

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 182/Srt/2022 (Assessment Year 2011-12)
(Virtual hearing)

Chaitali Suril Udeshi, A-902, Samanvay Residency, Opp: Safal Parisar-2, South Bopal Daskroi, Ahmedabad, Gujarat (India). PAN No. AHGPD 9813 R	Vs.	I.T.O., Ward-3(1)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Aseem Thakkar, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	27/02/2023
Date of pronouncement	28/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 29/04/2022 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

- “1. The Id. CIT(A) has erred in confirming the action of the Assessing Officer in issuing notice u/s 148 of the Income Tax Act, 1961 which is illegal and bad in law hence the assessment so made requires to be quashed.*
- 2. The Id. CIT(A) has erred in confirming the action of the Assessing Officer in reopening the assessment only on the basis of AIR and CIB information and passing an order u/s 143(3) r.w.s. 147 of the I.T. Act, 1961.*
- 3. The Id. CIT(A) has erred in confirming the addition of Rs. 28,00,000/- made by the Assessing Officer by making disallowance of exemption claimed by the appellant u/s 54 of the I.T. Act, 1961.*
- 4. The appellant craves leave to add, alter, amend or modify all or any of the grounds of appeal before or at the time of hearing.”*

2. Brief facts of the case are that the case of assessee for A.Y. 2011-12 was reopened on the basis of information available on ITD System that the assessee sold immovable property for Rs. 52,31,000/-. No return of income for A.Y. 2011-12 was filed by the assessee. On the basis of information, the Assessing Officer recorded reasons that the income of assessee has escaped assessment. Notice under Section 148 dated 27/03/2018 was served upon the assessee. In response to notice under Section 148, the assessee filed return of income on 24/10/2018 declaring income of Rs. 71,440/-. The Assessing Officer after serving notice under Section 143(2) of the Income Tax Act, 1961 (in short, the Act) proceeded for assessment. During the assessment, the Assessing Officer noted that the assessee sold flat bearing No. A-606, 6th Floor, Evening Glory Co. Op Housing Limited, Raheja Vihar, Tungwa Powai, Mumbai-400072 on 03/11/2010 for the sale consideration of Rs. 52,31,000/-. The assessee was having 50% share in the said property, thus, the share of assessee comes to Rs. 26,15,500/-. On further perusal of computation of income, the Assessing Officer noted that the assessee claimed deduction of Rs. 28.00 lacs under Section 54 of the Act for purchasing residential house. The date of purchase of new residential house is on 18/11/2015 for an amount of Rs. 37,51,923/-. The assessee paid booking amount of said house of Rs. 5.00 lacs on 14/05/2012, as the property was sold on 03/11/2010 and another property was purchased on 18/11/2015, the

Assessing Officer was of the view that a new residential house was purchased after lapse of five years and the assessee has paid only amount of Rs. 5.00 lacs as a booking amount. As per Section 54 of the Act, if the funds are not utilized after six months, from the date of sale of asset, the same is to be kept in a bank or institution as may be specified and to be utilized in accordance with the scheme notified by the Central Government.

3. On the basis of such view, the Assessing Officer issued show cause notice dated 06/11/2018. The contents of show cause notice is recorded in para 6 of assessment order. The assessee filed her reply dated 19/11/2018. The contents of reply of assessee is recorded in para 7 of assessment order. The assessee in her reply stated that she had sold her residential flat at Mumbai and the sale proceed were invested in purchase of another residential property at Ahmedabad. The assessee furnished allotment letter issued by the builder on 14/05/2012, the allotment letter specified flat Number and the amount deposited by assessee. The assessee also furnished copy of bank statement of Kotak Mahindra Bank showing the payment of Rs. 28.00 lacs within three years of the sale of flat at Mumbai. On the specific reference in the show cause notice that only booking amount of Rs. 5.00 lacs was paid, the assessee explained that she has substantially invested the capital gain within three years for purchase of flat. Only conveyance deed was executed on 18/12/2015. However,

substantial payment has been made within three years from the date of sale of residential house. To support her contention, the assessee relied on the decision of Madras Tribunal in the case of ACIT Vs Smt. Umayal Annamalia in ITA No. 415/Mad/2015.

4. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer held that for claiming deduction under Section 54, the assessee has to purchase another flat within duration of two years or one year before the date of actual transaction of immovable property. If the funds are not utilized even after lapse of six months from the date of sale of asset, then amount is to be kept in capital gain account as prescribed in the Income Tax Act in the Government scheme which the assessee only to do so and that the assessee has paid only Rs. 5.00 lacs, therefore, deduction claimed under Section 54 of the Act to be disallowed and recalculated again. On the basis of such observation, the Assessing Officer disallowed the entire deduction of Rs. 28.00 lacs.
5. Aggrieved by the reopening as well as addition in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submission. The submission of assessee is recorded in para 4 of order of Id. CIT(A). Besides challenging the reopening, the assessee submitted that during the assessment, the assessee furnished details of sales and asset and purchase of new residential property at Ahmedabad. The assessee furnished allotment

letter, statement of money, statement of bank account, evidence of payment within three years from the sale of property. The assessee also furnished details of payment made from time to time. The assessee specifically stated that she earned capital gain of Rs. 26,15,500/- and explained the payment against new residential asset in the following manner:

Amounts invested in purchase of new property at Ahmedabad.

Booking money paid	14/05/2012	Rs. 5,00,000/-
Amounts paid in installation 1	26/06/2012	Rs. 5,00,000/-
Amounts paid in installation 2	21/08/2012	Rs. 3,00,000/-
Amounts paid in installation 3	29/10/2012	Rs. 4,00,000/-
Amounts paid in installation 4	01/11/2012	Rs. 1,00,000/-
Amounts paid in installation 5	12/01/2012	Rs. 2,00,000/-
Amounts paid in installation 6	28/01/2013	Rs. 3,00,000/-
Amounts paid in installation 7	13/01/2013	Rs. 2,00,000/-
Amounts paid in installation 8	30/05/2013	Rs. 1,00,000/-
Amounts paid in installation 9	04/10/2013	Rs. 2,00,000/-
Total advance paid within three years		Rs. 28,00,000/-

6. On the basis of aforesaid details, the assessee stated that she invested capital gain for purchase of new residential house within three years from the date of sale as prescribed under Section 54 of the Act. On the objection of Assessing Officer that the assessee was required to invest the capital gain in capital gain account before due date of filing return of income, the assessee explained that she complied the condition of Section 54F(1) of the Act by purchasing and constructing new residential property. The provisions of Section 54F are beneficial provision and to be considered liberally in the aspect of limitation period. The only condition is investment must be in residential property which the assessee has

complied. The assessee also relied on the decision of Mumbai Tribunal in ITO Vs. Nilima Abhijit Tannu & Anr.

7. The Id. CIT(A) after considering the submission of assessee held that the amount of capital gain was not utilized before furnishing return of income i.e 31/07/2012. Such fact is admitted by the assessee that the capital gain was not deposited in the capital gain scheme. Section 54(2) of the Act specifically provides that the amount which have not been invested either in purchase or for construction have to be deposited in specific account before due date of filing return of income under Section 139 of the Act. Booking of new flat is made after one year and five months. On such observation, the Id. CIT(A) upheld the addition/disallowance of Section 54 of the Act. Further aggrieved, the assessee has filed the present appeal before this Tribunal.
8. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have perused the orders of the lower authorities carefully. The Id. AR of the assessee submits that the assessee furnished details of sales of asset and purchase of new residential property at Ahmedabad. The assessee furnished allotment letter, statement of money, statement of bank account, evidence of payment within three years from the sale of property. The assessee also furnished details of payment made from time to time. The assessee specifically

stated that she earned capital gain of Rs. 26,15,500/- and explained the payment against new residential asset. The Id. AR of the assessee submits that assessee invested capital gain for purchase of new residential house within three years from the date of sale as prescribed under Section 54 of the Act. The Id AR for the assessee submits that provisions of Section 54F are beneficial provision and to be considered liberally in the aspect of limitation period. To support his submission, the Id AR for the assessee relied on the following decisions;

- ❖ CIT Vs Smt Umayal Annamalai (2020) 273 Taxman 145-Mad,
- ❖ Xariver J Pullikal Vs DCIT (2016) 72 taxmann.com 34 –SC,
- ❖ CIT Vs Venkata Dilip Kumar (2021) 124 taxmann.com 198 –Mad,
- ❖ CIT Vs Jagruti Aggarwal (2011) 5 taxmann.com 146 (P&H),
- ❖ CIT Vs Shakuntala Devi (2016) 75 taxmann.com 222 (Kar),
- ❖ Aniruddh Rinki Gandhi Vs DCIT (2022) 137 taxmann.com 160 (Ahem-Tribu.),
- ❖ Dr Dharmista Mehta Vs ITO (2022) 144 taxamann.com 136 (Mum-Tri)
- ❖ Seema Sabharawal Vs ITO (2018) 91 taxmann.com 2 (Chandigarh-Trib) and
- ❖ Harminder Kaur Vs ITO (2021) 126 taxmann.com 160 (delhi-Trib).

9. On the other hand, the Id. Sr. DR for the revenue has vehemently supported the orders of the lower authorities. The Id SR DR for the revenue submits that sale of old asset took place on 3.11.2010, the due date for filing return of income for relevant assessment year was 31.07.2011. The assessee made booking of new residential house only on 14.05.2012, which was after due date of filing return of income. The

execution of sale deed of new house took place only on 18.12.2015, which is not within three years from the date of sale.

10. I have considered the submissions of both the parties and perused the record. I find that the Assessing Officer made the assessment on the basis of fact that the assessee sold a flat bearing No. A-606, 6th Floor, Evening Glory Co. Op Housing Ltd., Raheja Vihar, Tungwa Powai, Mumbai-400072 on 03/11/2010 for the sale consideration of Rs. 52,31,000/-. The assessee was having 50% share in the said property, thus, the share of assessee comes to Rs. 26,15,500/-. On perusal of details of payment with the builder, I find that the assessee has paid Rs. 28.00 lacs within three years from the date of sale of old house. The date and payment on various dates as recorded in para- 5 (supra) is not disputed by revenue. Such details of payment were furnished before lower authorities. However, only the sale deed of new house was executed 18/12/2015. I find that coordinate bench of Delhi Tribunal in a recent decision in Harminder Kaur Vs ITO (supra), while following the earlier decisions of Punjab & Haryana High Court in Jagruti Aggarwal (supra) held that where the assessee sold residential house and utilized the sale consideration for booking flat in housing project which was yet to be constructed, since assessee had made entire payment toward investment in new flat within period of three years from the date of transfer of original asset, amount was to be treated as invested in purchase / construction of new residential

property and assessee is to be allowed exemption under section 54. I find that fact of the said case is similar and the ration of above decision is clearly applicable on the facts of the present case.

11. Further, Mumbai Tribunal in Dr Dharmista Vs ITO (supra) also held that exemption under section 54 should be allowed if the amount is invested on or before due date of filing return of income under section 139(4). Thus, in view of the aforesaid factual and legal discussion, I direct the assessing officer to allow exemption under section 54 to the assessee. In the result, ground no. 3 of the appeal is allowed.
12. Considering the fact that I have allowed relief to the assessee on merit, therefore, adjudication on ground No.1 & 2 have become academic.
13. In the result, the appeal of the assessee is allowed.

Order announced in open court on 28th April 2023

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/04/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat