

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2700/दिल्ली/2024 (नि.व. 2016-17)

ITA No.2700/DEL/2024 (A.Y.2016-17)

Kavita Kalra,
Kavi Impex, A-4/102, Paschim Vihar,
Delhi 110063

PAN: AKAPK-1007-F

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-41(3),
Civic Centre, Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Mukul Gupta, Advocate
प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal , Sr. DR
सुनवाई की तिथि/ Date of hearing : 10/09/2024
घोषणा की तिथि/ Date of pronouncement: : 29/11/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 13.02.2024, for assessment year 2016-17.

2. The solitary issue in appeal is against disallowance of deduction amounting to Rs.34,58,099/- u/s. 54 of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). The facts of the case in brief are as under: The assessee had sold Long Term Capital Asset during the Financial Year 2015-16, relevant to assessment year

2016-17 for a total sale consideration of Rs.1,39,50,000/-. Immediately thereafter, the assessee purchased two flats in the Financial Year 2015-16 for consideration of Rs.30,00,000/- and Rs.37,00,000/-, respectively and claimed benefit of exemption u/s. 54 of the Act on both the flats. The Assessing Officer (AO) granted benefit of exemption u/s. 54 of the Act on one flat purchased for Rs.37,00,000/-. The assessee carried the issue in appeal before the CIT(A) to claim exemption u/s. 54 of the Act on second flat. The CIT(A) vide impugned order rejected assessee's claim. Hence, the present appeal by the assessee.

3. Shri Mukul Gupta, appearing on behalf of the assessee submitted that the assessee had purchased two flats in the same building i.e. 1st Floor and 2nd Floor, Plot No. 102, Block A-4, Paschim Vihar, New Delhi. Since, two flats purchased by the assessee are together, the assessee is eligible to claim benefit of exemption u/s. 54 of the Act. In support of his contention, he placed reliance on the decision in the case of Ms. Anita Mahindrakumar Oberai vs. ITO in ITA No. 600/Pun/2020 for AY 2015-16 decided on 01.02.2022.

4. Per contra, Ms. Shivani Bansal representing the department vehemently defending the impugned order submits that the assessee had purchased three properties after the sale of Long Term Capital Asset during the relevant period. The assessee claimed benefit of exemption u/s. 54 of the Act on two properties i.e. Flat situated on 1st and 2nd floor, Block A-4, Paschim Vihar, New Delhi. Both flats were purchased separately on two different dates. The provisions of section 54 of the Act were amended by the Finance (No.2) Act, 2014 w.e.f 01.04.2015. As per amended provisions, benefit of section 54F of the Act is allowed only on one

residential house in India. The AO and the CIT(A) have thus granted benefit of section 54 of the Act to the assessee on a flat having higher purchase cost.

5. Both sides heard, orders of the authorities below examined. It is an undisputed fact that the assessee after sale of capital assets has invested capital gains in purchase of two flats on 1st and 2nd floor Block A-4, Paschim Vihar, New Delhi. The assessee claimed benefit of exemption u/s. 54 of the Act on purchase of both flats. The contention of the assessee is that since both flats are in the same building on two consecutive floors, the assessee is eligible for the benefit of exemption u/s. 54 of the Act on both flats, even after amendment of the provision of section 54 of the Act by Finance (No. 2) Act, 2014. The assessee is entitled to claim benefit of section 54 of the Act, if the assessee within a period of one year before or two years after the date on which the transfer took place purchase or within a period of three years after that date constructed one residential house in India. Thus, on plain reading of provisions of section 54 of the Act it is unambiguously clear that the benefit is allowed on purchase of only one residential house. In the instant case, the assessee has purchased two flats on two different floors of the same building. The assessee has not been able to substantiate as to how these two flats are interconnected to be used as a single residential unit. The assessee has placed reliance on the decision rendered in the case of Anita Mahindrakumar Oberai (supra), wherein the assessee was granted benefit of section 54 of the Act on two flats. I find that the facts of the said case are distinguishable. In the said case, two adjacent flats were purchased to be used as a single dwelling unit. Hence, the Tribunal granted benefit of section 54 of the Act to the assessee. In the present case as pointed earlier the flats are on

different floors. The assessee has failed to show as to how the two flats on two different floors can be used as a single dwelling unit; hence the ratio laid down in said case cannot be applied in the facts of the instant case. I find no infirmity in the impugned order; hence, appeal of the assessee is dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on Friday the 29th day of November, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 29/11/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI

