



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**ITA No.125/CTK/2023**

Assessment Year : 2015-16

Satyaranjan Chand, Plot No.GA-722, 3 <sup>rd</sup> floor, Kalinga Nagar, K-3-B, PO: Ghatikia, Bhubaneswar.	Vs.	Dy. Commissioner of Income tax, Circle-2(1), Bhubaneswar
PAN/GIR No.AAJPC 7891 A		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.K.Agrawalla, CA  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 15/11/2023**  
**Date of Pronouncement : 15/11/2023**

**ORDER**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 23.3.2023 in Appeal No.ITBA/NFAC/S/250/2022-23/1051182250(1) for the assessment year 2015-16.

2. Shri S.K.Agrawalla, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the issue in the appeal relates to allowance of claim of exemption u/s.54F of the Act. It was the submission that the assessee owned three properties one being Flat No.1, Maha Maya

Enclave, Plot No.53, VIP Area, IRC Village, Bhubaneswar, second being sub-plot No.36A, Plot No.61/1761/1836, Bharatpur, Bhubaneswar and third being Sub-plot No.36B, Plot No.61/1761/1836, Bharatpur, Bhubaneswar. The assessee also owns another plot of land namely Plot No.GA-722, PO: Ghatikia, Bhubaneswar. It was the submission that the assessee had sold sub-plot No.36A to one Mr Maqsood Ahmed Khan, which had given rise to capital gains tax. The sale had been done on 27.12.2014. The sub-plot No.36B which consisted of a house property was on rent to the assessee's sister namely, Smt. Amitarani Giri. She had been staying on the said house from April, 2014 and this has also been recognized by the Pr. CIT in his order passed u/s.263 on 24.3.2020. The assessee had gifted the said property to his sister Smt. Amitarani Giri on 27.12.2014. The assessee had utilized the sale proceeds on the sale of the vacant plot No.36A for the construction of a new residential building at Plot No.GA-722, PO: Ghatikia, Bhubaneswar. It was the submission that the Assessing Officer on the ground that the assessee owned more than one residential house as on the date of sale, held that the assessee was not entitled to claim exemption u/s.54F. It was the submission that date 27.12.2014 is the specified date on which the transfer had taken place. At the beginning of 27.12.2014, the assessee, in fact, had two residential houses and two vacant plots. At the end of the specified date being 27.12.2014, the assessee remained with only one residential house and one vacant plot. It was the submission that

consequently, as on the date of transfer, the assessee did not own more than one residential house, the proviso to section 54F did not apply. Ld AR placed reliance on the decision of the Co-ordinate Bench of Mumbai Tribunal in the case of Smt. Maya A Ajwani vs ITO, in ITA No.7091/Mum/2012 for A.Y. 2009-10, order dated 10.4.2015, wherein, in para 4.3, it has been held as follows:

“4.3 With this background, we may proceed to apply the law to the issue at hand. We find no provision in law for the assessee to continue to be regarded as the owner or even a part owner of the property (the Sion residential flat) gifted by her to her husband on 03.10.2008. Even if the same is for the purpose of enabling availing benefit under section 54F, we cannot by any score treat as not valid in the eyes of law. The law does not oblige a person to pay maximum taxes or authorize disregarding a lawful transaction if the same has the effect of reducing his tax liability. The transfer is by no means sham or bogus, notwithstanding that the assessee would continue to reside with her family, including her husband, in the said house, i.e., both before and after its gift to her husband. That is, true, the assessee, along with her family, including her husband, continues to reside in the Gope Niwas Bldg., both before and after the gift, so that the same has no purpose apart from the change of the ownership, which is to be reckoned as on the date of the transfer (of the original asset, i.e., 06.10.2008). Whether, therefore, the change of the ownership was effected a few days or, why, even a day earlier, to the relevant date, is of no moment. The gift deed, duly registered, has to be given its full legal fact, which is of a change in its ownership from the assessee to her husband, Shri Ashok Vishindas Ajwani. Pinning on some altruistic notion, as we observe the Revenue to, cannot entitle it to read the law except in terms of its clear and unambiguous language, so that only what stands specifically provided is to be excluded. There is no stipulation in law with regard to the ownership pattern, or its quantification, i.e., of the assessee's other family members, including spouse, or even of the transferee/s. The same clearly provides for consideration of the ownership of residential house/s only of the assessee, and on a particular date.

He also placed decision of the Co-ordinate Bench of Delhi Tribunal in the case of ITO VS Shri Samir Jasuja in ITA No.4187/Del/2012 for A.Y. 2009-10 order dated 24.11.2015, wherein in para 13, it has been held as follows:

“13. We consider the allegations of the Assessing Officer as well as conclusion of the CIT(A). In our understanding when the assessee has parted his legal right through gift deed dated 29.1.2009 and the property no. G-602 was gifted to his wife, then it cannot be presumed that the assessee continued to be owner of the said property even after execution of registered gift deed in favour of his spouse. So far as the taxable income from the said property is concerned, the assessee’s stand gets support from the order of the ITAT Mumbai Bench in the case of Smt. Maya wherein it was held that section 64(1)(iv) will not operate to nullify gift and would operate only to club income in the hands of donor assessee.

14. At this juncture, it is also relevant to note that the assessee is the owner of only one property i.e. JPH-03, Central Park, Sector 4, having 50% of share as per conveyance deed available at assessee’s paper book pages 96 to 119 after sale of property on 2.2.2009 out of which impugned capital gain accrued to the assessee. In these facts and circumstances, the CIT(A) was right in concluding that during the course of assessment proceedings, the assessee filed the relevant details of capital gain and its utilization along with copies of the bank account statement and from these details, it is amply clear that the money of capital gain has been deposited in mutual fund and on redemption of the mutual fund, it has been deposited in the capital gain account scheme. It was also noticed that the assessee on sale of original assets has deposited the proceeds in his bank account. From there, he deposited the money temporarily with mutual funds and before the due date of deposit in Capital Gain Scheme, encashed the mutual funds and deposited the amount in Capital Gain Scheme as required by the relevant provisions of the Act. On vigilant and careful consideration of contention of the Assessing Officer as well as conclusion of the CIT(A) as noted above, we are of the view that the Assessing Officer rejected the claim of the assessee u/s 54 of the Act without any justified reason and on incorrect premise which was rightly allowed by the CIT(A) after properly appreciating and considering the facts and circumstances of the case in the light of explanation of the I.T.A. No. 4187/Del/2012 Assessment Year: 2009-10 15 assessee. We are unable to see any infirmity or any other valid reason to interfere with the order of the

Id. CIT(A) and uphold the same. Accordingly, ground no. 2 of the revenue is also dismissed.”

It was the submission that as the assessee did not own more than one residential house on the date of transfer of the property/asset, which gave rise to the long term capital gains, the assessee was entitled to claim of exemption u/s.54F.

4. In reply, Id Sr DR submitted that a perusal of the order of the Assessing Officer at page 4 clearly showed that the document number of the sale deed is prior to document number of gift deed, which clearly showed that when the vacant plot was transferred, the assessee owned more than one residential house and consequently, the proviso to section 54F came into play and the assessee was not entitled to exemption u/s.54F. He placed reliance on the decision of the Co-ordinate Bench of Hyderabad Bench in the case of Rachit V Shah vs ITO in ITA No.420/Hyd/2022, a.y. 2015-16, order dated 15.3.2023, wherein, in para 14, the Co-ordinate Bench of Hyderabad Bench has held as follows:

“14. From the conduct of the assessee and in view of the circumstances prevailing at the time of the agreement of sale, more particularly giving gift to his father just before the date of agreement, it is clear that the act of the assessee to gift the house is nothing but a concerted effort to avoid the due payment of taxes to the Government. With a view to avoid the payment of taxes, the assessee surreptitiously gifted the house at Door No.3- 6-305/43,43/1, Avanthi Nagar, Basheerbagh, Hyderabad to his father just before entering into agreement of sale and received the consideration of Rs.2,28,38,880/- on 03.11.2014 and Rs.2,11,41,120/- on 03.11.2014. Though, gift deed, on a standalone basis seems to be a natural act on the part of son to gift home to his

father, but when the gift deed is to be examined in the light of the prior and subsequent acts and prevailing circumstances, then it is clear that the real intention of the assessee, was to claim the deduction u/s. 54F of the Act. Further, the assessee before and subsequent to gifting the property, continued to live with his father in the same property, which clearly shows that the gift deed executed by the assessee was merely a camouflage to claim the deduction u/s. 54F of the Act and to avoid due payment of taxes to the Government. Undoubtedly, tax evasion connotes illegally suppressing facts, falsifying records, fraud or collusion to evade tax liability with the help of such unfair means. Whereas abusive tax avoidance involves 'contrived' or 'artificial' schemes. In the present case, the assessee was engaged in the artificial transfer of one house by way of gift deed just prior to the effective date. Further, under sections 23 and 24 of the Indian Contract Act, 1872, when the object is to defeat any provisions of law, and when consideration is of such nature that, if permitted, it would defeat the provisions of any law, the contract will be void. In the present case, per se gift deed was not executed on account of natural love and affection but was executed by the assessee to artificially avail the deduction u/s 54F of the Income Tax Act 1961."

It was the submission that the facts clearly showed that the assessee owned more than one residential house as on the date of transfer of the asset and consequently, the action of the Assessing Officer in denying exemption u/s.54F is liable to be upheld.

5. I have considered the rival submissions. A perusal of the facts in the present case clearly show that the basic issue to be decided is whether as on 27.12.2014, the assessee own more than one residential house or not?. It is an admitted fact that the assessee has gifted residential house being Plot No.36B, Bharatpur, Bhubaneswar to his sister, Smt. Amitarani Giri, who was already in possession as a tenant of the property. It is also an admitted fact that the assessee was residing at Flat No.1, Maha Maya

Enclave, which is a self occupied property. At the beginning of the specified date being 27.12.2014, admittedly, the assessee did hold two residential properties. However, at the end of the specified date, the assessee own only one residential house. A perusal of the proviso to section 54F shows that the wording used is " on the date of transfer of the original asset". Though Id AR has been vehement in his argument that the meaning of the term "on the date of transfer" should be considered as the end of the specified date of transfer, I am unable to accede to the arguments because the date of transfer starts at 00 hours and ends at 23.59 hours. On the date means any time during the date and at the beginning of the date of intended transfer of the original asset, the assessee did own more than one residential house. This being so, I am of the view that the Assessing Officer and Id CIT(A) is right in denying the assessee the benefit of exemption u/s. 54F of the Act.

6. The decision of Mumbai Bench in the case of Smt Maya A Ajwani (supra) relied upon by Id AR would not apply insofar as the facts in the said case was different as the assessee in that case had gifted her share in the property to her husband before the date of transfer of the capital asset which gave rise to capital gains. Similar is the case in the decision of ITAT Delhi in the case of Shri Samir Jasuja (supra). The decision of ITAT Hyderabad in the case of Rachit V Shah (supra) relied upon by Id Sr DR would not apply insofar as that was a case where the gift itself had been

treated as colourable device, which is not done by the AO or Id CIT(A) in the present case.

7. It must be mentioned here that the interpretation brought out by Id AR itself lead to substantial question of law as to what exactly is the interpretation of the term " on the date of transfer". The interpretation given by Id AR though plausible is not acceptable to this Tribunal.

8. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 15/11/2023.

**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 15/11/2023  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Satyaranjan Chand, Plot No.GA-722, 3<sup>rd</sup> floor, Kalinga Nagar, K-3-B, PO: Ghatikia, Bhubaneswar
2. The Respondent: Dy. Commissioner of Income tax, Circle-2(1), Bhubaneswar
3. The CIT(A)-NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**