

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 1013/Mum/2024
(Assessment year: 2015-16)

Cheryl Oscar Pereira A G/1, Dheeraj Heritage Residency, Link Road Extn, Shastrina, Santacruz West, Mumbai-400 054 PAN : AADPC2481N	vs	Deputy Commissioner of Income Tax, Circle-13(1)(2), Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri Madhur Agarwal
Respondent by : Shri H.M. Bhatt (SR. DR.)
Date of hearing : 11/06/2024
Date of pronouncement : 18/ 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the Ld. National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16, date of order 19.01.2024. The impugned order was emanated from the order of the Ld. Deputy Commissioner of Income Tax, Circle-13(1)(2), Mumbai (in short, 'the A.O.')

passed under section 143(3) of the Act.

2. The assessee has taken the following grounds of appeal:-

“1. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [‘CIT(A)'] erred confirming the action of AO in denying the entire claim of exemption u/s 54 of Rs.2,21,37,945/- arising on sale of three residential properties and also denying the claim of exemption u/s 54F to the extent of Rs.4,04,95,459/- arising from the capital reduction of 1,55,000 shares of a company namely, "Perlin Cosmeceuticals Pvt. Ltd.

Denial of Claim of exemption u/s 54:

2. The Ld. CIT(A) failed to appreciate the language used in section 54(1) whereby the exemption is available to the assessee in respect of transfer of any number of long term capital assets being residential houses if the said gain is invested in "one residential house".

3. The Ld. CIT(A) failed to appreciate the mandate of the exemption provision which was not that the long term capital gain on sale of residential houses should be invested in separate new residential houses. The investment of the entire LTCG in one house was sufficient compliance to claim exemption u/s 54 of the Act.

Denial of Claim of exemption u/s 54F:

The Ld. CIT(A) erred in confirming the action of AO in grossly misinterpreting the law by insisting on purchase of separate asset for claiming separate exemptions with respect to transfer of each asset. The learned CIT(A) failed to appreciate that the appellant had fully complied with all the parameters of section 54F and was entitled to the exemption under section 54F.

Without prejudice to the above the Ld. CIT(A) failed to appreciate that section 54 and section 54F could certainly be availed of in the purchase of the same residential house, and this was an established proposition of law.

Further and without prejudice to the above grounds, the Ld. CIT(A) erred in confirming the action of AO in denying the exemption u/s. 54F to the extent of Rs.4,04,95,459/- without appreciating the fact that the appellant (same assessee) had sold 572500 no. of shares at a single instance on 25th March, 2015 on account of capital reduction by the company. The presentation of transfer of total no. of shares at the same point of time into 3 different lots was only to show the distinct cost of acquisition and indexation thereof.

Your Appellant craves leave to add, to alter or to amend the aforesaid ground of appeal.”

3. Brief facts of the case is that the assessee, in individual capacity, filed the return by declaring income under the head of salary, Income from House Property, Income from other sources and capital gain. During the impugned assessment year, the assessee sold 3 (three) residential houses and sale of shares of Perlin Cosmeceuticals Pvt Ltd. The assessee earned capital gain of Rs.14,83,09,386/- on account of sale of share and Rs.2,21,37,945/- on account of sale of residential house which works out to total amount of Rs.17,04,47,331/-. The assessee claimed exemption under section 54 and 54F of the Act by purchasing the residential house amount to Rs.13,15,63,258/- and the assessee also incurred certain expenses amount of Rs.1,37,40,416/- on construction of said flat to make it habitable and the balance amount Rs.2.5 crores is deposited in the Capital Gain Account Scheme to claim exemption. During the assessment proceedings, the Ld.AR claimed exemption under section 54 & 54F on sale of 3

properties and share against buying one property. So the Ld.AO disallowed the exemption under section 54 & 54F to the extent of Rs.6,26,33,404/- in the manner the rejection of exemption under section 54 amount to Rs.2,21,37,945/- and partial rejection under section 54F, the amount of Rs.4,04,95,459/-. Being aggrieved, the assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR filed a written submission which is kept in the record (in short ABP). The Ld.AR first explained the section 54 & 54F. In question of explanation of legal matrix (APB page 29-32). The Ld.AR further claimed that the assessee is eligible for entire claim of expenditure under section 54 & 54F of the Act related to long term capital gain.

The **section 54 of the Act** is read as follows:-

“Profit on sale of property used for residence.

54. Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date [constructed, one residential house in India], then], instead of the capital gain being charged to income-tax as income of the previous

year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain [is greater than the cost of [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:”

The **section 54F of the Act** is read as follows: -

Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

“54F. Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset),

the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:”

5. The Id. AR respectfully relied on the order of **ITAT Mumbai Bench-A** in the case of **Deputy Commissioner of Income-tax, Central Circle-32v.Ranjit Vithaldas, [2012] 23taxmann.com226 (Mumbai)**. The relevant paragraphs are reproduced as below: -

“11. Another important aspect which needs to be examined is whether the exemption u/s 54 will be available, in case, capital gain arising from sale of more than one residential house, is invested in one residential house. The Id. counsel appearing for the assessee argued that there was no restriction under section 54 that capital gain arising from two residential houses cannot be invested in one residential house. We find substance in the argument advanced by the Id. counsel for the assessee. No rulings have been brought on record by the Id. DR to show that the capital gain arising from sale of more than one residential houses cannot be invested in one residential house. The provisions of section 54 as pointed out earlier apply to transfer of any number of residential houses by the assessee provided the capital gain arising therefrom is invested in a residential house. The exemption u/s 54 is available if capital gain arising from transfer of a residential house is invested in a new residential house within the prescribed time

limit. Thus there is an inbuilt restriction that capital gain arising from the sale of one residential house cannot be invested in more than one residential house. However, there is no restriction that capital gain arising from sale of more than one residential houses cannot be invested in one residential house. In case, capital gain arising from sale of more than one residential houses is invested in one residential house, the condition that capital gain from sale of a residential house should be invested in a new residential house gets fulfilled in each case individually because the capital gain arising from sale of each residential house has been invested in a residential house. Therefore, even if two flats are sold in two different years, and the capital gain of both the flats is invested in one residential house, exemption u/s 54 will be available in case of sale of each flat provided the time limit of construction or purchase of the new residential house is fulfilled in case of each flat sold.”

5.1. Further relied on the order of **ITAT Mumbai Bench ‘D’**

Rajesh Keshav Pillai v. Income-tax Officer, Ward 19(3)(2), Mumbai, [2011] 44SOT617 (Mum.). The relevant paragraph is as follows:-

“4.1 A perusal of provisions of section 54(1) which has been reproduced at page 2 earlier shows that capital gain arising from transfer of a long-term capital asset being a residential house the income of which is chargeable under the head "income from house property" is exempt if the capital gain is invested in a residential house in the manner prescribed in the said section. There is no restriction placed anywhere in the section 54 that exemption is available only in relation to sale of one residential house. Therefore, in case the assessee has sold two residential houses, being long-term assets, the capital gain arising from the second residential house is also capital gain arising from the transfer of a long-term asset being a residential house. The provisions of section therefore will also be applicable to the sale of second residential house and similarly to a third residential house and so on. Whenever the exemption available is restricted to one asset, a suitable provision is incorporated in the relevant section itself. For instance section 23(2) exempts income from a property consisting of a house or a part of house which is in occupation of the assessee or which could not be occupied by the assessee because of his

employment/business/profession being carried on at some other place. Based on such provisions contained in section 23(2), income from any number of properties being residential houses which are self-occupied will have to be treated as exempt. But a restriction has been placed in section 23(4) which provides that where the property referred to in sub-section (2) consists of more than one residential houses, exemption would be available only in respect of one house and other self-occupied residential houses will be treated as let out. There is no such provision in section 54 to restrict the exemption of capital gain only to sale of one residential house. The authorities below have taken the view that whenever more than one option is given to the assessee the word used is "any". The reference has been made to the provisions of section 54E etc. We find from perusal of the said sections that the word "any" has been used because the assessee has option to invest in any of the assets mentioned therein. For instance, section 54E provides exemption in respect of capital gain arising from transfer of a long-term capital asset if whole or any part of the net consideration is invested in any specified assets within six months from the date of transfer. Since the specified assets were more than one, the word "any" has been used because the exemption will be available if the investment is made in any of the specified assets. The situation in section 54 is different. Considering the language used in section 54(1), in our view exemption will be available in respect of transfer of any number of long-term capital assets being residential houses if other conditions are fulfilled.

5. The Ld.DR argued and fully relied on the order of the revenue authorities. The Ld.DR invited our attention in appeal order page 27 para 12. The relevant paras 12-14 are reproduced as below:-

"12. In relation to flat in Vishnu Villa, the AO has given a finding that the flat had been used for the purpose of business and, therefore, is not eligible for exemption u/s 54 which allows exemption only in respect of residential house income from which is chargeable under the head "income from house property". The AO has drawn his conclusion based on the ground that the assessee had not returned any income from Vishnu Vila Flat. The AO had treated the Ramkrishna Sadan flat as self occupied property and, therefore, in his opinion, the income from Vishnu Villa property could be exempt from house property only if the same was used for business as only one flat could be treated as self occupied

property. The Id. CIT(A) has not accepted the finding given by the AO and we agree with the view taken by CIT(A). The assessee had shown no income from Vishnu Villa flat because the assessee had treated both the flats as one residential house which had been used as a self acquired property. Therefore, only on the ground that the assessee had not shown any income from the Vishnu Villa property, it cannot be concluded that the flat had been used for the purposes of business when there is no material to support the said conclusion. Even at the time of hearing before the Tribunal, the Ld.DR did not produce any material to show that the Vishnu Villa had to be treated as residential house, the income from which is chargeable to tax under the head "income from house property". The only requirement of section 54 is that income should be chargeable to tax under the head "house property income" and it is not necessary that income should have been actually charged. Therefore, capital gain arising from the sale of the Vishnu Villa flat would be eligible for exemption u/s 54 subject to fulfillment of other conditions.

13. In view of the foregoing discussion, we direct the AO to allow the capital gain exemption u/s 54 of the Act after verifying that the new residential house had been constructed within prescribed time limit.

14. In the result, the appeal of the Revenue is partly allowed."

6. We heard the rival submission and considered the documents available in the record. The assessee sold 3 (three) properties and the share and earned the capital gain. Related to section 54 on sale of residential house, the assessee claimed exemption for purchasing the residential house. Related to section 54F, the amount of capital gain from sale of share (other than house property) is invested for purchase of new house property. There is no dispute raised by the revenue related to other contention for claiming of exemption under section 54F. But only the issue is with purchasing of single house is related to denial of exemption under section 54 and partial denial of exemption under section 54F. Considering both the sequence, there are no restrictions for purchasing a single unit on the same value. The assessee invested the entire amount for claiming of

exemption under section 54 & 54F. Further, section 54 was amended by the Finance Act 2014 with effect from 01/04/2015 whereby the words “one residential house” were substituted by words “a residential house”, in order to create restriction that investment cannot be allowable only in one house. Prior to such amendment, various appellate authorities were taking view that words “a residential house” do not restrict the benefit of exemption to investment in one house only and we have to interpret in a manner to allow the benefit to investment made in more than one residential house as well. But this amendment has been made only to the later part of section which refers to the investment in residential house and not in the earlier part of the section which refers to the capital assets transferred. We find that the intention of the legislature was not to restrict the benefit of exemption only to one residential house transferred. The similar amendment would have been made in the earlier part of section and words “being a residential house” as pleasantly appearing in the section would have been substituted by “being one residential house”. Therefore, in light of the above discussion and considering the words “building or lands” used in the section. It is crystal clear that there is no restriction under section 54 on the number residential houses transferred and even where more than one residential house is transferred and the investment is made in one residential house, the exemption under section 54 would be available to the assessee. We relied on the order of coordinate bench of ITAT-Mumbai in **Ranjit Vithaldas**(supra) and **Rajesh Keshav Pilla** (supra).

In our considered view, the claim of exemption under section 54 & 54F should be allowed to the assessee entirely. We set aside the appeal order. So, the

disallowance of exemption amount to Rs.6,26,33,404/- is quashed. The appeal of the assessee is succeeded.

7. In the result, appeal of the assessee bearing ITA **No. 1013/Mum/2024** is allowed.

Order pronounced in the open court on 18th day of June, 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 18/06/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**

	Details	Date	Initials	Designation
1	Draft dictated on PC on	11.06.2024		Sr.PS/PS
2	Draft Placed before author	12.06.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			