

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA.No.2326/Mum./2024
Assessment Year 2014-2015

Sompalsingh J. Kataria, Flat No.2202, Orchid, Hiranandani Meadows, Gladys Alwares Marg, Thane (West) – 400 061. Mumbai. Maharashtra. PAN AADPK3293N	vs.	The Income Tax Officer, Ward-3(4), Ashar IT Park, 6 th Floor, Road No.16Z, Wagle Industrial Estate, Thane (West), Mumbai. PIN – 400 607. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Subodh Ratnaparkhi, C.A.
For Revenue :	Shri Prashant Mahajan, Sr. AR

Date of Hearing :	24.07.2024
Date of Pronouncement :	25.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal for assessment year 2015-2016 arises against the order of the CIT(A), Pune-11, Pune's DIN & order no.ITBA/APL/S/250/2023-24/1062472996(1), dated 12.03.2024, in proceedings u/s.143(3) r.w.s.254 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 that both the learned lower authorities have erred in law and on facts in disallowing his sec.54 deduction claim amounting to Rs.1,69,47,407/- in the course of assessment dated 26.03.2022; as upheld in CIT(A)-NFAC's detailed discussion; learned counsel invited our attention to the latter's findings to this effect as under :

“Findings

6. *I have considered the facts of the case and the submissions made by the appellant. The only issue involved in this appeal is as to whether the appellant is eligible for deduction u/s 54 of the Act on the sale of a residential flat. As per the provisions of section 54 of the Act, the assessee should purchase another Residential Property within 1 year before or 2 years after the transfer of the Property sold and/or construct a Residential house Property within a period of 3 years from the date of transfer/sale of property. Thus, the*

date on which the residential property is transferred/sold as well as the date on which the new flat is purchased, are very crucial in order to examine the eligibility of deduction u/s 54 of the Act.

7. *In the present case, the appellant has explained that for selling his old flat, he entered into an MoU on 23.03.2013. However, the 'Agreement to Sale' was executed only on 29.05.2013. Therefore, the date on which agreement to sale was executed/registered is taken as the date of transfer of his old capital asset. Therefore, the LTCG is declared in AY 2014-15 which is corresponding to FY 2013-14 (the year in which agreement to sale was executed/registered)*

8. *As far as purchase of new flat is concerned, the appellant purchased the flat no. 2202, Basilius, Hiranandani Meadows, from the developer namely M/s Roma Builders Pvt Ltd. The said flat was allotted to the appellant on 28.03.2012 and the 'Agreement to Sale' was registered with the Sub-Registrar on 29.03.2012. The appellant has claimed that possession of the flat*

was given on 20.03.2015 which is within a period of 2 years from the date of transfer of old residential flat i.e. 29.05.2013. The appellant has accordingly contended that for the purposes of section 54 of the Act, the date of possession should be considered as date of acquisition.

9. *I have considered the above contention of the appellant. In this connection, it is seen that the hon'ble Bombay High Court in the case of PCIT vs Vembu Vaidyanathan (2019) 101 taxmann.com 463 (Bombay) has held that for the purposes of section 54F of the Act, the date of allotment of flat shall be considered as date of acquisition. The relevant portion of the said judgement is as under:-*

4. Having heard learned counsel for the parties, we notice that the CBDT in its circular No 471 dated 15th October, 1986 had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority (D.D.A. for short) for which allotment letter is issued, the date of such

allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.

10. *Further, Hon'ble jurisdictional ITAT in the case of Sujauddian Kasimsab Sayyed vs ITO (2020) 114 taxmann.com 168 (Mumbai Trib) has held that the immovable property is not conveyed by delivery of possession, but by a duly registered deed. The relevant portion of the said decision is as under.-*

4.3. *In the instant case, there is no dispute that the "Agreement for Sale" is dated 10.09.2014. We have held that the "Letter of Allotment dated 27.04.2012 which has been produced at para 4*

hereinabove cannot be considered as the date of execution of agreement by any stretch of imagination.

In this context, we have relied on the judgment of the Hon'ble Supreme Court in Alapati Venkataramiah v. CIT [1965] 57 ITR 185 (SC), CIT v. Podar Cements (P.) Ltd. (1997) 92 Taxman 541/226 ITR 625 (SC), wherein it is held that once the executed documents are registered, transfer will take place on the date of execution of documents and not on the date of registration of documents. It is well-settled that immovable property is not conveyed by delivery of possession, but by a duly registered deed. Further, it is the date of execution of registered document, not the date of delivery of possession or the date of registration of document, which is relevant.

4.4 In the instant case, the "Agreement for Sale" is dated 10.09.2014. Section 56(2)(viii)(b)(ii) clearly stipulates that where any immoveable property is

received for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50000/-, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources. It is applicable from A.Y. 2014-15.

11. *The above decisions clearly suggest that for the purposes of section 54 of the Act, the date of allotment is required to be taken as date of acquisition. Further, the date of possession of the flat is immaterial in case of conveyance of immovable properties. Both the above decisions are by jurisdictional Tribunal and jurisdictional High Court and therefore, same are binding on the undersigned. Therefore, following the above case-laws, the date of possession of the flat, as contended by the appellant, cannot be considered as date of acquisition. Since, in the present case, the new flat was allotted to the appellant on 28.03.2012 and the 'Agreement to Sale' was registered on 29.03.2012, the*

date of acquisition is therefore falls on either of these dates. Both these dates are falling beyond the period of 1 year from the date of transfer of capital asset as the agreement for sale for the old flat was registered on 29.05.2013. Since, the appellant is not fulfilling the mandatory condition of acquiring a new residential flat in the time-period specified in section 54 of the Act, it is held that the appellant is not eligible for deduction u/s 54 of the Act.

12. Accordingly, the addition of Rs. 1,69,47,407/- made by the assessing officer by disallowing the deduction u/s 54 of the Act, is upheld. The ground no. 1 raised by the appellant is DISMISSED.

13. The ground no. adjudication. 2 is of general nature and does not require specific adjudication.”

3. We now advert to the basic relevant facts. There is hardly any dispute between the parties regarding the same *inter alia* that the assessee had entered into MOU with the builder/developer wherein the latter allotted a residential unit in question to him on 28.03.2012; followed

by an agreement to sale of the relevant capital asset registered on 29.03.2012 and the final purchase/possession of the flat on 20.03.2015; respectively. We make it clear that sec.54 of the Act stipulates deduction of the capital gains arising from transfer of a capital asset [residential house] in case the assessee concerned/investments the same by way of purchasing a residential house one year before or two years after the date of transfer or constructs residential house within a period of three years from the date of the foregoing transfer; as the case may be.

4. We now advert to the Revenue's objections for disallowing the assessee's impugned sec.54 deduction claim. Both the learned lower authorities and more particularly; the CIT(A)-NFAC invokes the former limb of "one year before the transfer" i.e., 28.03.2012 and the date of transfer itself dated 29.03.2012 to conclude that the same falls beyond the prescribed period of "one year" and therefore, the assessee is not entitled for the same.

5. We have given our thoughtful consideration to the vehement rival stands and find no merit in the learned lower authorities action making the impugned disallowance. It emerges during the course of hearing that various judicial precedents i.e., (1) CIT vs. Smt. Beena K. Jain [1994] 75 Taxman 145 (Bombay); (2) Sunil Amritlal Shah vs. ITO [2024] 162 taxmann.com 676 (Mumbai-Tribu.); (3) Bastimal K. Jain vs. ITO [2016] 76 taxmann.com 368 (Mumbai-Tribu.); (4) Reji Easow vs. ITO [2022] 194 ITD 384 (Mumbai-Tribu.); (5) Mustansir I. Tehsildar vs. ITO [2017] 88 taxmann.com 275 (Mumbai-Tribu.) and (6) Sanjay Vasant Jumde vs. ITO [2023] 148 taxmann.com 34 (Pune-Tribu.); have settled the issue in assessee's favour and against the department that the relevant date in such an instance; for the purpose of computing the limitation in all three eventualities in sec.54, has to be taken in light of the payment of consideration and possession of the new house property only. Learned DR could hardly rebut the fact that the various judicial precedents in learned CIT(A)-NFAC's detailed discussion already stand duly considered and

therefore, we hold the assessee is entitled for the impugned sec.54 deduction in very terms. Necessary computation shall follow as per law. Ordered accordingly.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 25.07.2024

Sd/-
[OMKARESHWAR CHIDARA]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumbai, Dated 25th July, 2024

VBP/-

Copy to

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

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.