

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA.No.1822/Mum./2024
Assessment Year 2013-2014

Shri Sandeep S. Mittal, 105, Augustus, Raheja Acropolis-II, B-Wing, Deonar Pada Road, Near Talcom Factory, Chembur, Mumbai – 400 088. Maharashtra. PAN ACPPM8418H	vs.	The Income Tax Officer, Ward – 27 (3)(1), IT Office, Vasi Railway Station Bldg., Navi Mumbai. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Jose Pulikkoden
For Revenue :	Shri Laxmi Kanth, Sr. AR

Date of Hearing :	08.07.2024
Date of Pronouncement :	11.07.2024

ORDER**PER SATBEER SINGH GODARA, J.M.**

This assessee's appeal, for assessment year 2013-2014, arises against National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1060913571(1) dated 14.02.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance canvassed in the instant appeal challenging correctness of both the lower authorities action disallowing his sec.54 deduction claim amounting to Rs.3,58,68,411/- in the course of assessment dated 15.12.2015; we note that the CIT(A)-NFAC's detailed discussion to this effect reads as under :

Decision:**6.** Section 54 is reproduced below:

Profit on sale of property used for residence.

54. [(1)] [[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, a residential house, 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 45; 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.

6.1. In this case the appellant has not produced any evidence to show that he has purchased or constructed a residential house within the time limit mentioned in section 54. This appeal is being disposed after the elapse of ten years since the transaction where-from capital gains arose. However till date proof of purchase or construction has not been furnished by the appellant.

6.2. The appellant produced details of advance given, before filing the return of

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income, to a builder. Also copy of a letter from the builder was produced. In the letter from Shanti and Santosh Builders dated 22.05.2013 it is stated as under:

"We hereby inform you that we have allotted you a residential area admeasuring 5200 sq. Feet (salable) in the building to be constructed on plot bearing CTS No.160A-1 of village Majas, Taluka Andheri, Mumbai Suburban District, situate, lying and being at Jogeshwari (East) Mumbai."

6.3. The letter makes clear that project was not started as on 22.05.2013. It does not identify the house allocated to the appellant. It acknowledges receipt of advance payment but does not mention the purpose for which the advance was made.

6.4. If the intention of the appellant was to invest in a house, on account of the delay in delivery, the appellant would have started legal proceedings against the builder. However there is no evidence for any step taken for the recovery of the advance given. Under the circumstances, the claim of the appellant about investment in a residential property is not accepted.

6.5. There are a number of judicial decisions which interpret section 54/54F liberally especially with regard to the time limits involved within which investment has to be made. The appellant has invoked the decision of the Karnataka High Court in Commissioner of Income-tax vs. Sambandam Udaykumar [2012] 19 taxmann.com 17 (Karnataka). The facts of the cited case are as under:

Assessee sold certain shares and earned capital gains and within 12 months made investment for construction of a residential house - Exemption under section 54F was claimed by assessee with regard to said portion - Assessing Officer, however, denied exemption under section 54F on ground that construction was not complete within three years as certain work like flooring, electrical fittings, fittings of door shutters, etc., were still pending - However, registered sale deed was executed showing transfer of property in assessee's favour and assessee was in possession and occupation of said property - The Court held that the assessee was entitled to benefit of exemption under section 54F.

6.6. The appellant has also referred to Madras High Court decision in Sardarmal Kothari vs. CIT [2008] 302 ITR 286 (Madras). The brief facts are as under:

The assessee had purchased lands by investing capital gain and they had also constructed residential houses and in order to establish same, assessee submitted before Commissioner (Appeals) evidence in form of invitation card printed for house warming ceremony and assessee also

produced completion certificates from municipal authority, The Court held that the Assessing Officer was not justified in rejecting assessee's claim for exemption of capital gain under section 54F on ground that construction was not complete within specified period.

6.7. However in the instant case, there is not even a legally binding agreement between the appellant and the builder to construct a house. Therefore the case laws do not come to the aid of the appellant.

7. In the result, appeal is dismissed.

3. Learned counsel vehemently argued during the course of hearing that both the learned lower authorities have wrongly rejected the assessee's impugned sec.54 deduction claim despite the fact that he had placed on record the allotment letter to this effect which proves substantial compliance of all the relevant conditions therein at his behest. Learned counsel's case accordingly is that the impugned sec.54 deduction disallowance is not sustainable in law once the assessee re-invests his capital gains as is the case before us.

4. Faced with this situation, we sought to know about the final completion status of the residential house in question vis-à-vis the project concerned. The reply received from assessee's side is in "negative" only; on both counts. Meaning thereby, that the assessee

has not been able to prove the clinching conditions of having purchased a residential house by way of re-investment of capital gains before one year or after two years of the date of transfer of the capital asset or having constructed the same within three years from the said date; as the case may be. The assessee's plea that he could not be penalized for the action of the real estate developer also fails to evoke our concurrence since sec.54 deduction is allowable only if a residential house is purchased or constructed in the foregoing terms and not otherwise. We thus uphold the learned CIT(A)-NFAC's findings rejecting the assessee's sec.54F deduction claim in very terms. Ordered accordingly.

5. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 11.07.2024

Sd/-
[AMARJIT SINGH]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumba, Dated 11th July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "G" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.