

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 264/Mum/2023 (A.Y.2016-17)

Lalita Pandurang Kangokar,
Flat No. 701, Parmar Heritage,
Mhatarpada Road, Amboli Village,
Andheri (West)
Mumbai-400 058
PAN: AAHPK5888R

..... Appellant

Vs.

ITO-24(2) (5)
Piramal Chamber,
Lal Baug, Parel
Mumbai-400012

..... Respondent

Appellant by : Shri Mandar Vaidya
Respondent by : Shri Manoj Kumar Sinha, Sr. AR

Date of hearing : 20/04/2023
Date of pronouncement : 12/06/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 19.11.2022 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2016-17. The assessee has raised the following grounds of appeal:-

1 The Ld. CIT (A) erred in not considering that the assessee was entitled for deduction of 'cost of acquisition', notwithstanding the fact that the assessee, out of lack of knowledge, had not claimed the same.

2. The Ld. CIT (A) fell in error of law in not appreciating that, the two adjacent flats acquired by the assessee constituted a single house for the purpose of section 54 of the Act.

3. The Ld. CIT(A) failed to appreciate that the assessee was entitled for exemption u/s. 54 on her entire investment in the two adjacent flats since the two flats together constituted one single house.

4. The Ld. CIT(A) erred in adopting the date of service of the Assessment Order as 30th Dec 2018 which is in fact the date of order but was erroneously stated as date of service.

'5. The appellant craves leave to add, alter, amend, modify any grounds of appeal.

2. The brief facts of the case are that the assessee filed her return of income on 24-12-2016 declaring total income at Rs 3,64,150/-. Subsequently the case of the assessee was selected for scrutiny under the CASS. During the AY under consideration assessee sold one residential house property for the sale consideration of Rs 3.23 cr. on 10-02-2016. This property assessee inherited as gift from her husband. Assessee reinvested her entire sale proceed in acquiring 2 flats separately on 31-03-2016 for the consideration of Rs 3, 47, 12,840/-. In view of the above assessee had

claimed exemption u/s. 54 as the amount of investment i.e. Rs 3, 47, 12,840/- is more than the sale consideration of Rs 3.23 cr.

3. The AO was not convinced the way assessee invested her total sales consideration in two flats in view of amendment brought into by finance act 2014 wherein it amended the provision of sec. 54 of the income tax act, 1961 and replaced “a residential house” as one residential house in India” which is applicable from the AY 2015-16 onwards. In this regards the assessee was issued two show causes as to why the exemption in her case should not be limited only for one residential house property, in the light of the amended provision of sec 54 of the I.T. Act, 1961 and balance sale proceedings should not be added back to the total income from long term capital gains. In view of this AO allowed exemption limited to one residential property amounting to Rs 1,73,56,420/- and balance amount of Rs 1,49,43,580/- is herewith disallowed as exemption u/s. 54 and added back to the total income of the assessee treated the same as long term capital gains.

4. Assessee being aggrieved with this order of AO preferred an appeal before the Ld.CIT (A) who in turn confirmed the assessment order passed by the AO. Assessee being further aggrieved preferred this appeal before us. We have gone through the order of AO, order of Ld.CIT (A), paper-book filed by the assessee and the case law relied upon. We observed that the assessee bought two adjoining units in the same building for her habitation from a builder M/s. Konark and Associates vide Nos. 701 and 702 on the 7th Floor on the said building known as “Parmar Heritage”.

5. Similar issues with same A.Y. and applicable law have been discussed by the co-ordinate bench, Pune, vide ITA No. 600/PUN/2020, Dated: 01.02.2022 wherein Hon'ble Vice-President observed as under:

"4. I have heard both the sides and perused the relevant material on record. There is no dispute on any other aspect of the computation of long-term capital gain, except the denial of exemption u/s.54F in respect of one property only on the ground that the exemption was available only for one residential unit and not the two residential units purchased by the assessee. It is also not in challenge that the assessee purchased two flats, numbering, 1101 and 1102 at Malad, Mumbai, which shows that these were adjacent flats, which the assessee claimed to have purchased for use in a consolidated manner as one residential house. Section 54F of the Act, prior to substitution by the Finance Act No.2 of 2014 w.e.f. 01-04-2015, stated that the exemption will be available where the assessee has "constructed, a residential house". Various judicial forums, taking into consideration the relevant provisions of the General Clauses Act, interpreted this provision as conferring benefit on more than one flats by holding that singular included plural. The Finance Act, 2014 substituted the relevant part of the provision by inserting the words: "constructed, one residential house" in place of "constructed, a residential house". The effect of the amendment is that now exemption is available only in respect of one residential house. Adverting to the facts of the extant case, I find that the assessee purchased two flats to be used as a single dwelling unit. Since these two units are adjacent to each other and meant for use as a single property, mandate of the substituted provision, being, one residential house, is still also satisfied. The viewpoint of the Id. CIT (A) that the amendment carried out to section 54F w.e.f. 01-04-2015 has changed the legal position is albeit factually correct, but, in the given facts, even the amended provision comes to the rescue of the assessee inasmuch as the assessee acquired one residential house only comprising of two flats. In view of the foregoing reasons, I am satisfied that the assessee deserves exemption u/s. 54F on second unit as well. I order accordingly. The impugned order is set-aside to this extent."

6. In this case also, assessee purchased 2 adjoining units to be used as one single unit. In deciding this issue, it is pertinent to observe that the city like Mumbai where the size of flats are usually so small that to maintain a person's

earlier habitation requirements and standard of living one has to go for such type of arrangements wherein for the namesake flats are to be counted as to practically she got equal space even in these two flats what she had earlier in one flat. The fact that both the units are in the same building, same floor and adjoining is not under challenge. Moreover, the total consideration realized by the assessee from the sale of old unit is fully invested in purchase of these two adjoining new units. We observe that even after amendment in section 54 w.e.f. assessment years 2015-16, assessee is still acquiring one unit only, hence the requirements for claiming exemption u/s. 54 even after amendment is satisfied. The fact of the case has to be considered in a practical and pragmatic view. The intention of law has to be interpreted in a way which achieves the basic purpose of the law i.e. acquiring house which can be used suitably for one's residential requirements and in the guise of exemption provisions nobody should create extra wealth in the form of house, etc.

7. As none of the facts enumerated in the case under challenge, except denial of exemption on 2nd House, that issue is being discussed and decided in favor of assessee by co-ordinate bench and not challenged by the Ld. DR., we don't see any reason to deviate from the ratio laid down in ITA No. 600/PUN/2020, Dated: 01.02.2022. In the result ground no. 2 and 3 are allowed. Other grounds, i.e., 1 and 4 are irrelevant after adjudication of ground nos. 2 and 3 and ground no. 5 is general in nature hence no adjudication is required.

8. In the result, appeal of the assessee is allowed and orders of the authorities below are set aside.

Order pronounced in the open court on 12th day of June, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/06/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai