

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 4769/Mum/2015
(Assessment Year 2012-13)

ITO (IT) 3(3)(1) 1 st Floor Scindia House Ballard Estate N.M. Road Mumbai-400 038. (Appellant)	Vs.	Akansha Ranju Pilani Building No. 1 The Colaba Land CHS Sorab Baurcha Marg Colaba Mumbai-400 005. (Respondent)
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PAN No. AAMPG8806C

Assessee by	Shri Ishwer Prakash Rathi
Department by	Shri Jagdish P. Jangid
Date of Hearing	18.5.2017
Date of Pronouncement	26.5.2017

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 30.3.2015 passed by the learned CIT(A)-55, Mumbai and it relates to A.Y. 2012-13.

2. The Revenue is aggrieved by the decision of the learned CIT(A) in granting relief u/s. 54 of the Act, which was partially rejected by the AO.

3. Facts relating to the issue are stated in brief. The assessee sold an immovable property on 2.8.2011 for a sum of ` 1.60 crores. The assessee purchased another residential house property on 26.7.2012 for a sum of ₹ 2.75 crores. The assessee claimed exemption u/s. 54 of the Act on the value of new house property against the capital gain computed on sale of old house. The Assessing Officer noticed that the assessee had entered into an agreement to purchase a new house on 26.7.2012 and paid the consideration by way of several cheques. Some of the cheques issued by him have been cleared after

2.8.2012. The Assessing Officer noticed that two cheques aggregating to Rs.75.00 lakhs have been cleared prior to 2.8.2012. The Assessing Officer took the view that the consideration for the new house should have been paid by the assessee within one year from the date of sale old house. Accordingly, he restricted the deduction u/s. 54 of the Act to ₹ 75 lakhs and disallowed the balance claim of ₹ 62.21 lakhs.

4. The learned CIT(A) noticed that the time limit available for making investment in a new residential house is two years from the date of sale of original asset and the amount not invested prior to the date of filing of return of income should be invested in capital gain account before the due date of filing of return of income. The learned CIT(A) noticed that the due date for filing return of income in certain class of assesseees (those who are required to file return electronically) was extended up to 31.8.2012 for the year under consideration. The Ld CIT(A) noticed that the assessee was falling under that class, since his total income exceeded Rs.10.00 lakhs. The learned CIT(A) noticed that the assessee has paid the consideration for new house within two years from the date of transfer of the original asset and also before the due date for filing return of income for A.Y. 2012-13. Accordingly, he directed the Assessing Officer to allow claim made by the assessee u/s 54 of the Act fully. Aggrieved, the Revenue has filed this appeal before us.

5. We have heard the parties and perused the record. Section 54 of the Act provides that the time limit available for purchase of house is one year before the date of transfer of original asset or two years after the date of such transfer. Admittedly in the instant case the assessee has purchased a new residential house and paid the consideration within two years from the date of transfer. Section 54(2) states that the amount which has not been utilised for purchasing a new house before the due date of furnishing of return of income u/s. 139 of the Act shall be deposited by him before furnishing such return in an account in any such bank or institution as may be specified in and shall be utilised in accordance with scheme so framed in this regard.

6. The learned Departmental Representative submitted that the provisions of sec.54(2) prescribe for depositing the amount into Capital gain account scheme before the date of furnishing return of income. He submitted that the assessee has filed his return of income on 28.7.2012, but cheques aggregating to Rs.62.21 lakhs have been en-cashed after the date of filing of return. Accordingly, learned Departmental Representative contended that the condition prescribed in section 54(2) have not been fulfilled by the assessee and hence the AO was justified in rejecting the claim made u/s. 54 of the Act to the extent of Rs.62.21 lakhs.

7. We notice that the Assessing Officer himself allowed deduction u/s 54 of the Act to the extent of ₹ 75 lakhs and disallowed only part claim of ₹ 62.21 lakhs. The reason given by the Assessing Officer for making disallowance is that the payment for purchase of new house property has not been made within one year from the date of transfer of original asset. We have already seen that the provisions of section 54(1) allow purchase of new house within two years from the date of transfer of asset and hence the view taken by the Assessing Officer is not in accordance with the law and hence the same is liable to be quashed.

8. The Ld D.R's contention is that the assessee has violated the provisions of sec. 54(2) of the Act. However, the contention of the assessee is that he had issued cheques on the date of agreement itself i.e. 26.7.2012, which is before the date of furnishing of return of income. However those cheques have been encashed by the builder belatedly and hence the assessee should not be penalized for that. The contention of the Ld A.R was that once cheques have been issued, assessee's liability gets fulfilled and the same constitute utilization of sale proceeds of the old house. We find merit in the submissions of the assessee. There is no dispute that the assessee has issued cheques to the seller of house property on 26.7.2012, which is prior to the date of furnishing of return of income of the instant year. Accordingly, we are of the

view that there is no requirement to comply with the provisions of section 54(2) of the Act in the facts and circumstances of the case.

7. In view of the foregoing, we are of the view that there is no infirmity in the decision taken by the learned CIT(A) and accordingly we uphold the same.

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

Order has been pronounced in the Court on 26.5.2017.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/5/2017

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,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS