

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 1668/MUM/2024
(Assessment Year : 2014-15)**

Pravin Gambhirchand Shah (HUF) 10 Oomed Sadan 58, Sion West, 400022.	Vs.	Asst Commissioner of Income Tax-26(2) Kautilya Bhavan, Mumbai.
PAN/GIR No. AAAHP1082R		
(Appellant)	..	(Respondent)

Assessee by	Shri. Vijay Mehta
Revenue by	Shri. H.M. Bhatt (SR.DR.)
Date of Hearing	20/06/2024
Date of Pronouncement	17/09/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 29.02.2024 passed in Appeal no. CIT(A), Mumbai-38/11124/2016-17 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year 2014-15, wherein learned CIT(A) has confirmed the assessment order dated 30.12.2016 and dismissed assessee's appeal.

2. The brief facts that give rise to this appeal are that the assessee filed return of income on 28.07.2014 for A.Y. 2014-15, declaring total income of Rs. 1,17,68,280/-. The return was processed u/s. 143(1) of the Act. The case was selected for scrutiny under CASS. Statutory notices u/s. 143(2) and 142(1) were issued and served upon the assessee. Assessee's representative Mr. Hetan Patel, CA furnished various details called for. After considering assessee's submissions, learned assessing officer noticed that during A.Y. 2013-14, assessee had sold shares of M/s. Neutral Glass and allied industries private Ltd. for an amount of Rs. 3,27,60,000/- on 18.04.2012 and after adjusting the indexed cost of acquisition at Rs. 9,73,918/-, income from long-term capital gains was shown as Rs. 3,17,86,082/- and after deducting exemption of Rs. 50,00,000/- u/s. 54EC and exemption of Rs. 2,32,96,400/- u/s. 54F of the Act, assessee had shown net income of Rs. 34,89,682/- from LTCG. Learned assessing officer further noticed that assessee purchased residential flat from Godrej and Boyce Ltd. on 24.12.2012 for Rs. 2,32,96,400/. Learned assessing officer further found that assessee purchased from Megabuild Spaces another 3BHK, Flat No. 702 on 7th Floor admeasuring about 890 sq. ft. for a price of Rs. 80,42,625/- herein after referred as 3BHK flat, vide agreement dated 05.07.2013 in a proposed building yet to be constructed. The

purchase of aforesaid second flat within a period of two years from the date of transfer of original asset, led the assessing officer to trigger section 54F(2) of the Act. Accordingly, an amount of Rs. 2,32,96,400/- was added to the income of the assessee as deemed income during the A.Y. 2014-15, which was not charged u/s. 45 during the A.Y. 2013-14.

3. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who dismissed assessee's appeal.
4. Appellant assessee has preferred this second appeal on the ground that learned CIT(A) has erred in confirming the addition of Rs. 2,32,96,400/- u/s. 54F(2) of the Act, being withdrawal of exemption u/s. 54F(1) of the Act granted in A.Y. 2013-14 and further that the withdrawal of deduction has been excessive to the extent of Rs. 8,79,742/-.
5. We have heard learned representatives for both the parties and perused the records.
6. The main point for consideration under appeal is as to whether the assessee purchased second residential house, a 3BHK flat, within a period of two years, after the date of transfer of original asset within the meaning of section 54F(2) of the Act?
7. Learned representative for the assessee has submitted that assessee's claim for exemption of Rs. 2,32,96,400/- on account of purchase of residential flat from Godrej and Boyce Ltd., granted during the year 2013-14 u/s. 54F(1) of the Act, has been withdrawn on the ground that the assessee has purchased another 3BHK Flat, a residential house, within two

years after the date of transfer of original asset. Learned AR has further submitted that an agreement between M/s. Megabuild Spaces and the assessee was executed and registered on 05.07.2013 to purchase aforesaid 3BHK flat which was just proposed to be constructed. However, the said agreement was terminated vide termination letter dated 27.03.2014 on the ground of vendor/builder not having received the requisite approval of commencement of construction. According to the termination letter an option was given to the assessee to shift to any other project of the builder Megabuild Spaces. Assessee opted for new flat no. 207, S. nos. 9/4 and 9/1 at Thane, however, this agreement was also terminated and the entire price/amount paid to the builder was refunded to the assessee/HUF. Learned AR, thus submits that no second residential house was ever purchased by the assessee within two years after the date of transfer of original asset. Learned AR has thus submitted that assessee purchased only one residential house within the period provided u/s. 54F(1) of the Act after the transfer of original asset.

8. Learned AR has referred Commissioner of Income Tax V Ravinder Kumar Arora [2012] 342 ITR 38 (Delhi), wherein Hon'ble Delhi High Court held that in case of purchase of a residential house in the joint names of assessee and his wife, where wife had not contributed to said purchase, the assessee was entitled to exemption u/s. 54F of the Act. Learned AR has further referred order dated 14.06.2022 passed by the co-

ordinate bench of this Tribunal in ITA NO. 5453/MUM/2019 for A.Y. 2013-14, Anant R Gawande V ACIT, wherein it was observed that for availing exemption of section 54F of the Act, the requirement is that the assessee should not own more than one residential house on the date of sale and further that assessee should not purchase any other residential house other than the new asset within the period provided in that section after the date of transfer of original asset.

9. Learned DR as vehemently supported impugned order, upholding the assessment order.
10. At the very outset, it is worth mentioning section 54F of the Act, which reads as under:

“54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

(1)[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 (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:

[Provided that nothing contained in this sub-section shall apply where-

(a)the assessee,-

(i)owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii)purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii)constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b)the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property.]

.....
Explanation. - For the purposes of this section,-

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"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2)Where the assessee purchases, within the period of [two years] after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

”

11. In the instant case, learned assessing officer triggered the provisions of section 54F(2) of the Act on the ground that the assessee has purchased another 3BHK property on 05.07.2013 from M/s. Megabuild Spaces within the period of two years after the date of transfer of original asset on 18.04.2012. Despite having already purchased one residential flat from Godrej and Boyce Ltd. On 24.12.2012. The conclusive findings recorded by the learned assessing officer is based on the registered agreement dated 05.07.2013 entered between the vendor Megabuild Spaces and the assessee. On examination of the said agreement, it is noticed that admittedly assessee has not purchased a constructed residential house. It was agreed between the parties only to the extent that vendor/developer shall sell a 3BHK flat to the assessee for the consideration of Rs. 80,42,625/-in a proposed

building, which was proposed to be constructed in the said property described as above. The sale deed could be executed only after the construction in due course of time. Meantime the builder/vendor terminated aforesaid agreement dated 05.07.2013 on 27.03.2014 for the want of approval from concerned authorities. However, assessee according to the offer of vendor/builder extended in the termination letter, opted for the purchase of new residential property from M/s. Merit Magnum (sister concern of M/s. Megabuild Spaces) as flat no. 270, S. nos. 9/4 and 9/1 situated at Thane. According to the assessee's affidavit, this agreement also got terminated and amount paid to the builder was refunded back to the assessee HUF. The aforesaid factual matrix is undisputed.

12. It is important to note that the revenue had no objection upto A.Y. 2013-14, where assessee claimed exemption u/s. 54F on account of purchase of first residential flat on 24.12.2012 from Godrej & Boyce Ltd. after the transfer of original asset on 18.04.2012. The revenue raised objection only when the assessee got an agreement to purchase another 3BHK flat, executed on 05.07.2013, within a period of two years after the transfer of original asset. The said agreement does not point towards any purchase of a "residential house". It is an undisputed fact that when the builder failed to get approval from the competent authority to raise construction, it terminated the said agreement dated 05.07.2013. The assessee was therefore neither in occupation nor in possession over any other residential house except the new

13. asset. No question arises of existence of any “animus possidendi” on behalf of the assessee in absence of any “corpus possessionis”. We are of consistent view that learned assessing officer was not right in holding that assessee purchased second residential house within a period of two years after the date of transfer of original asset. Learned CIT(A) has also erred in approving the action of the learned assessing officer. The aforesaid point is accordingly determined in favour of the assessee and against the revenue. We hold that the assessee is entitled for the exemption u/s. 54F(1) of the Act. The addition made by learned assessing officer and approved by learned CIT(A) stand deleted. The appeal is liable to be allowed.

14. In the result, the appeal is allowed. Impugned order dated 29.02.2024 and assessment order dated 30.12.2016 are set aside on the addition discussed above. Learned assessing officer is directed to take follow up action in accordance with what we have observed hereinabove.

Order pronounced on 17.09.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 17/09/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT

4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai