

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 3698/MUM/2023 (A.Y: 2020-21)

Bhaskar Prataprai Shah 1 Vivek, Tilak Road Ghatkopar (E), Mumbai- 400077 PAN: ABEPS4107K	v.	DCIT – 16(2) Aayakar Bhavan Mumbai
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Mani Jain
Department Represented by	:	Shri Ashok Kumar Ambastha
Date of conclusion of Hearing	:	06.03.2024
Date of Pronouncement	:	22.03.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 04.10.2023 for the A.Y.2020-21.

2. Brief facts of the case are, the case of the assessee was selected for Limited scrutiny under CASS to verify the issue of "Capital Gains Deduction Claimed". Assessee had filed his return of income for the A.Y.2020-21 declaring an income of ₹.92,85,280/- on 18.01.2021. Accordingly, notices under section 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response, Authorised Representative attended and submitted the relevant information as called for.

3. The Assessing Officer observed from the Computation of Income for the year under consideration that the assessee has claimed deduction under section 54F of the Act amounting to ₹.4,72,22,936/- against Long Term Capital Gain on sale of shares. In support of deduction claimed under section 54F of the Act, the assessee has uploaded an agreement to sell registered on 23.12.2020 with Registrar of Assurance, Bengaluru, executed between M/s. Sri Nakoda Construction Limited and the assessee. On perusal of the above said agreement, the Assessing Officer observed that assessee had purchased three flats i.e. Flat No. 2202, 2203 and 2103 for an amount of ₹.3,39,74,050/-, ₹.3,80,55,400/- and ₹.3,80,55,400/- respectively. In order to verify the claim of the assessee, assessee was asked to justify the claim of deduction under section 54F of the Act, for that purpose, a separate notice dated 07.12.2021 was issued to the

assessee and the same was reproduced at Page No. 3 of the assessment order. In response to the above notice assessee has submitted as under:-

"As regards your query in para-4 about provisions of section 54F:

We submit that assessee has purchased "one residential house" being triplex flat as per the agreement referred to hereinabove. You will observe from the floor plan copy which is part of the registered agreement on page-35 & 36 that:

- 1. The triplex flat is only one residential house connected internally as per approved plans. The first level being unit no.2103 consists of Living room, Kitchen and Dining Room. Please note there are no bedrooms on this level.*
- 2. The second level being unit no.2202 & 2203 are interconnected without any dividing walls and consists of only bedrooms and family area. There is no Kitchen or Dining area on this level.*
- 3. Both the first and second level are interconnected with stairs going internally from lower level to upper level, duly marked on the floor plan copy.*

We therefore submit that there is unity of structure with a common living room, common passage, interconnected stairs, a common kitchen and dining area. As per the approved plans, the said triplex flat used only as one residential flat and assessee's is using the same as one residential flat.

The said flat is also purchased by a single agreement to sell dated 23.12.2020. You will also kindly observe from the possession letter given by the Vendor/Developer that they have given possession to the assessee mentioning the same as a "triplex unit (unit being singular and one residential house).

A copy of the floor plan copy being part of the registered agreement to sell is already submitted to your vide our earlier letter dated 21.11.2021. We once again submit the same as Exhibit-2 for your ready reference

3. As regards your query no. 5,

"Please provide details of any residential house owned by you or your wife before this purchase was made"

We submit that before the above purchase, Assessee owned only one house at 303, Liva Rocca, Gulmohar Cross Road, Vile Parle (West), Mumbai - 400049 and though Assessee's wife owning any flat is irrelevant for deduction us 54F claimed by the Assessee, we submit that Assessee's wife also owns only one house at 304, Liva Rocca, Gulmohar Cross Road / Vile Parle (West), Mumbai - 400049."

4. After considering the submissions of the assessee, Assessing Officer rejected the same and observed from Section 54F that a residential house has to be purchased by the assessee after sale of other assets. After analyzing the section 54F and relying on certain decisions viz., Shri Neville J. Pereira *v.* ITO (ITA No. 2972/MUM/2007) and CIT *v.* Raman Kumar Suri [2013], he observed that the assessee has purchased in the pretext of triplex flat due to which the exemption is not allowable in view of the proviso under section 54F of the Act. He observed that entire purpose of the legislature is defeated if, the assessee buys more than one residential house on the pretext of buying multiplex flats by a single agreement. Moreover, the assessee has not submitted any documentary evidence issued by third party such as building society, builder, tehsil office, municipal corporation etc. which can substantiate that the flats are not different residential units and are part of only one residential house. The mere submission of the assessee that the flats are connected internally and used by him as one residential house cannot fulfill the criteria laid

down under section 54F of the Act. Accordingly, he rejected the claim of section 54F claimed by the assessee.

5. Aggrieved assessee preferred appeal before the Ld. CIT(A) and filed detailed submissions before him which is reproduced at Page No. 3 to 18 of the Appellate Order. After considering the detailed submissions of the assessee, Ld.CIT(A) analysed the findings of the Assessing Officer and observed that assessee has purchased three flats entering into an agreement with the builder to purchase Triplex flat and Ld. CIT(A) has also reproduced the diagram of the flats purchased by the assessee in his order at Page No. 23 and 24 of the Appellate order. After considering the submissions and acknowledging that as per the diagram that assessee has purchased three flats which are interconnected with stairs from Floor 21 to Floor 22 and the flats in Floor 22 are interconnected having only one kitchen rest of the flats consist of living area and rooms. He has rejected the claim made by the assessee that itself a single unit of residential house considering the fact that assessee has entered into three separate sale deed executed for the purchase of above aforementioned triplex flat and the sale deed identifies, flats separately as single unit and observed that each of the flat have separate kitchen which does not match the representation made by the assessee with the three flats have single

kitchen. Sale deed is sole documents which specify the particulars of the flats purchased and ownership. The three flats may be interconnected with internal stair case but with separate kitchen in each of the flats does not make them a single unit to be eligible for deduction under section 54F of the Act. Accordingly, he dismissed the grounds raised by the assessee.

6. Aggrieved with the above order, assessee filed an appeal before us raising following grounds in its appeal: -

"1. On the facts and circumstances of the Appellant's case and in law the Id. CIT (A) erred in confirming the action of the Id.AO in holding that the residential units purchased by the appellant are separate and cannot be considered as one residential house for claiming exemption u/s 54F, for the reasons mentioned in the impugned order or otherwise.

2. On the facts and circumstances of the Appellant's case and in law the Id. CIT (A) erred in confirming the action of Id. A.O. in disallowing an exemption of Rs.4,72,22,936/- claimed u/s. 54F of the Act, for the reasons mentioned in the impugned order or otherwise.

3. The Appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing."

7. At the time of hearing, Ld.AR of the assessee brought to our notice the facts involved in this case and brought to our notice that assessee has entered into a single agreement to buy triplex flat from the buyer which has floor area of three flats. Flat No. 2103 consist of only living area and common kitchen and connected with stairs to the upper floor Flat No.2202

with stairs. Flat No. 2202 and 2203 are interconnected with common passage which consists of three bed room and a formal living area without any kitchen. In support of the same he has filed a flat diagram of all the three flats certified by the builder before us along with the agreement and possession handed over letter. He submitted that assessee has purchased one single unit which consists of three flats only for identification purpose and as far as assessee is concerned assessee has purchased one single unit which satisfies the provisions of section 54F of the Act.

8. On the other hand, Ld. DR brought to our notice Page No. 9 of the Paper Book which is the sale agreement as per which assessee purchased three flats which is modified after the building approval acquired by the builder. Further, he submitted that the handing over letter contents does not match with the agreement. He supported the findings of the lower authorities.

9. Considered the rival submissions and material placed on record, we observe that assessee has sold the shares and out of the sale proceeds he purchased three flats with interconnectivity. We also verified the agreement submitted before us which clearly shows that assessee has purchased one triplex flat which consists of a common living area,

common kitchen and rooms in the 22nd floor which is interconnected. From the agreement and the flat diagram clearly shows that all the three flats are interconnected with one living room, one kitchen and three rooms. After careful consideration of the facts on record and as per the provisions of section 54F of the Act, it allows an assessee to purchase "a residential flat". Therefore, "a" represents one single unit which consist of one living area, "X" number of rooms and one kitchen. In common parlance, a residential unit consist of living area, one kitchen and rooms. As per the definition of a residential house the triplex flat purchased by the assessee which has common living area, common kitchen and several rooms which satisfies the definition of a single residential unit.

10. Even though assessee has entered into a single agreement to purchase three identified block from the builder, the identification of blocks may be identified with floor names it does not mean that assessee has purchased three flats merely because of identification given by the builder to complete the whole project.

11. No doubt the builder has taken a gross approval for constructing a complete residential apartments and it has always available for modification which suits the buyers. Accordingly, they modified the

construction of the flats as per the requirements of the buyers. As far as the corporation approval is concerned, the builder may have constructed the number of blocks of flats based on the permission obtained from corporation, however, he must have modified several flats to suit the requirements of the buyers. Accordingly, in this case the builder has modified three flats to suit the requirement of the assessee as per which assessee has purchased a modified flats to suit his requirement as per which assessee has purchased common living area, common kitchen and required rooms which satisfies the common definition of a residential flat. Therefore, in our considered view the assessee has purchased a residential flat which may consists of more than one block of flats.

12. We observe from the assessment order in which Assessing Officer relies on the case of CIT *v.* Raman Kumar Suri [2013] in which the Hon'ble Bombay High Court has decided in favour of assessee with the observation that *"two flats were joined together before the respondent assessee became the owner of two flats. The certification from the society also established the fact that two flats Nos. 416A and 516A were joined together and were considered as one residential house"* the Assessing Officer accepted the above decision and observed that the assessee has not submitted a certificate from the society, builder, tehsil office from

municipal corporation. However, we observe that assessee has submitted a floor plan from the builder which encompasses triplex nature of flat and has been attached along with the registered sale deed which clearly shows that triplex nature of unit purchased by the assessee were approved and accepted by the builder. In the light of the discussion, the claim of the assessee is found to be just and proper. Therefore, we are inclined to take a view that assessee in the facts and circumstances of the case, has purchased triplex flats which are interconnected and which can be considered as "a residential unit" as per the definition of section 54F of the Act. Accordingly, ground raised by the assessee is allowed.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 22nd March, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Mumbai / Dated 22.03.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. CIT
 4. DR, ITAT, Mumbai
 5. Guard file.
- //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum