

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial member

ITA No. 1764/Del/2019 : Asstt. Year: 2013-14

Rajeev Ranjan, 101, First Floor Juhi, Phase-1, Jalavayu Defence Enclave, Kharghar, Maharashtra-410210 (APPELLANT)	Vs	ACIT, Circle-52(1), New Delhi (RESPONDENT)
PAN No. AAAPR0854R		

Assessee by : Sh. Rajeev Ranjan, Assessee

Revenue by : Sh. Vivek Vardhan, Sr. DR

Date of Hearing: 31.08.2023

Date of Pronouncement: 17.11.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. CIT(A)-18, New Delhi dated 04.01.2019.

2. Following grounds have been raised by the assessee:

"1. The CIT(A) erred in upholding the disallowance made by the A.O. in respect of the appellant claims for exemption/deduction u/s 54 of the Income Tax Act, 1961.

2. The CIT(A) and the A.O. failed to correctly interpret the amendment made by the Finance Act, 2014, herein the words "a residential house" appearing in section 54 of the Act were changed to "one residential house", thereby making a prospective amendment in the Act, that implied that, prior to the amendment the word "a" in a residential house was a grammatical reference and not a numeric reference, meaning one residential house.

3. *The CIT(A) failed to appreciate this amendment and wrongly upheld the A.O.'s action of denying the benefits of the provisions of section 54 of the Income Tax Act, 1961 to the appellant."*

3. The assessee has received income from salary, house property, business, capital gain and other sources. The assessee filed return of income on 04.09.2013 declaring income of Rs.28,06,372/-. The appeal relates to the addition of Rs. 37,28,051/- made by the AO by disallowing partly the deduction claimed u/s 54 of the Act.

4. The brief facts of the case are that the appellant had sold a property during the year for a sale consideration of Rs. 1.15 crores and has shown long term capital gains of "Nil" after claiming exemption u/s 54 of the Act for a sum of Rs. 1,21,13,830/-. This exemption u/s 54 of the Act has been claimed on account of investment made by the appellant in the following five house properties:

S. No.	Name of seller	Flat No./Location	Amount	Remarks
1	Arch Developer	301	27,62,100	Both these flats are on same floor of same building.
2	Arch Developer	303	18,75,000	
3	Arch Developer	403	15,89,480	This flat is in different building
4	Narava Suni	Mundra	15.44,750	Different location
5	Harender Singh	Navi Mumbai	43,42,500	Different location

5. The AO restricted the exemption u/s 54 of the Act to investment in one house property amounting to Rs. 43,42,500/- and the balance exemption in respect of investment in other four properties has been denied by the AO and corresponding addition has been made under the head long term capital gains.

6. The AR submitted that section 54 of the Act has been amended only w.e.f. 01.04.2014 and before that, investment in multiple houses was permitted. The AR relied upon various decisions in favour of the appellant. The AO was not satisfied with the contentions of the AR and held that exemption u/s 54 of the Act was permitted for investment in multiple units only if those multiple units are amenable to joint enjoyment as a one unit. The Id. CIT(A) affirmed the action of the AO.

7. Aggrieved, the assessee filed appeal before the Tribunal.

8. Heard the arguments of both the parties and perused the material available on record.

9. The Id. AR relied upon the decision of Mumbai ITAT in the case of Ravi Shankar vs. ACIT in ITA No. 3270/Mum/2016 for AY 2012-13.

10. We have gone through the complete facts of the case. It is observed that the appellant has sold a property for sale consideration of Rs. 1.15 crores and has worked out long term capital gains of Rs. 77,71,949/- and the same has been claimed as deduction u/s 54 of the Act on account of investment made in five house properties, the detail of which is given above and also in the assessment order. In the assessment order, the AO has observed that the above five properties are situated at different locations. The AO has also analyzed the position with respect to the two flats purchased on the same floor and has stated that these two flats also cannot be considered as one unit as another flat is located between these two flats. The AO has stated that as per the provisions of section 54 of the Act,

the deduction is allowable only for investment made in one house property and therefore, the AO has restricted the deduction u/s 54 in respect of one house property only. We have perused the various case laws and have also gone through the legal position on the issue as decided in various judgments by various authorities.

11. ITAT Mumbai in the case of Nilesh Pravin Vora and Yatin Pravin Vora, held that exemption u/s 54/54F will be allowed for purchase of more than one residential unit as the amendment to the section 54/54F is effective from 01.04.2015.

12. The Id. DR submitted that these decisions in favour of the appellant are based on the judgment of Chennai High Court in the case of Commissioner of Income-tax, Coimbatore vs. Smt. V.R. Karpagam. In this case, the assessee had entered into an agreement with the builder and as per the development agreement, the assessee (land owner) parted from land and she was to receive 43.75 per cent of built up area, which was translated to 5 flats. The Hon'ble High Court held that the said five flats in the same building can be construed as a single unit and therefore, exemption u/s 54F can be allowed in respect of these multiple units. The decision was given after relying upon the decision of the Karnataka High Court in the case of CIT v. K.G. Rukminiamma [2011] 331 ITR 211/196. The Hon'ble Chennai High Court has further held in this case that,

"9. It is relevant to note herein that an amendment made with regard to the word 'a' by the Finance (No. 2) 01.04.2015. The said amendment reads as follows:

'32a. Words "constructed, one residential house in India" shall be substituted for "constructed, a residential house" by the Finance (No.2) Act, 2014, with effect from 01.04.2015.'

10. The above-said amendment to Section 54F of the Income Tax Act, which will come into effect only from 01.04.2015, makes it very clear that the benefit of Section 54F of the Income Tax Act will be applicable to constructed, one residential house in India and that clarifies the situation in the present case, i.e. post amendment, viz., from 01.04.2015, the benefit of Section 54F will be applicable to one residential house in India. Prior to the said amendment, it is clear that a residential house would include multiple flats/residential units as in the present case where the assessee has got five residential flats. We may also mention here that all the Authorities below have clearly understood that the agreement signed by the assessee with M/s. Mount Housing Infrastructure Ltd., is that the assessee will receive 43.75% of the built-up area after development, which is construed as one block, which may be one or more flats. In that view of the matter what was before the Assessing Officer is only equivalent of 56.25% of land transferred, equivalent to 43.75% of built up area received by the assessee. This built up area got translated into five flats. Hence, we are of the opinion that the transaction in this case was not with regard to the number of flats but with regard to the percentage of the built-up area, vis-a-vis, the Undivided Share of Land."

13. After perusal of the above decisions, it has become clear that the judicial authorities have held that the amendment to section 54/54F whereby the words "a residential house" has been replaced with the words 'one residential house in India' is applicable with effect from 01.04.2015 and prior to the amendment, the earlier legal position will continue to hold. It is also inferred that post amendment, i.e. after 01.04.2015, the exemption u/s 54 will be available only in respect of one residential house in India and not in respect of multiple houses. In fact, a perusal of notes to the Finance Act, 2014 clearly mentions that the said amendment is clarificatory in nature and the intention of the statute was always to provide exemption for one residential unit.

14. We need to understand the legal position on the issue prior to the amendment made to section 54/54F of the Act. In the case of Commissioner of Income-tax, Coimbatore vs. Smt. V.R. Karpagam, the Hon'ble Chennai High Court after relying upon various other judgments has upheld (as quoted above) the view taken by various other judicial authorities that prior to amendment, the benefit u/s 54 can be allowed in respect of multiple units which can be construed as a single residential unit. Nowhere, in any of these judgments, it has been held that the benefit u/s 54 can be allowed in respect of investment in more than one residential units which are disparately placed. Similar view is taken by Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Gita Duggal (relied upon by the appellant also) wherein it is held that-

"8. There could also be another angle. Section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent 'Residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an

independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary implication prohibited.

For the above reasons we are of the view that the Tribunal took the correct view."

15. The following case laws have been perused:

- CIT Vs. K. G. Rukminiamma (331 ITR 211) (Kar.)
- CIT Vs. Khoobchand M. Makhija (223 taxman 189) (Kar.)
- CIT Vs. Gita Duggal (30 Taxman 230) (Del.)
- A. Kodanada Rami Reddy, Chennai Vs. AO in ITA No. 1865/Mds/2012
- Rajnish Chaudhary (HUF) Vs. AO in ITA No. 2565/Del/2012
- Pawan Arya Vs. CIT in ITA No. 2416/Del/2008

16. We are of the considered view that the amendment made available on the statute, vide the Finance (No. 2) Act, 2014 w.e.f. 01.04.2015 pursuant whereto the term "a residential house" had been substituted by "one residential house in India", rather supports the fact that the restriction of making the investment in only one residential house had been made available on the statute only with effect from A.Y. 2015-16, and as such cannot be extended to the years prior to that. We find that our aforesaid view is fortified by the judgment of Hon'ble

High Court of Karnataka in the case of CIT Vs. Khoobchand M. Makjija (supra). Since the issue pertains to assessment year 2013-14 i.e. before the amendment in the statute the appeal of the assessee is hereby allowed.

17. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 17/11/2023.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 17/11/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR