

आयकर य कर , यय “ब ”,  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'B, CHANDIGARH  
BEFORE: SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI R.L. NEGI, JUDICIAL MEMBER

ITA No. 1112/Chd/2019  
(Assessment Year: 2015-16)

The Income Tax Officer, Ward-4(3), Chandigarh.	बनाम	Smt.Rachna Arora, House No.1846, Sector 34-D, Chandigarh.
थायी लेखा स./PAN NO: ALJPA7492G		

नधा रती क ओर से/Assessee by: Shri Parikshit Aggarwal, CA

राज व क ओर से/ Revenue by : Shri Ashok Khanna, Addl.CIT

सनवाई क तार ख/Date of Hearing: 17.03.2021

उदघोषणा क तार ख/Date of Pronouncement: 31.03.2021

(Hearing through webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The appeal filed by the Revenue is directed against the order of Learned Commissioner of Income Tax (Appeals)[in

short the ' Ld.CIT(A)], Chandigarh dated 24.05.2019 relating to the assessment year 2015-16, passed u/s 250(6)) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'.

2. At the outset itself, it was pointed out that the solitary issue in the present appeal pertained to claim of exemption u/s 54 of the Act of Long Term Capital Gains earned by the assessee being invested in another property. That the AO had restricted the claim of exemption to the extent of assessee's share in new property purchased, being 34%, while the Ld.CIT(A) allowed the entire claim on noting the fact that the entire capital gains earned by the assessee had been invested in the new property purchased. The Ld. DR drew our attention to the grounds raised by the Revenue against the order of the CIT(A) as under:

- “(i) Whether in the facts and circumstances of the case and in law, the Ld.CIT (A)'s order is not perverse and he has erred in law as well as facts in allowing the appeal of the assessee without appreciating the facts of the case?
- (ii) Whether in the facts and circumstances of the case and in law, the Ld.CIT(A)'s has erred in law, in allowing the exemption u/s 54 of the Income tax Act, in respect of Capital Gains invested in the property purchased in name of her married daughter and son-in-law, when the exemption should have been limited as per law to her own share of 34% only.
- (iii) Whether in the facts and circumstances of the case and in law, the Ld.CIT(A)'s order is not perverse and he has erred in allowing the exemption u/s 54 of the Income tax Act at Rs, 4,34,59,040/- which is admissible only on her own share of 34% at Rs. 1,47,76,073/-, as exemptions are subject to strict interpretation as held by constitution bench in

Commissioner of Custom (Import) Mumbai Vs Dilip Kumar and Company and others.

- (iv) Whether in the facts and circumstances of the case and in law, the Ld.CIT(A)'s order is not perverse and in contravention of jurisdictions! High Court decision in the case of CIT, Faridabad Vs. Sh. Dinesh Verma in ITA No. 381/2014 wherein it was held that the assessee is not entitled to the benefit of deduction u/s 54 if the subsequent property is purchased by a person other than the assessee including a close relative such as a wife or child.
- (v) Whether in the facts and circumstances of the case and in law, the Ld.CIT(A)'s order is not perverse and in contravention of jurisdictional division bench decision in the case of Jai Narayani Vs Income Tax Officer, [2008] 306 ITR 335 (P&H) wherein it was held that a reading of section 54B of the Act nowhere suggests that legislature intended to advance the benefit of the said section to an assessee who purchased the agriculture land in the name of a third person.
- (vi) It is prayed that the order of Ld. CIT(A) be set aside and that of the Assessing officer may be restored.
- (vii) The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off."

3. Referring to the same he contended that primarily the contention of the Revenue was that the CIT(A)'s order was not in consonance with the decision of the Hon'ble Jurisdictional High Court in the case of CIT, Faridabad Vs. Shri Dinesh Verma in ITA No.381/2014. The Ld.Counsel for the assessee, on the other hand countered by saying that the Ld.CIT(A) had allowed assessee's appeal after taking into consideration the aforesaid decision of the Hon'ble Jurisdictional High Court.

4. Adverting to the facts of the case during the relevant year the assessee had sold a

residential property for a consideration of Rs.4,35,00,000/-on which Long Term Capital Gains (LTCG) was calculated at Rs 4,34,59,000/-. The assessee had invested the whole sale consideration in the purchase of another residential property jointly with her daughter and her son in law which

was purchased for a consideration of Rs.5,35,50,000/-. The shares of three co-owners

namely the assessee, her son in law and her daughter in the purchased property were 34%, 33%

& 33% respectively. As the assessee's share in said property was 34%, the AO held that the assessee would be entitled for claim of exemption to the extent of 34% of total LTCG invested by her. Accordingly, the AO restricted the benefit of exemption u/s 54 of the Act to Rs.1,47,76,073/-(34% of Rs.4,34,59,040/-) and added back the remaining amount of Rs.2,86,82,967/- to the returned income of assessee.

5. The Ld.CIT(A) allowed the assessee's appeal holding as under:

"7.3 The submissions and case laws relied upon by the assessee have been considered. During the relevant year assessee sold a residential property for a consideration of Rs. 4,35,00,000/- on which Long Term Capital Gains (LTCG) was calculated at Rs 4,34,59,0007-. The assessee invested the whole sale consideration of Rs. 4,35,00,000/- in purchase of another residential property jointly with her daughter and her son in law for a consideration of Rs. 5,35,50,000/-. The balance amount was contributed by her son in law. The proportionate share of assessee, her son in law & her daughter in the purchased property was 34%, 33%, 33% respectively. The AO was of opinion that since the share of assessee in new property was 34%, therefore she would be entitled for claim of exemption u/s 54 of the Act to the extent of 34% (Rs. 1,47,76,0737-) of total LTCG invested by her. During the appellate proceedings, the assessee submitted that she purchased the property conjointly with her daughter and her son in law to avoid any litigation subsequent to her death. In order to corroborate her contention that nothing contained in section 54 of the Act precludes assessee from investing Capital Gains in property conjointly, the assessee placed reliance on judicial pronouncements of various High Courts wherein the respective courts have invariably held that it is not mandatory that the investment should exclusively be-made by assessee in his own name to claim deduction u/s 54 of the Act. It is pertinent to mention that similar issue of claim of exemption u/s 54B was before Hon'ble Punjab & Haryana High Court in case of Dinesh Verma Vs. CIT in ITA No.381 of 2014. In the said case, the assessee sold his agricultural land for Rs.60 lakhs and subsequently purchased another agricultural land for Rs.61.60 lakhs in which he invested a sum of Rs.44.76 lakhs received on account of sale of his agricultural land. Remaining consideration of Rs.16.84 lakhs was paid by his wife. The High Court in the said case dealt with two substantial questions of law, viz.

1. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of Ld. CIT(A) in allowing and

enhancing the exemption u/s 54B to the extent of Rs.60 lakhs where as the assessee's own claim of his exemption was only to the extent of Rs.44.76 lakhs as is evident from the return of income filed by him.

2. Whether the respondent-assessee was entitled to the benefit under Section 54B of the Income Tax Act, 1961 in respect of the property purchased from the sale proceeds in the name of his wife?"

The adjudication of the court on the above issues is replicated below:

As we mentioned earlier, the respondent sold his agricultural land for a sum of Rs. 60 lakhs. Out of the sale proceeds he invested only a sum of Rs. 44.76 lakhs towards the purchase of another agricultural plot. The balance consideration of Rs.16.84 lakhs in respect of that plot was paid by the respondent's wife. It is not the respondent's case that it is actually he who paid the amount of Rs. 16.84 lakhs and that his wife's name was added benami and that the title thereof even to that extent vested in himself. We must, therefore, proceed on the basis that out of the sum of Rs.60 lakhs the appellant invested only Rs. 44/76 lakhs in the second property.

The Tribunal observed that it is settled now that an assessee can purchase a new asset or part thereof in the name of his wife and that there was sufficient justification for the same on considerations, such as, stamp duty rebate, social considerations, security for ladies. The Tribunal noted that as long as the funds are invested the respondent's exemption cannot be denied.

It is difficult to accept this view. Section 54B requires the assessee to purchase the property from out of the sale consideration of the capital asset. It does not entitle the assessee to the benefit conferred therein if the subsequent property is purchased by a person other than the assessee including a close relative even such as his wife or children. If the legislature intended conferring such a benefit, it would have provided for the same expressly. Indeed, an assessee can purchase an asset or a part thereof in the name of his

wife but he would not be entitled then to the benefit of Section 54B. Moreover, it is not the case of the assessee that he purchased the asset benami in the name of his wife. We have proceeded on the basis that his wife invested the amount of Rs.16,84,700/- herself.

The order of the Tribunal to this extent is, therefore, overruled. It is declared that respondent shall be entitled to the benefit of Section 54B on the basis that he invested only a sum of Rs.44,76,000/- in the agricultural property purchased by him after the sale of the agricultural property earlier owned by him. Even the additional question No. 7 raised by us in our order dated 02.03.2015 is answered in favour of the appellant/department.

Though the case at hand pertains to that of claim of exemption u/s 54 of the Act on LTCG but the ratio of the case mentioned supra would be applicable in the instant case also. In the instant case it is not disputed that the assessee had not invested the LTCG in purchase of residential property within stipulated time. The AO had restricted the claim of exemption u/s 54 merely on the basis that the assessee's share in the new property was 34% without acknowledging the fact that the assessee had invested the entire LTCG in purchase of residential property.

The plain reading of provisions of section 54 of the Act indicates that in order to claim the benefit of exemption u/s 54, the assessee should, invest the capital gain arising out of sale of residential property in purchase of another residential property within stipulated time. Nothing contained in this section precludes the assessee to claim the exemption in case the property is purchased jointly with close family members, who are not strangers or unconnected to her provided the assessee invests the entire amount of LTCG. The addition made by AO is deleted.

Another issue assailed by the assessee in appeal is that the AO has erred in restricting the claim of exemption up to 34% of Capital Gain Amount [i.e.

$\text{Rs.4,34,59,040} \times 34/100 = \text{Rs.1,47,76,073/-}$ ], whereas, as per provisions of section 54 of Income

Tax Act, 1961, the amount of allowable claim of exemption u/s 54 should be calculated with reference to amount of investment in newly acquired residential house property and not the amount of capital gain on sale of existing house property. Since, the relief has been accorded, this gain on sale of existing house property. Since, the relief has been accorded, this issue is rendered infructuous. In view of above discussion, the grounds of appeal no. 2 to 8 are allowed.”

6. We have considered the contentions made by both the parties before us. We have also gone through the order of the Ld.CIT(A). The only contention of the Revenue being that the decision of the Hon’ble Jurisdictional High Court in the case of Dinesh Verma(supra) has not been followed by the Ld.CIT(A),we find that the Ld.CIT(A) had taken note of the said decision. He had, we find, taken note of the decision and applied the same to the facts of the present case noting categorically that though the said decision pertained to claim of exemption u/s 54B of the Act, yet the ratio would be applicable in the instant case also. The Ld.CIT(A) ,we find, had thereafter proceeded to note the facts of the present case being that the assessee had invested the entire Long Term Capital Gains in the purchase of residential property within the stipulated time, while the AO had restricted the exemption to 34% of the Long Term Capital Gains without acknowledging the fact that the assessee had invested the entire Long Term Capital Gains in the purchase

of residential property. We have gone through the decision of the Hon'ble Jurisdictional High Court, reproduced in the impugned order, and find that it had allowed exemption of capital gains, to the extent of the sale consideration invested by the assessee in the new asset, denying the exemption to the extent invested by his wife, on noting the fact that the investments in the new property had been made both by the assessee and his wife. The Hon'ble High Court held that the assessee would be entitled to the benefit of exemption u/s 54B only on the amount invested by him after the sale of his original property. Drawing parity from the same, the Ld.CIT(A), we find, has in the present case, noted the fact that the assessee has invested her entire sale consideration in the new property and, therefore, is entitled to exemption of the entire amount of Long Term Capital Gains. We do not find any infirmity in the same. Moreover, the Ld. DR has neither been unable to controvert the facts of the present case as noted by the Ld.CIT(A) nor has pointed out how the decision of the Hon'ble Jurisdictional High Court was applicable against the assessee in the facts of the present case.

7. In view of the same, we do not find any reason to interfere in the order of the Ld.CIT(A). All the grounds of appeal raised by the Revenue are accordingly, dismissed.

8. In the result, the appeal of the Revenue is dismissed. Order

pronounced on 31.03.2021.

Sd/-  
(R.L. NEGI)  
/Judicial Member

Sd/-  
(ANNAPURNA GUPTA)  
/Accountant Member

Dated: 31st March, 2021

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आदेश क % त&ल'प अ\*े'षत/Copy of the order forwarded to :

1. अपीलाथ+/ The Appellant
2. %,यथ+/ The Respondent
3. आयकर आय-ुत/ CIT
4. आयकर आय-ुत (अपील)/ The CIT(A)
5. 'वभागीय % त न0ध, आयकर अपील य आ0धकरण, च2डीगढ/ DR, ITAT, CHANDIGARH
6. गाड फाईल/ Guard File

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स / By order,  
/ Assistant Registrar