

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'T', NEW DELHI
BEFORE
SHRI R. S. SYAL, ACCOUNTANT MEMBER
AND
SHRI C. M. GARG, JUDICIAL MEMBER**

I.T.A. Nos.2941/Del/2012
(Assessment Year 2007-08)

Shri Ricky Chaudhary, C/o M/s. K.R. Theatre, Meerut Road, Karnal GIR / PAN :ALQPR2328K	Vs.	Addl. CIT, Karnal Range, Karnal
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I.T.A.No. 2942/Del/2012
(Assessment Year 2007-08)

Shri Sunny Chaudhary, C/o M/s. RRA Texindia, D-28, South Extension, Part I, New Delhi PAN: AGNPC1017E	Vs.	Addl. CIT, Karnal Range, Karnal
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I.T.A.No. 2943/Del/2012
(Assessment Year 2007-08)

Shri Krishna Chaudhary, C/o M/s. RRA Taxindia, D-28, South Extension, Part I, New Delhi PAN: AWDPK2903P (Appellant)	Vs.	Addl. CIT, Karnal Range, Karnal (Respondent)
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Appellant by :Shri Somil Agarwal,Adv.
Shri Tarun Kumar, Adv.

Respondent by :Ms. Anima Bernwal, Sr. DR

Date of hearing: 24.05.2016
Date of Pronouncement: 25.05.2016

ORDER

PER R. S. SYAL, AM:

These three appeals by different but connected assessee arise out of a common order passed by the Id. CIT(A) Karnal on 14.03.2012 in relation to the Assessment Year 2007-08. Since all these appeals are based on identical facts and common grounds of appeals, we are therefore proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The only issue raised in all these appeals is against denial of deduction u/s 54F of the Income-tax Act, 1961 (hereinafter also called 'the Act'). For the sake of convenience, we are espousing the case of Shri Ricky Chaudhary for consideration. Facts of the case are that the assessee along with certain other co-owners sold four properties. The total amount of capital gains was computed at Rs.2.75 crores. Investment of Rs.2.55 crores was made within one year from the date of sale, for which deduction was claimed u/s 54B, and the same was allowed by the Assessing Officer. A further sum of Rs.18,91,250/- was invested by the assessee on 06.05.2008 as his share for the purchase of residential property. The assessee also invested a still further sum of Rs.11,18,175/- on

23.06.2008 as his share in residential property. Deduction was claimed u/s 54F in respect of both the investments. The Assessing Officer, applying the provisions of Section 54F, permitted the deduction only in respect of one residential house. He, therefore, restricted the deduction u/s 54F in respect of investment made to the tune of Rs.18,91,250/-. The remaining amount of Rs.11,18,175/- was not considered for the purpose of deduction u/s 54F of the Act.

3. The Id. CIT(A), relying upon the order passed by him in the case of another co-owner of the same properties, namely, Shri Rajnish Chaudhary, upheld the Assessing Officer's stand in not granting deduction u/s 54F in respect of investment made in the second residential house. The assessee is aggrieved against the denial of deduction u/s 54F to this extent.

4. We have heard rival contentions and perused the relevant material placed on record. It emerges that there were at least five co-owners, including the assessee, who transferred the properties resulting into the capital gains, which became subject matter of deduction u/s 54B and 54F of the Act. The AO denied deduction u/s 54F in all such cases in respect of investment made in the second property. Cases of two such co-owners, namely, Shri Rajnish Chaudhary and Shri Ramnik Chaudhary came up for consideration before the Tribunal. Vide its order dated 30.10.2014 in I.T.A. No. 2565

and 2566/Del/2012, the Tribunal has upheld the denial of deduction u/s 54F in these cases by relying upon the judgement of Hon'ble Jurisdictional High Court in the case of *Pawan Arya Vs CIT (2011) 237 CTR 210 (P&H)*. The Hon'ble Jurisdictional High Court has held in this case that the assessee cannot claim deduction u/s 54, the relevant part of which is admittedly in *pari materia* with section 54F, in respect of two independent residential houses situated at different locations. In view of the judgment of Hon'ble Jurisdictional High Court in the case of *Pawan Arya (supra)* and the order passed by the Tribunal in the hands of other two co-owners, we do not see any reason to disturb the findings given by Id. CIT(A) in this regard.

5. The Id. A.R. invited our attention towards amendment made to section 54F(1) by the Finance (No.2) Act 2014 w.e.f. 01.04.2015 substituting the word “construct, a residential house” with “construct one residential house in India”. In the light of this amendment, the Id. A.R. argued that the word “a” should be read as plural in the period anterior to such amendment and deduction u/s 54F be accordingly allowed in respect of two properties. This was countered by the Id. D.R., who, while referring to the relevant part of Finance Bill (No.2) of 2014, submitted that Section 54F has been amended so as to clarify that deduction under this section is available

only in respect of one house property. The same being clarificatory, the Id. DR contended, is retrospective.

6. At this juncture we want to clarify that it is not essential for us to decide if the amendment is retrospective or prospective in view of the fact that the Hon'ble Jurisdictional High Court, while interpreting the provision, has held that deduction can be allowed in respect of only one property. In view of the this judgment, it is not possible for us to accept the contention that the deduction be allowed in respect of two independent residential houses situated at different locations. We, ergo, leave the question open as to whether the amendment made by Finance (No.2) Act 2014 w.e.f. 01.04.2015 is retrospective or prospective.

7. Reliance of the Id. A.R. on certain decisions interpreting Section 54F in a manner allowing deduction in respect of more than one residential houses, is of no consequence because of the availability of the direct judgment of the Hon'ble jurisdictional High Court available on the point. There is hardly any need to accentuate that the judgment of Hon'ble jurisdictional High Court is binding on all the authorities working under its jurisdiction and the same should be followed unless it is reversed by the Hon'ble Supreme Court. In view of the forgoing reasons, we are satisfied that the Id. CIT(A) was justified in rejecting the assessee's claim

of deduction u/s 54F of the Act in respect of the second house property.

8. Both the sides are in agreement that the facts and circumstances of other two appeals are *mutatis mutandis* similar to those of Ricky Chaudhary discussed above. Following the view taken hereinabove in the case of Ricky Chaudhary, we uphold the decision of the Id. CIT(A).

9. In the result, all the appeals filed by the assesseees are dismissed.

Order pronounced in the open court on 25th May, 2016.

Sd./-

(C. M. GARG)
JUDICIAL MEMBER

Date: 25.05.2016

Sp.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy.

Sd./-

(R. S. SYAL)
ACCOUNTANT MEMBER

By Order

(ITAT, New Delhi)

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	24/5		Sr. PS/PS
2	Draft placed before author	24/5/16		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	25/5/16		Sr. PS/PS
6	Kept for pronouncement	25/5		Sr. PS/PS
7	File sent to Bench Clerk	25/5		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			

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