

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3464/Mum/2023  
(A.Y. 2016-17)**

Pranav Bhawnath Jha A-1103, Lokhandwala Residency, L Papan Marg Maharashtra - 400018	Vs.	Int. Tax Ward 3(1)(1) Air India Building, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:ABUPJ5391G		
Appellant	..	Respondent

Appellant by :	Digesh Rambhia
Respondent by :	Anil Sant

Date of Hearing	08.02.2024
Date of Pronouncement	15.04.2024

आदेश / ORDER

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-57 for A.Y. 2016-17. The assessee has raised the following grounds before us:

**“Ground 1. Disallowance of exemption under section 54 of the Act:**

- In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax, CIT(A)-57, Mumbai (hereinafter referred to as "CIT(A)-57") erred in rejecting the exemption claimed by the Appellant under section 54 of the Act by stating that L&T Crescent Bay property was purchased from the builder for which the payment made on October 18, 2012 would be treated as transfer date under the provision of Section 54 of the Act and the same should be construed as purchase of property instead of construction*

2. *The learned CIT(A)-57 also erred in appreciating the fact that dispute was not regarding whether the date of allotment or date of registration of purchase should be taken as the date of purchase, but it was regarding the investment was made for under construction property and not for purchase of a fully completed residential house property.*
3. *The learned CIT(A)-57 erred in holding that the investment in new residential property was not made within the period of one year before the date of sale of two flats instead of applying the period of 3 years for investment into construction of property.*
4. *The learned CIT(A)-57 erred in affirming the AO's view that the date of purchase has been taken as that of allotment letter and it is beyond the period of one year from sale of old property. Therefore, whether the residential property was purchased or constructed remained a pertinent issue which was not resolved by the learned CIT(A)-57.*
5. *The learned CIT(A)-57 has erred in limiting the provisions of Section 54 of the Act by concluding that the sale proceeds or gain had to be actually invested in the property and that any prior investment before the sale of the property shall not be considered for the purpose of exemption.*
6. *The learned CIT(A)-57 has erred in rejecting the submissions and various case laws relied upon which highlighted that the date of commencement of construction was not relevant for claiming deduction under section 54 of the Act*

*Ground 2. Erred in in upholding the demand payable amounting to INR 14,77,390 in the hands of the Appellant.*

*Ground 3. Erred in levying interest under sections 234B and 234C of the Act.”*

2. Fact in brief is that return of income declaring total income for assessment year 2016-17 at Rs.7,73,800/- was filed on 02.08.2016. The return was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 03.07.2017. During the course of assessment the assessing officer noticed that assessee had sold a residential house and claimed exemption from capital gain tax u/s 54 of the Act. The assessing officer further noticed that assessee has made an agreement for purchase of new house in F.Y. 2012-13 and paid earnest money. The assessing officer was of the view that for the claim of deduction u/s 54 of the Act, the assessee has to purchase residential house within a period of one year before or two years after the transfer took place. The

assessing officer further stated that assessee has made agreement for purchase of new house on 18.10.2012 and payment of Rs.11 lac was made subsequent to the agreement, therefore, he was of the view that 18.12.2012 was the transfer date under the provisions of I.T. Act. Therefore, the assessing officer held that assessee was not entitled to get the benefit of exemption from capital gain tax u/s 54 of the I.T. Act because he has not purchased a residential house within a period of one year before or two years after the date of transfer of the long term capital asset. Accordingly, the assessing officer denied the exemption u/s 54 of the Act amounting to Rs.53,49,175/-.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. Counsel vehemently contended construction of new house property of L & T Crescent Bay was completed only on 15.03.2018. He also submitted that investment made by the assessee should have been considered as investment in construction of property which has to be completed within stipulated period of three years. He filed paper book comprising copies of document and details submitted before the lower authorities. He also referred the following judicial pronouncements:

- I. Mustansir I Tehsildar v. ITO [2017] 88 taxmann.com 275 (Mumbai - Trib.)
- II. CIT v. J.R. Subramanya Bhat [1987] 165 ITR 571 (Kar.)
- III. CIT v. Bharti Mishra [2014] 41 taxmann.com 50 (Delhi)
- IV. CIT v. Smt. Bharati C. Kothari (2000) 244 ITR 352
- V. CIT v. H.K. Kapoor [1998] 234 ITR 753 (All.)
- VI. Asstt.CIT v. Subhash Sevaram Bhavnani [2012] 23 taxmann.com 94 (Ahm. Tri.)

The ld. Counsel also contended that the date of construction of the property was relevant not the date of commencement of the property in the case of the assessee.

5. On the other hand, the ld. D.R contended that newly acquired property was allotted to the assessee on 18.12.2012 and the said date was rightly treated by the AO as transfer date under the provision of Sec. 54 of the Act.

6. Heard both the sides and perused the material on record. During the year under consideration the assessee has sold two residential house properties on 01.01.2016 and March, 2016 respectively and exemption was claimed from capital gains u/s 54 of the Income Tax Act, 1961 by investing in under construction residential house property namely L & T Crescent Bay. The payments for the construction of L & T Crescent Bay House Property were made in the instalment since October 2012 as per the schedule mentioned in the agreement for sale. The construction of L & T Crescent Bay House Property was completed on 15.03.2018. The assessing officer was of the view that the allotment of house property was made on 18.10.2012 and same was considered as date of purchase of new house property, therefore, assessing officer has disallowed the claim of exemption of capital gain from sale of house property u/s 54 of the Act amounting to Rs.53,49,175/-. The ld. Counsel has referred the CBDT Circular No. 672 dated 16.12.1993 in which it was clarified that in case of allotment of flats or house by cooperative societies or other institution whose scheme of allotment and consideration are similar to those of DDA then similar view should be taken as was done in the Board Circular No. 471 dated 15.10.1986, such cases may also be treated as cases of construction for the purpose of Sec. 54 and 54F of the Income Tax Act. We have perused the decision in the case of Mustanshir I. Tehsildar Vs. ITO (2017) 88 taxmann.com 274 (Mumbai – Trib) wherein the coordinate bench of ITAT, Mumbai held that acquisition of new flat in an apartment under construction is a case of construction and not purchase of property for claiming relief u/s 54 of the Act. In this case it is also held that construction could

start before the date of sale of earlier property, but it should be completed within three years from the date to be eligible for deduction u/s 54 of the Act. In that case also the assessee had earlier booked a flat at Elegant Tower which was under construction and the payment to the builder was made to the builder much earlier to the date of transfer of old flat. We have also considered the decision of Hon'ble High Court of Karnataka in the case of CIT Vs. J.R. Subramanya Bhat (1987) 165 ITR 571 (Kar.) wherein it is held that the date of the commencement of construction of the new building was immaterial. On the similar proposition the Hon'ble Delhi High Court in the case of CIT Vs. Bharti Mishra (2014) 41 taxmann.com 50 (Delhi) held that assessee could not be denied benefit of Sec. 54F on ground that construction of house had commenced before sale of shares. The Hon'ble High Court of Allahabad in the case of CIT Vs. H.K. Kapoor (1998) 234 ITR 753 (All) held that exemption on capital gains u/s 54 cannot be refused merely on ground that construction of new house had begun before sale of old house. We have also perused the decision of ACIT Vs. Subhash Sevaram Bhavnani (2012) 23 taxmann.com 94 (Ahd. Trib) wherein held that in order to claim deduction u/s 54 date of commencement of construction is not material. The ITAT Hyderabad in the case of Pradeep Chowdry Vs. DCIT (2015) 55 taxmann.com 81 (Hyderabad) on the similar proposition held that a flat constructed by builder within 3 years would amount to construction of a residential house for purpose of claiming deduction under Sec. 54F of the Act. In the light of the above facts and judicial findings as discussed supra we consider that the booking of a flat in an apartment under construction should be considered as a case of construction, since, the same was not existed at the time of booking and the construction was completed well within the period of three years from the date of transfer by fulfilling the requirement of Section 54 of

the Act. Therefore, the assessee is entitled for claiming exemption u/s 54F of the Act is accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 15.04.2024

Sd/-

(Amit Shukla)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 15.04.2024

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**