

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "A" Bench, Mumbai.

Before Shri Beena Pillai (JM)  
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 4526/Mum/2024 (A.Y. 2017-18)

Arun Kumar Sohan Lal Gupta 101, Guruprabha CHS Opp. Pramod Mahajan Park, Senapati Bapat Marg, Dadar West, Mumbai-400 028.  PAN : AADPG1319D  (Appellant)	Vs.	DCIT Circle 16(2) Mumbai.      (Respondent)
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Assessee by	Shri S.L. Jain & Shri Satish Jain
Department by	Shri Ram Krishn Kedia
Date of Hearing	03.10.2024
Date of Pronouncement	11.11.2024

ORDER

Per Omkareshwar Chidara (AM) :-

The appellant took two grounds of appeal before the ITAT as follows :-

1. The CIT(A) erred in confirming deduction u/s. 54 of Rs. 2,16,43,663/- as granted by Ld. AO on sale of one residential house as against claimed by the appellant on capital gain on sale of Three residential houses of Rs. 4,52,12,203/- although appellant invested Rs. 9,40,30,661/- in purchase of one residential house within the time permitted.

2. The Ld. CIT(A) as well as Assessing Officer failed to appreciate that "one" in section 54 is applicable to acquisition of residential house and not to sale of "a" residential houses.

2. In the above cited appeal the appellant sold three immovable properties viz., 304, Manekunj, 1003 Guruprabha and 302, Manekunj and received sale consideration of Rs. 5,57,02,370/- as mentioned in page No. 2 of the assessment order. Subsequently, the appellant claimed deduction of

Rs. 4,52,12,203/- under section 54 of the I.T. Act (Act for short) stating that immovable property for a consideration of Rs. 6,09,00,000/- and computed the long term capital gains and claimed deduction u/s. 54 of the Act for an amount of Rs. 4,52,12,203/-. The learned Assessing Officer (AO for short) observed that the appellant has several house properties in Bombay as mentioned in page No. 4 of the assessment order and hence issued show-cause notice stating that deduction u/s. 54 is not applicable in his case because the conditions mentioned u/s. 54 of the Act are not fulfilled. In reply to this show-cause notice, the appellant has stated that he sold three flats and then purchased two immovable properties but claimed deduction u/s. 54 of the Act only to the extent of Rs. 4,52,12,203/- for one property. After getting reply from the appellant, the Ld. AO limited the deduction u/s. 54 of the Act to sale of 'one' house property only. In other words, out of three houses, which were sold by the, the Ld. AO limited deduction to sale consideration of only 'one' house property and the balance sale consideration received for two properties were disallowed. The Ld. AO gave deduction to the extent of Rs. 2,69,43,663/- which is the sale consideration of 1003 Guruprabha and allowed it to be appropriated towards purchase of new houses property described as 2801, World Crest u/s. 54 of the Act. The remaining amount of Rs. 2,35,68,540/- claimed as deduction u/s. 54 of the Act was disallowed and added back as long term capital gains u/s. 45 of the Act.

3. Aggrieved by the disallowance of part of the deduction u/s. 54 of the Act, an appeal was filed before learned Commissioner of Income Tax (Appeals) [the Ld. CIT(A) for short]. The Ld. CIT(A) confirmed the addition made by the Ld. AO stating that provisions of section 54 are clear that the deduction shall be restricted to sale consideration of one flat only and he has also noted Section 54 was amended by the Finance Act, 2014 wherein ambiguity regarding 'one' house property was clarified.

4. As mentioned in page No. 1 of the of this order, the appellant's main ground of appeal taken before the ITAT is that the Ld. AO and the Ld. CIT(A) have failed to appreciate that the word 'one' in section 54 is applicable to acquisition of residential house and not to sale of 'a' residential house. Thus, the contention of the appellant before the ITAT is that deduction u/s. 54 was claimed for only 'one' house property even though two house properties were purchased by him.

5. Ld. AR of the appellant during the proceedings before the Bench relied on the Coordinate Bench decision in the case of DCIT Vs. Ranjit Vithaldas (ITA No. 7443/Mum/2002 dated 22.6.2012) reported in 133 ITD 367, wherein it was held that "No restriction was placed in s. 54 that exemption is allowable only in respect of sale one residential house. Even if the assessee sells more than one residential houses in the same year and the capital gain is invested in a new residential house, the claim of exemption cannot be denied if the other conditions of section 54 are fulfilled. The only restriction is that the capital gain arising from the sale of one residential house must be invested in one residential house and not in, two residential houses.

6. Ld AR of the appellant has also relied on the decision of Rajesh Keshav Pillai Vs. ITO (2011) 44 SOT 617 (Mum), wherein it was held that exemption u/s. 54 is available in respect of transfer of any number of residential flats, but exemption is limited investment in one house property. In other words, there is no restriction with regard to the amount utilised of any number of sale of flats, but restriction applies to investment in 'one' house as per plain reading of section 54 of the Act. Thus, Ld. AR of the appellant has stated that he sold three properties and claimed deduction u/s. 54 with regard to investment in only 'one' property. He has also emphasized that the Ld. AO as well as the Ld. CIT(A) were not correct in holding that the word used 'one' in section 54 is applicable to acquisition of residential house and not to sale of 'a' residential house. Ld. AR has pleaded that the appellant has purchased two immovable properties during the current year by selling three flats but

the appellant himself claimed deduction u/s. 54 of the Act for investment in one house only and deduction u/s. 54 of the Act was not claimed for investment in second property. Hence, entire deduction claimed by the appellant should be allowed.

7. Ld. DR has placed heavy reliance on the order of the AO and the Ld. CIT(A) by stating that sale consideration of house should also be restricted to one property for the purpose of giving deduction u/s. 54 of the I.T. Act.

8. After hearing both sides, it is decided that there is force in the argument of Ld. AR of the appellant because restriction is placed only on investment in house u/s. 54 of the Act but not on sale consideration of house. Even amendment which was made by the Finance Act 2014 relates to investment of house and not on restriction of number of houses which are being sold. Moreover, this issue is covered by Hon'ble Bombay High Court in the case of Devdas Naik (49 taxman.com 30)(Bom) and also by one more Coordinate Bench decision in the case of ACIT Vs. Bipin N. Sagar (ITA No. 1507/Mum/2017 dated 5.2.2019). Respectfully following the decisions of Mumbai Tribunal and Hon'ble Jurisdictional Bombay High Court, the appeal of appellant is allowed.

9. Appellant's appeal is allowed.

Order pronounced in the open court on 11<sup>th</sup> November, 2024.

Sd/-  
(Beena Pillai)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 11.11.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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