grounds of appeal:-

“1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding "short term capital gain" arose on sale of residential property no G 27 Ground floor, Kalka Ji, Delhi instead of "Long term capital gain" as claimed by the Appellant.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding Rs.3,44,000 as cost of acquisition instead of cost of acquisition of Rs.16,75,000 claimed by the Appellant in computing capital gain on sale of residential property no G 27 Ground floor, Kalka Ji, Delhi.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding Rs.2,06,000 as cost of acquisition instead of cost of acquisition Rs.6,70,000 claimed by the Appellant in computing long term capital gain on sale of residential property no G 27 basement, Kalka Ji, Delhi.”

3. Brief facts of the case are that the assessee filed return declaring total income of Rs. 5,38,341/-, the assessee had shown income from business of Rs. 5,42,500/-, income from other sources of Rs. 1,450/- and LTCG of Rs. 29,28,945/- which was claimed as exempt income by the assessee u/s 54 of the Act. The return was processed u/s 143(1) of the Income Tax Act, 1961. The assessment proceedings have been initiated against the assessee and the claim of exemption u/s 54 of the Act has been denied by the AO in following manners:-

“6.2.3. Claim of exemption u/s 54 of 1.T. Act

The assessee has purchased three new properties as detailed below:

<i>S.No.</i>	<i>Description of Property</i>	<i>Date of Purchase</i>	<i>Purchase Amount</i>
1.	<i>R-209, G.K-1, (1/2 share)</i>	<i>02/07/2008</i>	<i>29,10,000/- (1/2 share of the assessee comes to Rs. 14,55,000/-)</i>
2.	<i>S-505. G.K.-II, Basement</i>	<i>02/07/2008</i>	<i>10,00,000/-</i>
3.	<i>G-66B. First Floor, Kalkaji</i>	<i>13/08/2008</i>	<i>20,00,000/-</i>

The assessee is not entitled for relief u/s 54 of 1.T. Act in respect of investment made by him in above three properties against long term capital gain. The assessee is entitled for exemption u/s 54 of the IUT Act against long term capital gain in respect of investment in one residential property. The assessee has acquired these properties in 3 different locations. The properties acquired are not adjacent and are not inter-connected. The provisions of section 54 read as under:

"Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head Income from house property (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, a residential house, then) instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say-

(i) If the amount of the capital gain (is greater than the cost of the residential house) so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and

for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil, or

(ii) If the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

6.2.4 Determination of amount of exemption u/s 54:

In view of the above discussion, it is apparent that the assessee is entitled for exemption w/s 54 in respect of a residential house property purchased against long term capital gain on sale of a long term capital asset being a residential property. In this case, the assessee has purchased three properties, the exemption u/s 54 of I.T. Act is allowed in respect of a residential property in view of provisions of section 54 and not against all the three properties. Keeping in view, the highest investment amount in property exemption u/s 54 of I.T. Act is allowed for Rs. 20,00,000/- in respect of the property G-66 First Floor, Kalkaji purchased on 13/08/2008. Accordingly, long term capital gain after allowing exemption of Rs. 20,00,000/- computed as under:

<i>Long Term Capital Gain on sale of property</i>	
<i>G-27, Basement, Kalkaji, New Delhi as calculated above-</i>	<i>Rs. 22,33,769/-</i>
<i>Less: Exemption u/s 54 as discussed above</i>	<i>Rs. 20,00,000/-</i>
<i>Long Term Capital Gain</i>	<i>Rs. 2.33.7691-</i>

4. As against the order of the AO, the assessee has preferred an appeal before the Id CIT(A). The Id CIT(A) vide order dated 27.12.2016, dismissed the appeal filed by the assessee. Aggrieved by order of the Id CIT(A) dated 27.12.2016, the assessee preferred the present appeal on the ground mentioned above.

5. We have heard parties, perused the record and giving thoughtful consideration. The ground No. 1 and 2 are regarding upholding "short term capital gain" arose on sale of residential property No. G-27, Ground Floor, Kalkaji, Delhi and upholding of Rs. 3,44,000/- as cost of acquisition instead of cost of acquisition of Rs. 16,75,000/- claimed by the assessee in computing

capital gain on sale of residential property No G-27, Ground Floor, Kalkaji, Delhi.

6. While computing long term capital gain, the assessee has shown cost of acquisition of the property in the ground floor of Rs. 16,75,000/- on the basis of which index cost of acquisition has been claimed at Rs.19,61,468/-. It is found as per the registered General Power of Attorney dated 26.05.2006 executed between Shri Bharat Sareen and the assessee, the above property was purchased by the assessee for a sum of Rs. 3,24,000/- for which stamp duty of Rs. 10,000/- was paid and the said Power of Attorney is registered one. During the course of assessment proceedings, it has been claimed by the assessee that the property was acquired at Rs. 16.75 lakhs and the amount of Rs. 3,24,000/- mentioned only for the purpose of calculation of stamp duty and the actual cost of acquisition was Rs. 16.75 lakhs and relied on the unregistered agreement to sell.

7. As per the sale deed, the assessee became the owner of the property through Power of Attorney executed by Bharat Sareen on 26.05.2006 wherein, there was no mentioning of the that the property devolved in favour of the assessee though any 'gift deed'. We have perused the gift deed dated 30.06.2005 which is unregistered one. Since the gift deed falls under the documents which registration is compulsory as per section 17 of the Registration Act, 1908 the unregistered instrument of gift of immovable property does not have any legal sanctity. Therefore, considering the fact that the above property has been assigned by Shri Bharat Sareen by way of POA in favour of the assessee vide Power of Attorney dated 26.05.2006 and the same was sold by the assessee on 18.06.2008, the holding period of the same was not more than 36 months in the hands of the assessee. Thus, the lower authorities have committed no error in treating the same as 'short term capital gain' in respect of residential property G-27, Ground Floor, Kalkaji, Delhi. In view of the above, we find no merit in the ground Nos. 1 and 2 of the appeal. Accordingly, ground Nos. 1 and 2 of the appeal of the assessee are dismissed.

8. In so far as basement floor is concerned, the assessee after claiming exemption u/s 54 of the Act, the capital gain declared by the assessee was Nil.

The AO controverted the computation made by the assessee and the dispute between the assessee and the AO in the computation as under:-

<i>COMPUTATION OF CAPITAL GAINS:</i>		
<i>Basement:</i>	<i>As Per Assessee</i>	<i>As A.O.</i>
<i>Sale Consideration (25.07.2008)</i>	<i>24,75,0000</i>	<i>24,75,000</i>
<i>Indexed Cost of Acquisition</i>	<i>7,84,587 (As per Agreement to sell</i>	<i>2,41,231 (As per Power of attorney</i>
<i>Capital Gain</i>	<i>16,90,413</i>	<i>22,33,769</i>
<i>Exemption u/s 54</i>	<i>16,90,413</i>	<i>20,00,000</i>
<i>Long Term Capital Gain</i>	<i>Nil</i>	<i>2,33,769</i>

9. After considering the various facts, the AO recomputed the long term capital gain on account of transfer of basement of Rs. 2,33,769/- instead of Rs. 16,90,413/- claimed by the assessee. Accordingly, the exemption claimed u/s 54 of the Act was restricted to Rs. 20,00,000/- only. The sole reason for rejecting the exemption claimed by the assessee is that the assessee is eligible to get exemption u/s 54 of the Act only in respect of one residential property.

10. We have heard the parties and perused the material on record. The exemption u/s 54 of the Act has been denied in respect of the basement floor on the ground that the benefit of exemption u/s 54 can be passed on the assessee only in respect of one residential property instead of claim of 3 properties. The ld CIT(A) has made following observations:-

“4.2.5 In view of the above facts and. circumstances of the case, it is held that AO has rightly recalculated the claim of exemption made u/s 54 of the Act. As is worked out in para 4.1.1 (mentioned supra), there is long term capital gain of Rs.22,33,769/- and benefit of exemption u/s 54 can be passed on to the assessee only in respect of one residential property instead of claim of three properties, as discussed above. I am inclined to agree with the findings of the AO considering the provisions of Section 54 of the Act that assessee is entitled for benefit of claim of exemption, only in respect of investment made in property situated at G-66B, First Floor, Kalkaji, New Delhi purchased on 13.08.2008 for a sum of Rs.20 lakh. Accordingly. appellant is allowed for benefit of exemption u/s 54 from long term capital gain of Rs.22,33,769/- to the extent of Rs.20 lakh and balance amount of Rs.2.33.769/- is assessable as taxable long term capital gain.”

11. The Hon'ble Karnataka High Court in the case of Arun K. Thiagarajan vs. CIT, ITA No. 25/2011, dt. 18.06.2020 has held that for purpose of allowing benefit of deduction u/s 54(1), expression 'a residential house' included within its ambit plural numbers as well and thus it cannot be construed as one residential house only. In the said matter also the assessee had purchased two different house properties at two different places i.e one property at Koramangala and the other property at Domlur II stage Bangalore respectively on 23rd September 2002 and 23rd October, 2002. The AO denied the claim of exemption u/s 54 of the I.T. Act which was upheld by the Ld. CIT(A) and the Tribunal also dismissed the appeal filed by the assessee. The Hon'ble High Court held that the amendment brought in Finance (No.2) Act 2014 is prospective with effect from assessment year 2015-16 and not retrospective.

"15. This Court as well as Madras and Delhi High Court have interpreted the expression 'a residential house' and have held that the aforesaid expression includes plural. The ratio of the decisions rendered by coordinate bench of this court are binding on us and we respectively agree with the view taken by this court while interpreting the expression 'a residential house. Therefore, the contention of the revenue that the assessee is not entitled to benefit of exemption under Section 54(1) of the Act in the facts of the case does not deserve acceptance."

12. In the case of Tilokchand & Sons vs. ITO (2019) reported in 105 taxman.com 151 (Madras), the Hon'ble Madras High Court has held that where the assessee HUF sold its residential house and invested capital gain in purchasing more than one residential houses within stipulated time limit assessee would be entitled to benefit of exemption u/s 54 of the I.T. Act.

"21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the words 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y.2015- 2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the

same Assessee should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee- HUF in the present case, in our opinion, complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in CIT Vs.D.Ananda Basappa ((2009) 309 ITR 329 (Karn)) & Khoobchand M.Makhija (supra) cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case."

13. Similarly in the decision of Hon'ble Karnataka High Court in the case of CIT vs. Khoobchand M. Makhija reported in (2014) 43 taxmann.com 143 (Karnataka), held that acquisition of more than one residential house by assessee out of capital gains would not dis-entitle assessee from availing benefit conferred u/s 54 of the Act.

"9. The word 'a' is not defined in the Act. When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnishes a different denotation. A statute cannot always be construed with the dictionary in one hand and the statute in the other.

Regard must also be had to the scheme, context and to the legislative history. Words and expressions at times have a 'technical' or a 'legal meaning' and in that case they are understood in that sense. Judicial decisions expounding the meaning of words in construing statutes in pari materia will have more weight than the meaning furnished by dictionaries. (Principles of Statutory Interpretation by Justice G.P.Singh pages 279 and 280). It is in this background, it is necessary to understand the meaning of the word 'a' in the context in which it is used in the said Section.

10. The words "a" or "an" and "the" are called Articles. They come before nouns. There are two Articles - a (or an) and the. "a" or "an" is called the

Indefinite Article, because it usually leaves indefinite the person or thing spoken of "The" is called the Definite Article, because it normally points out some particular person or thing. The indefinite article is used before singular countable nouns.

The definite article is used before singular countable nouns, plural countable nouns and uncountable nouns. The indefinite Article is used in two contexts, firstly, in its original numerical sense of one. Secondly, in the vague sense of a certain. It is also used in the sense of any, to single out an individual as the representative of a class. It is also used to make a common noun of a proper noun."

14. Respectfully following the above ratio laid down by the High Courts, we are of the opinion that revenue/ department have erred in denying exemption claimed u/s 54 of the Act insofar as the basement floor is concerned. Therefore, we direct the AO to give the benefit of exemption u/s 54 of the Act in respect of Basement Floor is concerned. Accordingly Ground No. 3 of the Assessee is allowed.

15. Appeal filed by the assessee is partly allowed.

Order pronounced in the open court on : **05/04/2023**.

**Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

Dated : 05/04/2023

MEHTA/ AK Keot /R. N, Sr. PS

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

