

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री शैलेंद्र कुमार यादव, न्यायिक सदस्य एवं श्री रमित कोचर, लेखा सदस्य के समक्ष।
BEFORE SHRI SHAILENDRA KUMAR YADAV, JM
AND SHRI RAMIT KOCHAR, AM

आयकर अपील सं./ITA No. 1561/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2010-11)

A C I T - 19(3)
Room No. 305, 3rd Floor
Piramal Chambers, Parel
Mumbai 400012

अपीलार्थी/Appellant

बनाम/ Vs.

Smt. Pushpa Suresh Hira
Ground Floor, Plot No. 272
Hisdustan CHS Ltd., 36th Road
Bandra (W), Mumbai 400050

प्रत्यर्थी/
Respondent

स्थायी लेखा सं./PAN - AAEPH0092B

अपीलार्थी की ओर से / Appellant by: Shri C.W. Angolkar
प्रत्यर्थी की ओर से/ Respondent by: Shri Subhash Shetty

सुनवाई की तारीख /Date of Hearing : 28.10.2015
घोषणा की तारीख/Date of Pronouncement : 18.11.2015

आदेश / O R D E R

PER SHAILENDRA KUMAR YADAV, JM

This appeal has been filed by Revenue against the order of
CIT(A) on following grounds: -

"(1) That under the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the date of indexed cost of acquisition for computation of Capital Gain should be the year in which the previous owner acquired

the property and not the year in which the assessee become the owner.

- (2) That under the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the assessee's claim of deduction u/s 54EC of the Act even though the assessee had invested in eligible Bonds beyond the limitation period of six months from the date of sale."

2. The issue before us is disallowance of assessee's claim under section 54EC of the Act. Assessee was a joint holder (1/2 share) of the property, i.e. flat No.14, 3rd floor, Leela Villa, 36th Road, Bandra (W), Mumbai admeasuring 1610.98 sq.ft approx. of carpet area. The said property was sold during the year for ₹2.30 crores. Assessee has computed long term capital gain at ₹77,40,704/-and after adding expenses for transfer of property at ₹3,38,350/-, the 'indexed cost' of acquisition of the property was taken by her as on 1.4.1981 at ₹34,20,946/-. Assessee invested ₹50,00,00/- out of the above sale proceeds in NHAI Bonds and claimed exemption under section 54EC of the Act. The details of acquisition of the property in the hands of the assessee have been discussed by Assessing Officer as under: -

"During the course of assessment proceedings, assessee furnished the deed of sale of the above said property dated 2108.2009. Perusal of the sale deed indicates that one Valiram Malani was absolutely seized and possessed an immovable property bearing Sub plot No. 271C of final plot No.271 of TPS III, Bandra and CTS No. F/718-C admeasuring 1003 sq meters together with a structure known as Leela Villa standing thereon consisting of ground and three upper floors and garages situated at 36th Road, Bandra(W), Mumbai 50 having purchased the said property from Mrs. Gopibai Rochiram Bhavnani by a

Deed of conveyance dtd.27.12.1965. Shri Valiram Malani, who died on 14.09.1986, bequeathed the said property to his wife Mrs Lila Valiram Malani by will and testament dated 16.12.1976. Mrs.Lila Malani obtained probate of the said will from Hon'ble Bombay High Court in petition No. 189 of 1987. In the year 2002 Mrs. Lila Valiram Malani, allowed her son Suresh V Malani to raise additional floors on the existing building by utilizing the balance plot FS1 and also by procuring TDR. Mr. Suresh V Malani expired on 23.02.2004. However, before his death, he had assigned his rights of development to a third party and since then the developers have constructed additional floors on the existing building, the third floor of the building Leela Villa consisted of two flats numbered 13 and 14 and subsequently the said flats were amalgamated and were treated as one. On 23.8.2007 Mrs. Lila Valiram Malani gifted the said flat No.14 admeasuring 16.1098 Sq .Ft to her daughters agreed Mrs Romila M Malani and Mrs Pushpa S Hire, the assessee in equal shares. The daughters agreed to sell the flat situated at plot No.271C, 36th Road, Bandra (W),Mumbai to the purchasers for total consideration of ₹ 2.30 crores."

2.1 After considering the same Assessing Officer held that the property under deed of gift dated 23.08.2007. Therefore she became owner of the property after 01.04.1981 and for the said reason benefit of indexation as on 01.04.1981 under section 55(2)(b)(ii) was not available to her. He also disallowed assessee's claim of exemption under section 54EC of the Act on the ground that while the sale deed is dated 21.08.2009 allotment advice issued by the NHAI is dated 29.03.2010 wherein date of allotment of Bonds is shown as 28.02.2010, which is beyond six months period and the maturity date shown is 28.02.2013. Assessing Officer rejected the argument of the assessee that ₹50,00,000/- was invested on 15.02.2010, vide cheque

No.167049 drawn on IOB, therefore, the same has been invested within six months from the date of sale of flat, on the ground that the date of payment is not relevant, but allotment of bonds.

2.2. The matter was carried before first Appellate Authority wherein various contentions were raised on behalf of the assessee and having considered the same CIT(A) granted relief to assessee on both counts. The same is opposed before us on behalf of Revenue, inter alia, submitting that CIT(A) erred in holding that the date of indexed cost of acquisition for computation of capital gain should be the year in which the previous owner acquired the property and not the year in which assessee become the owner. Further, CIT(A) erred in allowing assessee's claim of deduction under section 54EC of the Act even though the assessee had invested in eligible bonds beyond the limitation period of six months from the date of sale. Accordingly the order of the CIT(A) be set aside and that of the AO be restored. On the other hand the learned A.R. for the assessee supported the order of CIT(A).

2.3 After going through the rival submissions and material on record we find that the issue involved is whether property has been acquired by way of gift and the said property existed before 01.04.1981. Whether the cost of acquisition can be taken as on

01.04.1981 by seller of property to avail the benefit under section 55(2)(b) of the Act. The said issue has been settled by the Hon'ble Bombay High Court in the case of Manjula J. Shah (2012) 204 Taxman 691 and in view of that CIT(A) held that assessee was entitled to indexed cost of property as on 01.04.1981 and from the details submitted during the appellate proceedings CIT(A) observed that assessee has not included any improvement cost to the cost of acquisition of the property as on 01.04.1981. In view of this CIT(A) rightly directed the Assessing Officer to adopt the indexed cost of property as on 01.04.1981.

2.4 Regarding allowability of exemption under section 54EC of the Act is concerned we find that the Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. (2011) 220 Taxman 618 (Bom) has held that for the purpose of provisions of section 54EC of the Act, the date of investment by assessee must be regarded as date on which payment was made and received by the authorities issuing bonds. In the case of assessee the date of investment to, i.e. clearing of cheque presented by the assessee to NHAI is within the period of six months from the receipt of the sale proceedings under the date of agreement. In view of the above CIT(A) was justified in directing the Assessing Officer to grant deduction under section 54EC to assessee. This reasoned finding of the CIT(A) need no interference. So we uphold the same.

3. In the result, appeal filed by Revenue is dismissed.

परिणामतः राजस्व की अपील खारिज की जाती है।

Order pronounced in the open court on 18th November, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 18.11.2015को की गई।

Sd/- (RAMIT KOCHAR) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (SHAIENDRA KUMAR YADAV) न्यायिक सदस्य/JUDICIAL MEMBER
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मुंबई Mumbai, दिनांक Dated 18th November, 2015

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A) - 30, Mumbai
4. आयकर आयुक्त / The CIT - 19, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, "C" Bench ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ By Order

सत्यापित प्रति //True Copy//

सहायक पंजीकार /Asstt. Registrar)
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