

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

ITA No. 187/Srt/2024 (Assessment Year 2021-21)
(Physical hearing)

Rekha Rajendra Shah, 2, Shivangi Bunglows, Behind Gokul Raw House, Parle Point, Surat-395007 (Gujarat) PAN No. AFXPS 3544 P	Vs.	Officer In Charge, NFAC, DCIT, Circle 1(3), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Rasesh Shah, C.A.
Department represented by	Shri Ritesh Mishra, CIT-DR
Date of Institution of Appeal	19/02/2024
Date of hearing	02/07/2024
Date of pronouncement	30/08/2024

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 19/01/2024 for the Assessment Year (AY) 2020-21, wherein the assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case as well in law on the subject, the learned CIT (Appeals) has erred in confirming the action of assessing officer in disallowing the claim of deduction of Rs. 9,61,49,283/- u/s 54F of the Act while calculating Long term capital gain.*
- 2. It is therefore prayed that the above disallowance made by the assessing officer and confirmed by the CIT(A) may please be allowed.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Brief facts of the case are that the assessee is individual, filed her return of income for A.Y. 2020-21 on 31/03/2021 declaring total income at Rs.52,28,540/-. The case was selected for scrutiny. During the assessment,

the Assessing Officer noted that during the year under consideration, the assessee alongwith six other co-owners have sold ancestral property for a consideration of Rs. 77.89 crores and earned capital gain. The assessee was having 1/7th share in the property, thus, she received her share of sale consideration of Rs. 10.98 crores. The assessee has computed capital gain on sale of such property at Rs. 10.49 crores and in computation of income claimed deduction under Section 54F of the Income Tax Act, 1961 (in short, the Act) of Rs. 9.61 crores. The Assessing Officer issued a show cause notice to substantiate the claim of deduction under Section 54F of the Act. In the show cause notice, the Assessing Officer referred the provisions of Section 54F of the Act, and stated that the assessee has to be invest in construction of new residential property on a plot of land either solely or jointly. In the instant case, the title of land wherein investment is made in the name of Shri Rajendra Suganchand Shah, (husband of assessee). The sale deed and sanction plan is sanctioned in the name of her husband. The assessee filed her reply, contents of reply are extracted on page No. 8 to 13 of assessment order. In the reply, the assessee stated that out of the sale proceed of her ancestral property, the assessee earned long term capital gain of Rs. 10.49 crores, out of which, the assessee has invested Rs. 9.61 crores for a construction of a residential house with her husband for construction of a residential property. The plot of on which construction of residential house is made, is in the name of her husband. The approval plan was sanctioned by the Surat Municipal Corporation (SMC) in the name of her husband. Ownership is also vested with her husband. She made a mutual understanding

for bearing part of construction cost with her husband. The assessee by referring the provisions of Section 54F of the Act, stated that it could be appreciated that there is no restriction in Section 54F that assessee should construct a residential house on a plot of land owned by herself only. To support her submission, the assessee also relied on the decision of Hon'ble Karnataka High Court in the case of CIT & Anr. Vs P.R. Sheshadri 329 ITR 377 (Kar) wherein similar deduction was allowed to assessee who invested capital gain on the land owned by his wife. The assessee also relied on the decision of Mumbai Tribunal in Chandrakant S. Choksi HUF Vs. ACIT (41 CCH 619 (Mum Trib)), decision of Jaipur Tribunal in Mahadev Balai Vs ITO ITA No. 333/JP/2016, Bombay High Court in PCIT Vs Rahul Uday Taljapurkar 264 Taxman 0036 (Bom), Gujarat High Court in PCIT Vs. Vaidya Panalal Manilal HUF 259 Taxman 0019 and CIT Vs Chandanben Maganlal 245 ITR 0182 (Guj). On the basis of aforesaid decisions, the assessee contended that Section 54, 54E and 54F of the Act are beneficiary in nature, promoting housing facilities and therefore, a liberal interpretation is to be taken, if the conditions requiring investment are fulfilled within four corners of laws. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer disallowed deduction/exemption under Section 54F of the Act by taking view that the assessee is not the owner of property and made investment in such property to avoid the tax.

3. Aggrieved by the additions, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed similar submission as made before the Assessing Officer. The Id. CIT(A), though extracted the submission of

assessee in para 4.3 of his order, which is not at all readable. The Id. CIT(A) on considering the submission of assessee, concurred with the finding of Assessing Officer. The Id. CIT(A) also tried to distinguish the facts of the cases relied by the assessee by holding that the ratio of decisions relied by the assessee are not applicable on the facts of the assessee's case. Further aggrieved, the assessee has filed present appeal before the Tribunal.

4. We have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and have perused the orders of the lower authorities carefully. The Id. AR of the assessee submits that a very short dispute is involved in the present appeal. There is no dispute about the capital gain earned by the assessee. The lower authorities have not disputed the capital gain. The only dispute is about claim of assessee against investment in the land/plot for residential purpose, which is in the name of her husband namely Rajendra Suganchand Shah. The Id. AR of the assessee submits that in fact the grounds of appeal raised by the assessee is directly covered by the decision of Hon'ble Karnataka High Court in CIT & Anr. Vs P.R. Sheshadri (supra) and PCIT Vs. Vaidya Panalal Manilal HUF (supra). The Id. AR of the assessee submits that the decision of Hon'ble Karnataka High Court in CIT & Anr. Vs P.R. Sheshadri (supra), almost similar only with the difference in the said case, the capital gain was earned by the husband of that assessee. However, in the present case, the capital gain is earned by the wife and utilized for the construction of residential house which is in the name of her husband. The lower authorities have not at all disputed

the construction of residential house. To support his submission, the Id. AR of the assessee also relied on the following decisions:

- CIT & ANR vs. P.R. Sheshadri [329 ITR 0377].
- Chandrakant S. Choksi HUF vs. ACIT [41 CCH 0619(Mum.)(Trib.)].
- DIT, International Taxation Vs Mrs Jennifer Bhide [349 ITR 0080 (Kar)].
- CIT Vs. V. Natarajan [287 ITR 0271 (Mad)].
- CIT Vs. Ravinder Kumar Arora [342 ITR 0038 (Del)].
- Antony P Kurian Vs. ACIT [442 ITR 0038 (Kar)].
- Mahadev Balai Vs. ITO [ITA No 333/JP/2016],
- PCIT vs. Rahul Uday Taljapurkar [264 Taxman 0036].
- PCIT vs. Vaidya Panalal Manilal HUF [259 Taxman 0019],
- CIT vs. Chandanben Maganlal [245 ITR 0182],
- Smt. Subbalakshmi Kurada vs. ACIT [ITA No 2493/Bang/2019].
- Bhagwan Swroop Pathak vs. ITO [ITA No 2754/Del/2018].
- Shri Ramphal Hooda vs. ITO [ITA No 8478/Del/2019],

5. On the other hand, the Id. CIT-DR for the revenue supported the orders of the lower authorities. The Id. CIT-DR for the revenue submits that the assessee has earned huge capital gain, which is invested and claimed exempted. The plot of land on which residential house is constructed in the name of her husband.

6. We have considered the rival submissions of the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by Id AR of the assessee. We find that the source of capital gain is not disputed by the Assessing Officer. The only objection of the Assessing Officer is that the plot of land on which capital gain is utilized for construction, is not in the name of the assessee, rather it is in exclusive name of her husband. The Assessing Officer has not disputed the utilization of capital gain. The Hon'ble Karnataka High Court in CIT Vs P.R. Sheshadri

(supra) while considering similar question of law, it was held that though the land may be in the ownership of assessee's spouse and wife of the assessee could have been included the value of construction for mortgage purpose but alone did not mean that construction was carried out by wife out of her own fund so as to deny the benefit of deduction under Section 54F. It was also held that there is no impediment in the assessee's claim for relief under Section 54F which he claimed to the extent of his contribution towards the cost of construction of the building and this amount would fall within the cost of building. The Hon'ble Jurisdictional High Court in the case of PCIT Vs. Vaidya Panalalmanilal (HUF) (supra) also held that mere consideration earned in the hands of HUF on sale of capital asset has been invested for the purpose of new residential house in the name of some of its member instead of HUF, deduction under Section 54F in the hands of HUF would be permissible. Further, the Hon'ble Jurisdictional High Court in CIT Vs. Chandanben Maganlal (supra) also held that where the assessee merely had purchased 15% undivided share in a residential house, she would not be disentitled to claim benefit of exemption under Section 54.

7. Hon'ble Delhi High Court in CIT Vs. Ravinder Kumar Arora (supra) while referring the decision of Hon'ble Apex Court in CIT Vs. Poddar Cement (P) Ltd. 226 ITR 625 held that Supreme Court in the said case, has accepted the theory of constructive ownership. It was held that Section 54F mandates that the house should be purchased by the assessee and it does not stipulate that house should be purchased in the name of assessee only. Where the house was purchased by assessee in his name and wife's name was also included

additionally. Such inclusion of name of wife for a peculiar factual reason should not stand in the way of deduction legitimately occurring to the assessee. Objective of the Section 54F and like provision such as Section 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the Legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Section 54F is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the tax-payer and deduction should not be denied on hyper-technical ground. The word 'assessee' must be given wide and liberal interpretation so as to include his legal heirs also. The Coordinate Bench of Mumbai Tribunal in Chandrakant S. Choksi Vs ACIT (supra) also held that for the purpose of provision of Section 54, it was not necessary that the assessee should become owner of property through registration as Section speaks of "purchase" and registration of document was not imperative.

8. The Hon'ble Supreme Court in the case of Mysore Minerals Limited Vs CIT (supra) held that the term "own", "ownership", "owned" are generic and relative terms. They have a wide and also a narrow connotation. The meaning would depend upon the context in which the terms are used. The term "owned" as occurring in Section 32(1) must be assigned a wider meaning. Anyone in possession of a property in his own title exercising such dominion over the property as would enable others being excluded therefrom and

having right to use and occupy the property and/or to enjoy its usufructs in his own right would be owner of the building though a formal deed of title may not have been executed and registered as contemplated under Transfer of property Act. Thus in view of aforesaid legal position, we find that there is no impediment in claiming deduction under Section 54F on investment of capital gain in the residential house, which is in the name of assessee's husband. Hence, we direct the Assessing Officer to allow deduction under Section 54F of the Act claimed by the assessee. In the result, grounds of appeal raised by the assessee are allowed.

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

Order announced in open court on 30th August, 2024.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/08/2024

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat