

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

AND

SMT.RENU JAUHRI (ACCOUNTANT MEMBER)

I.T.A. No.2551/Mum/2024

(Assessment year 2017-18)

Nakul Aggarwal 1401, D N Nagar, Terra Wing C Rustomjee Elements Andheri (W), Mumbai-400 053 PAN : AIYPA3923A	vs	Assistant Commissioner of Income Tax, Circle-24(1), Mumbai 601, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012
APPELLANT		RESPONDENT

I.T.A. No.2833/Mum/2024

(Assessment year 2017-18)

ACIT, CIRCLE-24(1), Mumbai 601, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012	vs	Nakul Aggarwal 1401, D N Nagar, Terra Wing C Rustomjee Elements Andheri (W), Mumbai-400 053 PAN : AIYPA3923A
APPELLANT		RESPONDENT

Assessee represented by	Shri Saurabh Soparkar, Sr.Adv. Ms. Jasmin Amalsadvala & Shri Bhavesh Bhatia
Department represented by	Shri Kailash C Kanojiya, CIT DR

Date of hearing	08-10-2024
Date of pronouncement	14-10-2024

O R D E R**PER : BEENA PILLAI (JM)**

Present cross appeals are filed by the assessee as well as by the revenue against the order dated 26/03/2024 passed by the Ld.CIT(A)/National Faceless Appeal Centre, Delhi for A.Y. 2017-18 on following grounds of appeal:-

Assessee's Appeal I.T.A. No.2551/Mum/2024

Based on the facts and circumstances of the case and in law, Mr. Nakul Aggarwal (the Appellant) respectfully craves, leave to prefer an appeal under Section 253(1)(a) of the Income-tax Act, 1961 ("the Act") against the order dated 26 March 2024 ("Impugned Order") passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [CIT(A)] under Section 250 of the Act on the following grounds:

Ground 1: General

1. *The order of the learned CIT(A) is based on incorrect application of facts and wrong interpretation of law and therefore, is bad in law.*

2. *The learned CIT(A) has erred in directing the learned AO verify the additional evidence and grant relief instead of granting the full relief to the Appellant.*

Ground 2: Disallowance of exemption claimed under section 54F of the Act

3. *The learned CIT(A)/AO have failed to appreciate that purchase of one residential house with modifications of two adjacent properties would amount to single residential house and therefore, the Appellant was eligible for exemption under section 54F of the Act.*

4. *The Ld. AO has erred in law and in facts, in stating that the Appellant had purchased two residential house properties instead of a single residential house without appreciating that merging of two adjacent properties to one residential house is not a violation of condition for claiming exemption under section 54F of the Act*

5. *The learned CIT(A)/AD has failed to appreciate the fact that the Appellant had always intended to purchase one residential unit and has in fact purchased one house for the purpose of his residence although the builder had registered it through two separate purchase deeds due to limitations at the end of the builder.*

6. *The learned CIT(A)/AD has erred in law and in facts, by failing to appreciate that a residential house can be constructed in any manner by the Appellant and so long as it constitutes one residential house for the purpose of residence, the Appellant shall be eligible to claim exemption under section 54F of the ITA.*

7. *The learned CIT(A) has erred in not granting full relief to the assessee after accepting the additional evidence filed (which included the amended layout plans of the flat constructed which was approved by the Maharashtra Housing and Area Development Authority) during the course of the Appellate proceedings.*

8. *The learned CITIAJAD has erred in law and on facts, by not applying the peoples and ratio laid down by various courts which have stated that where the provisions are introduced with the intention of promoting economic growth, such provisions or sections needs to be Interpreted liberally, so as to advance the objective of the section and not to fate*

9. *The learned CITIA) / AD has erred in law and in facts, by not applying the principles of Judicial discipline wherein the judgements of the Hon'ble jurisdictional High Court/Tribunal are binding on the authorities functioning within the jurisdiction of the Maharashtra / Mumbai*

Ground 3: Conversion of Company Into LLP is a not a taxable transfer under the Act

10. *The learned AD had failed to appreciate that conversion of company into LLP is not a taxable transfer under the Act. Once it is not a taxable transfer, no capital gains would accrue on account of such conversion*

11. *The learned AO has erred in law in not assisting the assessee and trying to collect higher tax without appreciating that only legitimate taxes are collected that are due and not to collect excess tax*

12. *The learned CIT(A)/AO have erred to appreciate that where the conversion of company into LLP itself is not taxable, then the claim of exemption under section 54F was mere academic and therefore denying of such exemption was only a theoretical exercise*

Ground 4: Other grounds

3. *The learned CIT(A) has erred in law and in facts, by passing an order without adjudicating on all the grounds of appeal raised (including the ground on conversion of company into LLP is not a taxable transfer)*

Ground 5: Levy of interest under Section 234A and 2348 of the Act

14. *The learned CIT(A) / AO has erred in law and on facts, in levying additional interest under Section 234A and Section 2348 of the Act, having regard to the assessed income.*

Ground 6: Initiation of penalty proceedings under section Act

15. *The learned CIT(A)/AO has erred in law in initiating penalty proceedings under section 2704 of the Act*

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with law.”

Revenue's Appeal : I.T.A. No.2833/Mum/2024

“1 (a) *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in directing the AO to allow the deduction u/s. 54F of the Act in respect of purchase of new asset when the assessee has purchased another residential house other than the new asset within one year after the transfer of original asset violating the Proviso to section 54F(1) of the Act.*

2(b) *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in holding that the assessee is entitled to deduction u/s. 54F of the Act in respect of purchase of one new asset when the case of the assessee is hit by Proviso (a)(ii) to Section 54F(1) in as much as the assessee has purchased a residential house other than new asset within one year after the date of transfer of the original asset.*

3 (c) *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in directing the AO to allow the deduction u/s 54F as per the proposal vide show cause notice dated 21-12-2019, after allowing necessary opportunity of hearing to the assessee without appreciating the fact that such direction amounts to set aside the proceedings which is not permissible as per amended provisions of section 251 of the Act w.e.f. 01.06.2001.”*

Brief fact of the case are as under:-

2.1 The assessee is an individual, filed his return of income for the year under consideration on 13/3/2018 declaring total income at Rs.1,01,52,950/- after claiming deduction under Chapter VIA of the Act at Rs.1,60,000/-. The case was selected for scrutiny to verify

deduction/exemption from capital gains, investment in immovable property and foreign asset. Statutory notices under section 143(2) and 142(1) was thereafter issued to the assessee, in response to which various details were called for. The assessee submitted the documents which were verified and considered while passing the final assessment order. It was submitted by the assessee that he was a shareholder in Binary Life Technology Pvt Ltd by virtue of subscribing to its share capital on its incorporation on 11/01/2010. Vide letter dated 28/08/2018 before the Ld.AO, assessee submitted that assessee was holding 5000 shares of Rs.10/- each at a total cost of acquisition of Rs.50,000/-.

2.2. Subsequently, on 28/10/2016, the company was converted into a Limited Liability Partnership (LLP). Upon conversion, the amount of capital and accumulated profit were credited into the capital account of assessee in the LLP, amounting to Rs.23,46,81,043/-. The assessee submitted that, the gain was invested in residential property subsequently, which was entirely tax free. It is submitted that assessee had furnished all relevant details/documents in support of the claim including the conversion certificate of the company into LLP, accounts of Binary Life Technology Pvt Ltd and the details of investment made by the assessee in the residential property.

2.3. The Ld.AO observed that, the assessee claimed deduction under section 54F and purchased two flats, one being 1402 & the other being 1401 in Terra West C, Rustomjee Elements, New D.N.

Nagar, Andheri (W), Mumbai. The Ld.AO was of the opinion that the assessee violated the provisions of section 54F by purchasing two flats as against one as required under section 54F. The Ld.AO thus recomputed the claim of assessee by disallowing the long term capital gain invested in both the flats.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.4. Before the Ld.CIT(A), the assessee filed various documents like the revised plan approved by 'MHADA', wherein, the two flats were considered to be one single unit adjacent to each other. The Ld.CIT(A), after considering the documents filed by the assessee allowed the claim in respect of one of the houses on pro-rata basis and directed the Ld.AO to re-compute the deduction under section 54F of the Act.

Aggrieved by the order of the Ld.CIT(A), both assessee as well as the revenue are in appeal before this Tribunal.

3. The Ld.AR submitted that, the assessee purchased new residential house property and claimed exemption under provisions of section 54F. The Ld.AR drew our attention to the manner in which the agreement was entered into by the assessee with the builder which is at page 97, 145 of the paper book. He submitted

hat both the flats being 1401 & 1402 were purchased by the assessee as per original plan that was approved by the builder as two separate units. However, as the assessee always intended to combine both the flats as one single unit, an application was made by the builder to revise the plan during, 2019 before the appropriate authority. The revised plan was issued by 'MHADA' on 24/11/2020. Herein annexed is the scanned copy of the amended plan approval letter issued by 'MHADA' dated 24/12/2020:-

महाराष्ट्र गृहनिर्माण व क्षेत्रविकास प्राधिकरण
MAHARASHTRA HOUSING AND
AREA DEVELOPMENT AUTHORITY

म्हाडा
MHADA



Building Permission Cell, Greater Mumbai / MHADA

(A designated Planning Authority for MHADA layouts constituted as per government regulation No. TPB4315/167/CR-51/2015/JD-11 dt.23 May, 2018.)

AMENDED PLAN APPROVAL LETTER

No.MH/EE/(B.P.)/GM/MHADA-105/092/2020

DATE- 24 NOV 2020

To
L.S, Suyog Shet
D-2, The Chitrapur CHS Ltd,
Plot no.225, TPS-III, 27th Road,
Bandra (W), Mumbai 400050.

Sub:- Proposed Redevelopment of "D.N. Nagar CHS Union Ltd - Lessee of MHADA" on plot bearing CTS no 195 (pt), Village Andheri at D.N. Nagar, Andheri (W). Amended plans to Sale Wing SC.

- Ref:** 1. Part OC issued by MHADA under no.MH/EE/(B.P.)/GM/MHADA-105/092/2018 dtd.19.09.2018.
2. Amended plan issued by MHADA under no.MH/EE/(B.P.)/GM/MHADA-105/092/2018 dtd.10.05.2019.
3. Full commencement certificate issued by MHADA under no.MH/EE/(BP)/GM/ MHADA- 105/092/2019 dtd.15.10.2019
4. Application Letter for Amended plans to Sale Wing SC from M/s. Miti. dtd. 11/09/2020 and 08.10.2020.

Certified True Copy

With reference to your application dated 11/09/2020, for development permission and grant approval for amended plan for redevelopment of "D.N. Nagar CHS Union Ltd - Lessee of MHADA" on plot bearing CTS no 195 (pt), Village Andheri at D.N. Nagar, Andheri (W).Mumbai under regulation no. 33(5) of DCR.

The Building Permit is granted subject to compliance of mentioned in IOD dated 26-12-2011 and following conditions:

- 1) All the conditions of I.O.D. issued by MCGM under no. CE/8871/WS/AK dated 26/12/2011 shall be applicable and should be complied with.

गृहनिर्माण भवन, कलानगर, वड्रे (पूर्व), मुंबई - ४०० ०५९.

दूरध्वनी : ६६४०५०००

फोन नं. : ०२२-२६५९२०५८

Griha Nirman Bhavan, Kalanagar, Bandra (East), Mumbai - 400 05

Phone : 66405000

Fax No.: 022-26592058

Website : www.mhada.maharashtra.gov.in

- 2) All the conditions of last amended I.O.D. issued by MHADA under no. MH/EE/(B.P.)/GM/MHADA-105/092/2019 dated 10.05.2019 shall be applicable and shall be complied with.
- 3) That the revised R.C.C. drawing/designs, calculations shall be submitted through Licensed Structural Engineer. Also Design calculation for internal staircase proposed in sale wing shall be submitted. stability for the same shall be produced before applying for F.C.C.
- 4) That the requisite Payment shall be made before issue of amended plans.

VP & CEO / MHADA has appointed Shri. Dinesh D.Mahajan/ Executive Engineer to exercise his powers and function of the Planning Authority under section 45 of the said Act.

--Sd--

(Dinesh Mahajan)

Executive Engineer/B.P./(GM)/MHADA

Copy submitted in favor of information please.

- 1) Chief Officer/Mumbai Board.
- 2) Dy. Chief Engineer/B.P./(GM)/MHADA

Copy submitted along with approved plan in favor of information please.

- 3) Rustomjee Realty Pvt. Ltd. CA to owner.
- 4) Executive Engineer /Bandra Division/ Mumbai board.
- 5) Asst. Commissioner (K/W) ward.
- 6) A.E. W.W. (K/W) Ward.
- 7) A.A.&C (K/W) Ward.

(Dinesh Mahajan)

Executive Engineer/B.P./(GM)/MHADA

3.1. The Ld.AR submitted that, other than this asset, the assessee owned only one residential house, which was self-occupied house. The LdAR thus submitted that all relevant condition to be eligible tofor claiming exemption under section 54F stands satisfied. The Ld.AR placed reliance on the decision of *Hon'ble Bombay High Court* in case of *CIT vs Devdas Naik* reported in (2014) 49 taxmann.com 30, wherein it was held that, exemption under section 54 of the Act would be available if two units acquired under different agreements are treated as one residential house. Hon'ble Court further observed that, upon fulfilling necessary conditions like approved plan with showing the two units as one single unit, one common kitchen even though they were independently acquired, the exemption under section 54F cannot be denied.

3.2. He also placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *CIT vs Anantha Basappa* reported in (2009) 180 Taxman 4, wherein, similar proposition was reiterated in respect of exemption claimed under section 54 of the Act. He also placed reliance on the *Special Bench* decision of this *Tribunal* in case of *ITO vs Sushila M Jhaveri* reported in (2007) 107 ITD 327, wherein identical situation was considered and the claim of deduction under section 54/54F was allowed. The Ld.AR submitted that the intention of the assessee from the beginning was to have a bigger flat. Since the builder originally obtained approval in the form of two independent units, the agreement was entered separately. And subsequently, the plan was amended. It is for this

reason that the assessee purchased two contiguous and adjacent units in order to convert into one single unit. He thus prayed for the exemption to be granted in totality, based on the above facts. In support of the above, heavy reliance is placed on the following decisions passed by coordinate benches of this *Tribunal*, considering the amendment brought in with effect from 01/04/2015 to section 54F:-

1. *Bhaskar Pratapari Shah vs DCIT - ITA No.3698/Mum/2023*
2. *Ms. Anita Mahindrakumar Oberoi vs Income Tax Officer – ITA No.600/PUN/2020*
3. *Bhatkal Ramrao Prakash vs Income-tax Officer (2019) 102 taxmann.com 145 (Bangalore-Trib)*
4. *Suruchi Jena vs ACIT, Circle-3(1), Partyakha Bhawan, Bhubaneswar ITA No.207/CTK/2024)*
5. *Mohd. Hassan vs ACIT, Circle, Nagpur – ITA No.74/Jodh/2020*
6. *Mohammad Anif. Sultanali Pradhan v The DICT, Circle 6, (ITA No.1797/Ahd/2018*

3.3. On the contrary, the Ld.DR vehemently opposed the arguments and submissions made by the assessee. He submitted that there is nothing on record brought by the assessee to establish his intention to purchase one single unit. The Ld.DR submitted that the decisions relied on by the Ld.AR was prior to 01/04/2014 and the year under consideration is the assessment year to which the amendment brought in to section 54F clearly applies. He relied on the order passed by the Ld.AO in support of his argument. He submitted that the partial relief granted by the Ld.CIT(A) is also to be denied as assessee did not satisfy the requirement to claim deduction under section 54F for the reason that at the time of purchases, assessee was already having a self-occupied property

and post the purchase date, the assessee was owning 3 residential houses thereby the relevant condition under section 54F is not satisfied.

We have perused the submissions advanced by both sides in the light of records placed before us.

4.1. Admittedly, there is no dispute regarding the purchase of both the houses by the assessee which is adjacent to each other. The only issue disputed by the revenue is that, the assessee purchased two house under two independent agreements, and therefore the intention to treat it as one single unit is not satisfied. The revenue is also alleging that at the time of purchase, the assessee was already having a self-occupied property and thereby necessary conditions under section 54F also do not stands fulfilled. And the assessee's case is that post purchase of the two flats, the revised plan was approved by MHADA wherein the two flats were considered as one single unit, with one kitchen and therefore the necessary criteria under section 54 F stands fulfilled.

4.2. Before we go into the merits, it is necessary to understand the provisions and the intention of the legislature to bring in the amendment by way of Finance Act, 2014. The intention of the legislature to introduce the amendment was that investment should be made only in one residential house.

4.3. It is noted that the Ld.CIT(A) granted partial relief to the assessee based on the revised plan by 'MHADA' vide letter dated 24/11/2020. The Ld.DR argued that these documents were never forwarded to the Ld.AO calling for a remand report, in their cross appeal. It is noted that the said letter of approval from 'MHADA' was received by the assessee after passing of the assessment order and, therefore, the Ld.AO did not have an occasion to go through the revised plan. In our opinion, the Ld.CIT(A) has a co-terminus power and is fully equipped with the authority to verify additional documents filed before him. We therefore do not find any force in the argument of the Ld.DR against the Ld.CIT(A) considering the revised plan issued by MHADA.

4.4. The claim of the assessee in the present fact is that assessee purchased two flats to be used as a single dwelling unit which is discernible from the plan reapproved by MHADA vide letter dated 24/11/2020. Admittedly, there is a change in the legal position with effect from 01/04/2015, wherein the assessee can claim exemption under section 54F only on acquisition of one residential house. In the present facts of the case, the revised plan dated 24/11/2020 clearly establish that the two flats though independently purchased by the assessee adjacent to each other was converted to be used as a single unit.

4.5. *Hon'ble Karnataka High Court* in case of *CIT vs Suresh Rao* reported in (2014) 41 *taxmann.com* 475 considered similar situation wherein the significance of the expression “held” used by the legislature was analysed and explained in a great length. Further, *Hon'ble Bombay High Court* in the case of *CIT vs Raman Kumar Suri* reported in 2012 (12 *TMI* 421) observed that, when two flats were joined together before the assessee became the owner of the two flats and certification from the society also establishes that the flats were joined together and were considered as one residential house, the Assessing Officer had to accept these facts and cannot disallow the claim merely because the flats were purchased by two separate agreements.

4.6. So long as the house is used by the assessee as one single unit, though by conversion, in our view, the exemption cannot be denied to the assessee under section 54F of the Act. There is nothing on record brought by the revenue other than arguing that, the assessee originally entered into two independent agreements for purchase of the flat. The impediment with the assessee at that stage was because, the builder originally got the plan approved as two separate units. The plan was subsequently revised, in order to suit the requirement of the assessee to use it as one single unit. The revised plan very categorically identifies one kitchen and other necessary structures, to be used as a single dwelling unit. The revised plan furnished by the assessee has not been opposed by the

revenue with any contrary evidence. Thus the conditions relevant for claiming deduction under section 54F is fully satisfied in the present facts of the case.

4.7. At this juncture we refer to the Special Bench decision of this *Tribunal* in case of *ITO vs. Ms.Shushila M. Jhaveri* reported in (2007) 107 ITD 327, exemption under section 54 was held to be allowable only in case of purchase of a single house. Entire discussion revolved around interpretation of "a residential house" in section 54. It was had by the *Tribunal* as under:

"The word "a" means "any" which, in turn, means "many" or "more than one". According to various dictionary meanings, it also includes "one" or "one out of many". The word "any" may have several meanings according to the circumstances. It may mean "all", "each", "some" or "one or more out of several" but it is not confined to a plural sense. It may also be used to denote "one". So, both the words "a" and "any" are ambiguous and, therefore, the meaning of these words has to be seen with reference to the context in which these words are used" Further, it was held that "The word "any" has been used by the Legislature in sections 54B, 54D, 54E, 54EA and 54EB while as the word "a" has been used in sections 54 and 54F of the Act. This clearly shows that the Legislature intended different meanings to be given to these two words. A close reading of these sections shows that the Legislature intended to allow exemption in respect of investment in more than one asset by using the word "any".

4.8. *Hon'ble Special Bench* in the above referred decision focused their discussion on the word "a" and held that exemption under section 54/54F would be available in respect of one house only. But where two houses joint together constitutes a single unit for residence, then exemption under section 54 would be available to such joint residential house. *Hon'ble Special Bench*, also noted that,

where two units are distantly situated, then it could not constitute to be "*a residential house*" and, therefore, exemption under section 54 will be available only to one residential house at the option of the assessee.

4.9. We, therefore, do not find any reason to dismiss the claim of the assessee based on surmises and conjectures of the authorities below. We direct the Ld.AO to grant complete deduction under section 54F as claimed by the assessee.

Accordingly, ground 2 raised by the assessee stands allowed.

5. As we have allowed the deduction claimed by the assessee, Ground 3 raised by the assessee being the alternative plea becomes academic at this juncture and, therefore, not adjudicated.

6. Grounds 5 & 6 are consequential in nature and therefore do not require adjudication .

Accordingly, ground raised by the assessee stand allowed as indicated hereinabove.

7. The cross appeal filed by the revenue is on the same issue against allowing the claim of exemption under section 54F partly by the Ld.CIT(A).

As we have allowed Ground 2 raised by the assessee, the ground raised by the revenue on this issue stands dismissed.

Accordingly the appeal filed by the revenue stands dismissed.

In the result the appeal filed by the assessee stands allowed and appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 14/10/2024.

Sd/-

Sd/-

(SMT. RENU JAUHRI)	(SMT. BEENA PILLAI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Place: Mumbai,

Dt : 14th October, 2024

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी /The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि ,आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar, **ITAT, Mumbai**