IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA.Nos.645, 666 & CO.No.19/PUN./2024
Assessment Year 2021-2022

Mr. Sambhaji Maruti Katkar, S.No.26/6, Singhad Road, Wadgaon (Bk), PUNE - 411 051 Maharashtra.PAN AEZPK8714Q	vs	The Income Tax Officer, Ward – 6 (1), PMT Bldg., Shankar Sheth Road, Swargate, PUNE – 411 037. Maharashtra.
(Appellant/Cross Objector)		(Respondent/Appellant)

For Assessee :	Shri Bhuvanesh Kankani
For Revenue :	Shri Arvind Desai, Addl. CIT-DR

Date of Hearing :	09.09.2024
Date of Pronouncement :	11.09.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's and Revenue's appeal(s) ITA.Nos.645 and 666/PUN./2024 and former's cross objection C.O.No.19/PUN./2024 in the latter's above appeal, arise against the CIT(A)-National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/ 2023-24/1060556280(1), dated 06.02.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act"); respectively.

Heard both the parties. Case files perused.

2. It emerges during the course of hearing that although both these parties have instituted their instant two respective appeals ITA.Nos.645 and 666/PUN./2024 with cross objection CO.No.19/PUN./2024 (supra); raising the solitary substantive issue of the assessee's entitlement to claim sec.54F deduction claim of Rs.5,42,71,818/-; disallowed to the extent of Rs.2,52,50,000/; in the course of assessment dated 05.12.2022 and partly upheld in CIT(A)-NFAC's detailed discussion as under :

> *"5.1. Ground of Appeal No.1: The appellant objects to restricting the deduction to 50% of the Purchase cost of New Property, by the AO on the reasoning that he is not the absolute owner of the Property as the property was jointly registered in his name as well as in the name of his son Sh Rakesh Katkar. The appellant claims that the appellant is a senior citizen and due to his age he had put his son's name so that he can succeed him in the property as a legal heir, without any hassle and at the same time claims that the admissible deduction to the extent of 100% must be allowed to him.*
>
> *5.2. The appellant quoted a catena of judicial decisions in support of the view that deduction u/s 54F must be allowed in such a case, if the source of investment in the*

new property are coming entirely from the claimant of the deductions.

5.3. The AO has brushed aside the above contentions stating

> *"The judgements quoted by the assessee are not applicable on the facts of the case. Moreover assesssee has failed to bring on record any binding judicial precedent of jurisdictional HC or Hon SC. Further since the ratio of the quoted judgement of Hon. Bombay High Court is squarely applicable on the facts of the present case, the issue has been decided in view of the judgement of jurisdictional High Court of Bombay as discussed above."*

The AO has relied upon the judgement of Hon'ble Bombay High Court I in the case of Prakash vs ITO, Ward No 1(5), [2008] 173 Taxman 311 (Bombay).

5.3. I have gone through the said judgement quoted by the AO. In that case the seller of original property did not buy in joint name but in the sole name of his son and his name was not mentioned as a owner in the new property. Thus the facts of the case are totally distinguishable. On the other hand, the appellant's case is supported by

numerous decisions given by Hon'ble Delhi High Court and various tribunal, some of them are noted below:

> *Commissioner of Income tax v. Ravinder Kumar Arora [2011] 15 taxmann.com 307 (Delhi)*
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> *In this case, the assessee sold a land owned by him and claimed exemption of capital gain under section 54F on account of purchase of new house. The AO decided that the assessee was entitled to exemption under section 54Fonly to the extent of his right in the new residential house purchased jointly with his wife and allowed only 50% of the exemption claimed under section 54F. The Hon'ble high court held that the assessee was the real owner of the residential house in question and mere inclusion of his wife's name in the sale deed would not make any difference.*
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> *CIT vs Kamal Wahal [2013] 30 taxmann.com 34 (Delhi)*
>
> *In this case, the Hon'ble court went further and allowed exemption u/s 54F where the investment in new property was made in the name of assesse's wife and not even in joint name. Sale proceeds from property were invested in a vacant plot and purchase*

of a residential house in the sole name of his wife. AO denied the exemption. The HC observed that Section 54F being a beneficial provision enacted for encouraging investment in residential houses should be liberally interpreted. Referring to various judicial decisions, the HC observed that "predominant judicial view, for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name.

DIT vs. Mrs. Jennifer Bhide [2011] 15 taxmann.com 82 (Kar HC) - The assessee sold her residential property and invested sale proceed on purchase of residential property and bonds & claimed exemption u/s 54 and 54EC of the Act. The above property was not in the name of the assessee alone but was in the name of her husband jointly. Though the name of the assessee's husband was shown in the sale deed as well as in the bonds, entire consideration for acquisition of the same is flown from the assessee. The Hon'ble HC observed that on careful reading of section 54, it is not expressly stated that the purchase to be made or the construction to be put up by the assessee, should be there in the name of the

assessee only. The Hon'ble court further observed that even in respect of section 54EC, the assessee has at any time within a period of six months after the date of such transfer invested the whole or any part of the capital gains in the long term specified asset then she would be entitled to the benefit mentioned in the said section. It was held that in absence of an express provision contained in these sections that the investment should be in the name of the assessee only, any such interpretation were to be placed, it amounts to Court introducing the said word in the provision, which is not there. The claim of exemption was allowed.

CIT v. Gurnam Singh [2008] 170 Taxman 160, 327 ITR 278 (P&H-HC) - The Assessee sold an agricultural land and out of sale proceeds purchased another agricultural land in his name and in name of his only son and claimed deduction u/s 54B. The Hon'ble HC held that admittedly, purchased land was being used by assessee only for agricultural purpose and merely because in sale deed his only son was also shown as co-owner, assessee could be denied deduction under section 54B.

CIT v. V. Natarajan [2006] 154 TAXMAN 399 (MAD HC) - The assessee, sold a house property and purchased a property in name of his wife. The Assessee claimed exemption under section 54. The Hon'ble HC held that since assessee was owner of a house property, he would be entitled to exemption under section 54.

CIT v Sh. Mahadev Balai ITA 136/2017 (Raj HC) The Hon'ble HC allowed exemption u/s 54B for investment made by the assessee in the name of his wife.

5.4. In view of the above the appellant is allowed 100% of the admissible claim of deduction u/s 54F. This ground of appeal is allowed.

5.5. Ground of Appeal No. 2: The appellant objects to restricting the qualifying amount of deduction From Rs. 5,72,80,000/- claimed by him to Rs. 5,05,00,000/-. The AO restricted the claim to Rs. 5,05,00,000/- to the extent of the acquisition cost of land and did not consider further amount, as the appellant failed to justify the claim towards construction of the house property.

5.6. The appellant claimed that he had started the construction of Residential house on the same land and

had availed a home Loan of Rs.4.5 crores for the construction from IDFC First Bank and submitted the sanction letter. He disputed the AO's apprehension that whether the loan was taken foe same property, whether the construction has actually started and whether on the same plot stating that necessary evidences of the construction cost shall be submitted.

5.7. It is notable that the appellant has not furnished any such evidence either in the assessment proceedings or the appellate proceedings. The only documents submitted even remotely related to construction are Sanction Plan and Commencement certificate. Even in his submission dated 06.01.2024, the appellant has not made any submission about ground of appeal no. 2 and has also not submitted any evidence which can substances the fact that construction on the plot has commenced has or any amount has been incurred in this regard.

5.7. In view of the same no interference is required on the AO's action of restricting the qualifying amount of deduction From Rs. 5,72,80,000/- to Rs. 5,05,00,000/-. This ground of appeal is accordingly dismissed.

5.8. Grounds of appeal No. 3 & 4:- These grounds of appeal need not be separately adjudicated as they are general and consequential in nature.

6. To summarise the deduction claim u/s 54F is allowed to the extent of Rs.5,05,00,000/- and the AO's action of not considering the amount of Rs.37,71,818/- (5,72,80,00 5,05,00,000) claimed as construction is upheld."

3. We next note that the assessee's appeal ITA.No.645/PUN./2024 claims sec.54F deduction in entirety along with the cost of acquisition representing stamp fee and other miscellaneous items. The Revenue's cross-appeal ITA.No.666/PUN./2024 on the other hand raised two substantive grounds challenging correctness of the CIT(A)-NFAC's action granting sec.54F deduction despite the fact that there is no compliance to the scheduled stipulation of construction of residential house and allowability of the very claim in principle to the extent of 50% in his son's name; respectively.

4. Coming to the assessee's cross objection C.O.No.19/PUN./2024 at the same time, we find that it is found to be supportive of the CIT(A)-NFAC's findings allowing sec.54F deduction.

5. It is in this factual backdrop that we first take-up the allowability of assessee's sec.54F deduction in principle. There is hardly any dispute between the parties that he had in fact sold/transferred the capital asset in question on 27.10.2020 for Rs.7,81,38,108/-; giving rise to capital gains of Rs.5,42,71,818/- [after reducing the cost of acquisition amounting to Rs.2,38,66,290/-]. The assessee thereafter invested the said capital gains in the specified residential asset admittedly on 21.01.2021 to the tune of Rs.5,72,80,000/- along with his son. We make it clear that there was no mention of any specified share in their respective names in the purchase deed. Learned Assessing Officer's detailed assessment discussion dated 05.12.2022 at pages-7 onwards indicates that he quoted Prakash vs. ITO [2008] 173 Taxman 311 (Bom.) to restrict the assessee's impugned deduction claim to the extent of 50% only and concluded that his son was not entitled for the very relief as per their lordships' decision. All this resulted in disallowance of Rs.2,90,21,818/- which in turn has been reversed in the CIT(A)-NFAC's above extracted detailed discussion.

6. The Revenue's vehement contention in it's appeal ITA.No.666/PUN./2024 first of all is that assessee had not re-invested his impugned capital gains within the stipulated time and therefore, his sec.54F deduction is not allowable. We find

that there is neither any such objection in the assessment nor in the CIT(A)-NFAC's adjudication and therefore, in light of the fact that assessee had purchased his immovable asset on 21.01.2021 (supra), we reject the Revenue's instant former substantive ground.

7. The Revenue's second substantive ground is that the Assessing Officer herein had rightly restricted the assessee's impugned deduction claim only to the extent of 50% once his son/co-purchaser is not entitled for the same going by hon'ble jurisdictional high court's decision (supra). We find no substance in the Revenue's instant latter argument as well as admittedly, the assessee had re-invested the capital gains in his name and his son has been taken only as a proforma purchaser. We further note that as against these clinching facts emerging herein; the appellant before their lordships' had re-invested the capital gains only in his son's name and therefore, the said judicial precedent does not apply in the given facts of the case before us. This is indeed coupled with the fact that various other hon'ble jurisdictional high courts have already decided the issue in assessee's favour whilst dealing with such a deduction claim involving co-purchases made by the taxpayer and the concerned family member(s). Learned counsel further quotes sec.45 of the Transfer of Property Act, 1882 that when funds used in a co-purchase

deed involving two or more vendees are clearly identifiable, their interest or title is to the extent of the corresponding investment made. He explains to the fact that the assessee only had invested these capital gains which have not been disputed. We thus reject the Revenue's instant twin substantive grounds as well as the main appeal ITA.No.666/PUN./2024 in very terms.

8. The assessee's cross objection C.O.No.19/PUN/ 2024 stands rendered infructuous since found supportive of the CIT(A)'s findings.

9. We are now left with the assessee's appeal ITA.No.645/ PUN./2024 wherein his first substantive ground claims stamp duty and registration fee amounting to Rs.35,35,000/- and Rs.30,000/-; totaling to Rs.35,65,000/- as also part of his sec.54F deduction claim. He has also filed a copy of the relevant purchase deed before us to this effect. The Revenue could not controvert the said clinching figures emerging therefrom. We thus accept the assessee's instant former head of claim amounting to Rs.35,65,000/- in very terms.

10. Learned counsel next invited our attention to assessee's paper book pages 3 to 6 comprising of various sample invoice(s) demonstrating cost of acquisition of his

house property. These invoices admittedly indicate expenses of Rs.10,53,742/-; Rs.74,191/-; Rs.7,12,783/- and Rs.3,04,145/-; respectively; which have nowhere been put to verification in both the lower proceedings. The fact also remains that such expenses indicating various miscellaneous heads in construction/purchase of a new residential house could not be altogether ruled-out. Faced with this situation and in larger of interest of justice, we deem it as a fit case to restrict the assessee's impugned claim to a *lump sum* amount of Rs.15 lakhs only [forming part of the record throughout] with a rider that the same shall not be treated as a precedent. These assessee's remaining claim sum raised in all these four invoices shall stand declined in otherwords. Necessary computation shall follow as per law. Ordered accordingly.

11. These assessee's appeal ITA.No.645/PUN./2024 is partly allowed in above terms.

12. To sum-up, Revenue's appeal ITA.No.666/PUN./ 2024 is dismissed, assessee's appeal ITA.No.645/PUN./2024 is partly allowed and cross objection of assessee C.O.No.19/ PUN./2024 has become infructuous. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 11.09.2024.

Sd/-	Sd/-
(RAMA KANTA PANDA)	(SATBEER SINGH GODARA)
VICE PRESIDENT	JUDICIAL MEMBER

Pune, Dated 11th September, 2024

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3 The Pr. CIT concerned.
4. DR, ITAT, "B" Bench, Pune.
5. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary: ITAT : PUNE.