

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"E" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.3975/Mum./2023**

**(Assessment Year : 2013-14)**

Thanwardas Lalchand Motwani  
KL Traders, Ganesh Bhawan,  
12 Shamrao Vithal Marg, Lamington  
Road, Mumbai-400007.  
PAN – AAEPM1907E

..... Appellant

v/s

Income Tax Officer-19(3)(5)  
Mumbai.

..... Respondent

Assessee by : Shri Ashish A Thakurdesai  
Revenue by : Shri P. D. Chougule

Date of Hearing – 16/04/2024

Date of Order – 03/05/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 08.09.2023 passed u/s 250 r.w.s. 254 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (*Appeals*) National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds: -

*"1. On the facts in circumstances of the case and in law the National Faceless Appeal Centre erred in confirming taxing capital gain of Rs.6,68,93,794/- by learned Assessing Officer.*

*2. On the facts in circumstances of the case and in law the National Faceless Appeal Centre erred in confirming denial of claim of exemption under section 54 by learned AO when the appropriate amount was deposited in Capital Gain Account before due date of filing return of income under section 139(1) of the Income Tax Act, 1961.*

*3. On the facts in circumstances of the case and in law the National Faceless Appeal centre ought to have allowed claim for exemption under section 54 by interpreting the incentive section liberally."*

3. The only dispute raised by the assessee, in the present appeal, pertains to the denial of a claim of exemption u/s 54 of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and for the year under consideration, filed his return of income on 01.10.2013 declaring a total income of Rs.11,93,108/-. The return filed by the assessee was selected for scrutiny and statutory notices u/s 143(2) as well as section 142(1) of the Act were issued and served upon the assessee. The assessee was a co-owner, having 80% of shares, in an immovable property at Iraniwadi, Kandiwali (W), Mumbai. The said property was transferred by the assessee on 24.04.2012 by the registered deed of conveyance to M/s.Arihant Enterprises for a total consideration of Rs.9 cr. As per the deed of conveyance of the property, the assessee was entitled to 80% share of the total consideration, amounting to Rs.7.20 cr. Out of this amount of Rs.7.20 cr, the assessee received a sum of Rs.1.20 cr from M/s. Arihant Enterprises before the execution of the conveyance deed on 24.04.2012. Further, as per this deed of conveyance, M/s. Arihant Enterprises was to pay the rest of the sale consideration of Rs.6 cr in three equal instalments till 24.07.2012. However, the assessee received the balance payment of Rs.6 cr only on 26.09.2013, and thereafter, the entire

sum of Rs.7.20 cr was deposited in the capital gain deposit account on the same date. Thereafter, the assessee purchased a residential property on 29.09.2014 for a total consideration of Rs.7.03 cr and claimed deduction u/s 54 of the Act. While filing his original return of income this capital gain transaction and the deduction claimed u/s 54 of the Act were reflected, however, in his revised return of income, the assessee did not offer any capital gain. Accordingly, during the assessment proceeding, the assessee was asked to explain the reason for filing a revised return of income and the reason for the non-inclusion of sale consideration from the aforesaid transaction in the revised return of income. In response thereto, the assessee submitted that the full consideration barring Rs.1.20 cr was received by the assessee only on 26.09.2013 after which the assessee immediately invested the amount in Capital Gains Scheme Account. Thus, the assessee claimed that the capital gain had accrued in the assessment year 2014-15 when the full consideration for the sale of the property was received by the assessee. In the alternative and without prejudice, the assessee submitted that he has deposited the entire consideration in Capital Gains Scheme Account on 26.09.2013 and therefore is entitled to claim the benefit u/s 54 of the Act.

5. The Assessing Officer ("AO") vide order dated 19.03.2016 passed u/s 143(3) of the Act did not agree with the submission of the assessee and held that since the deed of conveyance was entered into by the assessee with M/s. Arihant Enterprises on 24.04.2012 and the physical possession of the property was also transferred by the assessee to M/s. Arihant Enterprises on the same date, therefore, "transfer" as contemplated u/s 2(47) of the Act was completed

in the financial year relevant to the assessment year 2013-14. Accordingly, the AO held that the capital gains arising to the assessee from the aforesaid sale transaction are taxable only in the assessment year 2013-14. The AO further held that in order to claim the benefits of exemption u/s 54 of the Act, the assessee is required to purchase the new residential house property within a period of two years from the date of transfer of the original property. However, in the present case, even though the assessee deposited the entire sale consideration of Rs.7.20 cr in the Capital Gains Scheme Account, the new residential house property was purchased only on 29.09.2014, i.e. after the lapse of two years from the sale of original property on 24.04.2012. Thus, the assessee is not entitled to claim the benefit u/s 54 of the Act. Accordingly, the AO treated the long-term capital gains amounting to Rs.6.68,93,794/- accrued to the assessee by transferring the property at Iraniwadi, Kandiwali (W), Mumbai as taxable in the hand of the assessee for the assessment year 2013-14 and added the same to the total income of the assessee.

6. The learned CIT(A) vide impugned order, dismissed the appeal filed by the assessee and held that the assessee has not satisfied the conditions for claiming exemption u/s 54 of the Act, as he deposited the sale consideration in Capital Gains Scheme Account only on 26.09.2013, i.e. after the due date for filing the return of income u/s 139(1) of the Act. The learned CIT(A) also upheld the findings of the AO that the transfer of original assets took place in the assessment year 2013-14. Accordingly, the learned CIT(A) upheld the addition of long-term capital gains and denial of exemption u/s 54 of the Act by the AO. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("learned AR") submitted that in the present case, since the full consideration on the sale of property was received by the assessee on 26.09.2013, therefore, the capital gain has accrued to the assessee only in the assessment year 2014-15. The learned AR further submitted that even if it is considered that capital gains upon the sale of the property accrued to the assessee in the assessment year 2013-14, the assessee is entitled to claim the benefit of exemption u/s 54 of the Act as he deposited the entire sale consideration in Capital Gains Scheme Account before filing its return of income u/s 139(1) of the Act. The learned AR also submitted that in the present case, the residential house property purchased by the assessee on 29.09.2014 was under consideration flat since the occupation certificate was yet to be issued by the concerned authority at the time of purchase of the flat, and therefore, instead of time period of two years the time period of three years from the date of transfer of the original assets shall be applicable, as is applicable in case of construction of the residential house u/s 54 of the Act.

8. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute amongst the parties regarding the following facts: -

- (a) The assessee was co-owner, having 80% shares, in an immovable property at Iraniwadi, Kandiwali (W), Mumbai, which was transferred

by way of a deed of conveyance to M/s. Arihant Enterprises on 24.04.2012.

- (b) As per the deed of conveyance the assessee was entitled to receive an amount of Rs.7.20 cr, out of which he received Rs.1.20 cr before the execution of the aforesaid conveyance deed and the balance payment of Rs.6 cr was received by the assessee on 26.09.2013.
- (c) Upon receipt of the balance payment, the assessee deposited the entire consideration of Rs.7.20 cr in the Capital Gains Scheme Account on 26.09.2013.
- (d) On 29.09.2014, the assessee purchased the residential property for a total consideration of Rs.7.03 cr.

10. In the aforesaid facts, the first issue that arises for our consideration pertains to the year in which the capital gains accrued to the assessee is taxable. As per the assessee, since the full consideration was received by him only on 26.09.2013, therefore, the capital gain arising from the sale transaction with M/s. Arihant Enterprises is taxable in the assessment year 2014-15. On the other hand, as per the Revenue since the assessee has signed the deed of conveyance on 24.04.2012 and even handed over the physical possession of the land and structure thereon in favour of M/s. Arihant Enterprises on the same date, the "transfer" u/s 2(47) of the Act has taken place in the assessment year 2013-14, and therefore, the capital gains arising to the assessee is taxable only in the assessment year 2013-14. In order to decide this controversy, it is relevant to note the provisions of section 2(47) of

the Act, which, *inter-alia*, provides that “*transfer*” in relation to capital assets includes the sale of the assets. In the present case, from the aforesaid undisputed facts, it is evident that the sale of the immovable property at Iraniwadi, Kandiwali (W), Mumbai took place on 24.04.2012 by way of a deed of conveyance entered into between the assessee and M/s. Arihant Enterprises. Further, it has also not been disputed by the assessee that the physical possession of the land and the structure thereon was also handed over in favour of M/s. Arihant Enterprises on the same date. Accordingly, we are satisfied with the conclusion of the lower authorities that the transfer of the original asset took place in the financial year relevant to the assessment year 2013-14. Further, section 45 of the Act provides that any profits & gains arising from the transfer of capital assets effective in the previous year shall be chargeable to income tax under the head “*capital gains*” and shall be deemed to be the income of the previous year in which the transfer took place. Since we have come to the conclusion that the transfer of the original asset, in the present case, took place in the financial year relevant to the assessment year 2013-14, therefore, capital gains from the sale transaction is also taxable in the assessment year 2013-14.

11. Since we have concluded that the capital gains from the sale of the original asset is taxable in the assessment year 2013-14, now the question arises whether the assessee is entitled to claim the benefits of exemption under the provisions of the Act, particularly u/s 54 of the Act. The benefit u/s 54 of the Act is available if the assessee within the period of one year before or two years after the date on which the transfer of original asset took place

purchased a residential house or within the period of three years after that date constructed a residential house. Section 54(2) of the Act further requires that the amount of capital gains which is not appropriated or utilised by the assessee for the purchase or construction of the new residential house before the date of furnishing the return of income u/s 139 of the Act shall be deposited in the Capital Gains Scheme Account before furnishing such return. It is the plea of the assessee that he had deposited the entire sale consideration of Rs.7.20 cr in the Capital Gains Scheme Account before filing his original return of income u/s 139(1) of the Act and therefore, is entitled to claim the benefit of exemption as provided in the provisions of section 54 of the Act. On the other hand, as per the Revenue, the assessee deposited the consideration from the sale of the original asset in the Capital Gains Scheme Account on 26.09.2013 and further the new residential house was purchased on 29.09.2014, i.e. after a period of two years from the sale of the original asset, therefore, the assessee is not entitled to claim the benefit u/s 54 of the Act.

12. From the perusal of the original return of income filed by the assessee u/s 139(1) of the Act on 01.10.2013, forming part of the paper book from pages 6-30, we find that the assessee was liable to get his accounts audited u/s 44AB of the Act and in this regard also furnished audit report in Form no. 3CB dated 16.09.2013 for the financial year 2012-13. From the perusal of Explanation-2 to section 139(1) of the Act, we find that in the case of a person whose accounts are required to be audited under the Act, the due date of filing the return of income, for the year under consideration, was 30.09.2013. We

further find that vide order dated 24.10.2013 passed in exercise of powers conferred u/s 119 of the Act, the CBDT extended the due date prescribed u/s 139(1) of the Act in cases where accounts are required to be audited to 31.10.2013. Therefore, in view of the above, we find that the original return of income filed by the assessee on 01.10.2013 is within the due date prescribed u/s 139(1) of the Act. Further, since in the present case, it is undisputed that the entire sale consideration was deposited by the assessee in Capital Gains Scheme Account on 26.09.2013, therefore, we are of the considered view that the assessee has duly complied with the provisions of section 54(2) of the Act. Thus, we find no basis in the findings of the learned CIT(A) in concluding that the assessee has not filed his return of income u/s 139(1) of the Act and has not deposited the sale consideration in the Capital Gains Scheme Account before the due date of filing return of income u/s 139(1) of the Act.

13. As regards the finding of the AO that in the present case, the new house property was not purchased within the period of two years from the date of transfer of the original asset, it is the plea of the assessee that the new house property at the time of its purchase was not a ready-to-move-in flat but the same was under-construction flat and the occupation certificate from the concerned authority was awaited. Therefore, as per the assessee, the extended time period of three years from the date of transfer of the original asset for the purpose of construction of the residential house is applicable in the present case for determining the availability of benefit u/s 54 of the Act. In this regard, the assessee has placed on record the letter from the developer dated 24.09.2014. From the perusal of the aforesaid letter, forming part of the

paper book on page 161, we find that the process of obtaining the occupation certificate was in process and the developer agreed to procure the occupation certificate at the earliest. Therefore, upon consideration of the submissions of the assessee and perusal of the aforesaid letter, it needs to be determined whether the residential property purchased by the assessee on 29.09.2014 is a ready-to-move-in flat or an under-construction flat. Further, if the residential property purchased by the assessee is considered as an under-construction flat then it needs to be examined whether the extended period of three years in case of construction of a residential house as provided u/s 54 of the Act is applicable in the case of the assessee. From the perusal of the orders passed by the lower authorities, it is evident that this aspect of the matter was neither examined nor any documentary evidence verified in this regard. Since the examination of the aforesaid aspect is necessary for determining the availability of the benefit u/s 54 of the Act to the assessee, we deem it appropriate to restore this issue to the file of the jurisdictional AO for examination and adjudication of the aforesaid aspect as noted by us. We also direct the assessee to furnish all the necessary documents in support of his claim of entitlement to exemption from capital gains u/s 54 of the Act. The assessee is also directed to furnish all the documents as may be required by the AO for complete adjudication of this issue. Needless to mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. Accordingly, the impugned order is set aside and grounds raised by the assessee are allowed for statistical purposes.

14. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/05/2024

**Sd/-**  
**AMARJIT SINGH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 03/05/2024**

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai