

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER

I.T.A. No. 2788/DEL/2019 (A.Y 2014-15)

<p>Sumeet Dhiman House No. 7, Compound-1, Nestle India Ltd. Ludhiana FZR Road, Moga, Moga Punjab, PAN No. ABAPD2462J (APPELLANT)</p>	Vs	<p>ACIT Circle-4(1) Vanijya Nikunj, Udyog Vihar- V, Gurgaon, Haryana (RESPONDENT)</p>
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Appellant by	Sh. Dileep Poolakkot, Adv and Sh. Rohith R Kartha, Adv
Respondent by	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	18.05.2022
Date of Pronouncement	08.07.2022

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee against the order dated 13/02/2018 passed by the CIT(A)-1, Gurgaon for Assessment Year 2014-15.

2. The brief facts of the case are that, the return declaring income of Rs. 94,64,206/- was filed on 31/07/2014. The Assessing Officer noted that during the under consideration, the appellant had sold a residential property for an amount of Rs. 1,10,00,000/- on which the assessee had earned capital gain amounting to Rs. 76,64,058/-. The Assessing Officer further noted that the assessee had claimed deduction u/s 54 of the IT Act with respect to investment in two different houses i.e. purchase of new residential house located at Flat No. C-1103, AKME RAGGA and repayment of housing loan borrowed for

purchase of property located at PTS-01-0802, EMMAR PALM TERRACES which were located at two different locations. After considering the facts of the case, the Assessing Officer held that the assessee was eligible for deduction u/s 54 with respect to only one of the aforesaid properties and accordingly limited the deduction claimed by the assessee u/s 54 to Rs. 49,14,447/-. The balance amount of capital gain amounting to rs. 27,49,611/- was held to be taxable in the hands of the assessee.

3 As against the assessment order dated 22/12/2016, the assessee has filed the appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal by confirming the addition made by the assessee vide order dated 13/02/2018.

4. Aggrieved by the order dated 13/02/2018 passed by CIT(A), the assessee has preferred the present appeal on following grounds.

Appeal against the order u/s 143(3) of the Income Tax Act, 1961 ('the Act') dated 13.02.2018 for the Assessment Year 2014-15, passed by the ACIT, Circle 4(1), Gurgaon.

1. *The order passed by the Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] under Section 250(6) of the Act is bad in law and on the facts and circumstances of the case.*

2. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') grossly erred in not considering the fact that the agreement to sell for purchasing the new flat was executed on 30th June, 2013 but the sale deed could not be executed because of inter-se litigation between the land owners and the Builder. The Ld. AO further erred in not considering the fact that the Hon'ble Supreme Court has stayed the further construction of the flat in which the assessee has executed the agreement to sell with the Builder.*

3. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') has grossly erred in not considering the fact that payment made to the builder AKME projects Ltd. was not 49,14,447/- as stated in the assessment order and it was 52,07,616/-.*

4. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') erred in not considering the fact the cost of flat in AKME projects Ltd. was 68,24,852/- excluding the electricity connection charges, common service charges, stamp duty, cost of registration etc.*

5. *The Ld. CIT(A) has erred in law and on the facts and circumstances of the case in upholding the order passed by the Ld. AO in making disallowance of Rs. 27,49,611/-.*

6. *The Ld. CIT(A) has erred in the facts and circumstances of the case in dismissing the appeal of the appellant without considering reasonable demand of the Appellant in its right perspective.*

7. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') erred on facts ought to have considered the decisions of this Tribunal and various High Courts considering the fact that a residential house means house of a residential nature without any limitation regarding its numbers.*

8. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') has grossly erred in not considering the fact that the taxing of capital gain Rs. 2749611.00 from the assessee is in law as the term residential house does not indicate a single unit. While as in the case of section 54 of the Act it is a building or a land appurtenant thereto which is in the nature of a residential house and in case of section 54F the long-term capital*

asset is an asset other than a residential house. However, both the sections speak of either purchase or construction of a residential house. The phrase a residential house in these sections has been differently interpreted.

9. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') grossly erred in not considering the fact that the assessee had inherited the property by executing the agreement to sell for purchasing the new flat as defined under Section 2(47) of the Act which defines the term transfer in relation to a capital asset.*

10. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') grossly erred in not considering the fact that the intention behind Section 54 was to give relief to a person who had transferred his residential house and had purchased another residential house within two years of transfer.*

11. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') grossly erred in not considering the dictum laid down by the Hon'ble Supreme Court in Sanjeev Lal and ors Vs. Commissioner of Income Tax, Chandigarh & Anr. Reported in (2015) 5 SCC 775.*

12. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') erred in restricting the benefit u/s 54 in respect of flat bearing No. 1103, AKME Projects Ltd. on an investment of Rs. 49,14,447/- as against the claim of the assessee in respect of investment in two residential flats, on a total investment of Rs.1,12,07,616/-.*

13. *The Ld. Assessing Officer ('AO') ought to have granted exemption under section 54 of the act considering the fact that the*

amount of Rs. 60 lakh paid as repayment of home loan by the assessee is not considered by the AO as reinvestment.

14. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') grossly erred in not considering the fact that the intention behind Section 54 was to give relief to a person who had transferred his residential house and had purchased another residential house within two years of transfer.*

15. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') grossly erred in not considering the fact that the intention behind Section 54 was to give relief to a person who had transferred his residential house and had purchased another residential house within two years of transfer.*

16. *The Ld. Assessing Officer ('AO') ought to have granted exemption under section 54 of the act considering the fact that the amount of Rs. 60 lakh paid as repayment of home loan by the assessee is not considered by the AO as reinvestment.*

17. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') erred in not considering the fact that the provision of section 54(1) of the Income- tax Act discloses that when an individual- assessee or Hindu undivided family- assessee sells a residential building or lands appurtenant thereto, he can invest capital gains for purchase of residential building to seek exemption of the capital gains tax. Section 13 of the General Clauses Act declares that whenever the singular is used for a word, it is permissible to include the plural.*

18. *The Learned Commissioner of Income Tax (Appeals)-I ["Ld. CIT(A)"] and Ld. Assessing Officer ('AO') failed to consider the purpose of capital gains tax the cost of the new asset is the tentative*

cost of construction and the fact that the amount was allowed to be paid in installments does not affect the legal position stated above. Since the builder had some legal issues he could not continue the construction and therefore demand not raised and assessee is not able to pay the due from capital gain. More over the repayment of Housing loan also be treated as investment of residential house as the assessee is paying the same from sale proceeds of his house sold during the year ie. unit no 95 greenwood city Gurgaon. Further to justify the points, the Appellant may be allowed to produce the additional documents and supporting evidences as part of our appeal.

19. That on the facts and circumstances of the case and in law the Ld. AO/ Ld. TPO erred in not examining the section 54 of the Act in its right perspective.

20. That the appellant craves leave to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal as they may be advised. That, the above grounds are independent and without prejudice to each other."

5. The entire grounds of Appeal No. 1 to 20 are against disallowance of deduction claimed u/s 54 of the Act which is the solitary issue involved in the present appeal.

6. We have heard the parties, perused the material on record and gave our thoughtful consideration. It is not in dispute that the assessee has sold residential property and earned capital gain and the assessee has claimed deduction u/s 54 of the Act with respect to investment in two different houses i.e. purchase of a new house and for repayment of loan borrowed for acquisition of another house. Thus, the question arises for consideration is that whether the assessee was eligible for deduction u/s 54 with respect to investment in two

residential house property. Section 54 of the Act reads as follows:-

"Profit on sale of property used for residence.

(l) Subject to the provisions of sub-section (2). where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a Long-term capital asset, being buildings or lands appertaining thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" thereafter in this section referred to as the original asset), the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date [constructed, a residential house in India, then instead of the capital gain being charged to income tax as income of the assessee previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this Section, that is to say,

(i) if the amount of the capital gain *and the cost of the new residential house so purchased or constructed (hereafter in this section referred to as the new asset,) the difference between the amount of the capital gain and the cost of the new asset shall be charged u/s 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*

(ii) *if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 and for the purpose of computing in respect of the new asset any*

capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(ii) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139 shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit: and, for the purposes of subsection (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset.

Provided that if the amount deposited under this subsection is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in subsection (1), then.

(i) the amount not so utilized shall be charged u/s 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation [Omitted by the Finance Act, 1992, w.e.f 1-4-1993]

7. As per Section 54 of the Act, if an assessee being an individual or Hindu undivided family, the capital gain arises from the transfer of long term capital asset being building or lands appurtenant thereto and being a residential house the income of which is chargeable under the head of "income from house property". But the said capital gain not liable to be taxed if the same has been invested in *a new residential house* which has been either purchase or constructed within the relevant period of time as prescribed by the section 54 of the Act. In case the assessee fails or commit a default in nesting the same, then there is a mechanism inbuilt in section 54 which safeguard the interest of revenue according to which if the capital gain were not invested within the due date as mentioned u/s 139(1) of the Act aforesaid person, then such capital gain required to be deposited with the separate bank account called a capital gain account scheme. There is another safeguard as prescribed by the provision of section 54 of the Act which provides that, if there is a proportionate amount of capital gain is invested in purchase or construction of a new residential house, then only the pro- rata deduction is available to the assessee.

8. In the present case, admittedly assessee has used with the long term capital gain for purchase of a new residential house at Flat No. C-1103 AKME RAGGA and also used for repayment of a housing loan which is borrowed on a property located at PTS-01-0802 EMMAR PALM TERRACES. Thus, the assessee has invested a capital gain in purchase of two residential houses.

9. The assessee can take shelter and claim deduction u/s 54 only when the assessee invests the long term capital gain in purchase or construction of a single residential house. The words 'a one residential' mentioned in Section 54 of the Act is refers to only a one house which can be purchased or constructed to the amount of capital gain. The word 'a residential house' cannot be read or interpreted as 'more than one house' in the present case, wherein both the houses situated in separate buildings and in different places.

10. The Ld. Counsel for the assessee has relied on the judgment of High Court of Delhi dated 21/02/2013 in the case of Geeta Duggal in ITA No. 1237/2011. The factual matrix of the said case and the present appeal are entirely different. In the case of Geeta Duggal (Supra), the assessee has claimed deduction for purchasing basement, ground floor, first floor and second floor in a single building. The Hon'ble Court's opinion is that, the physical structure of a new residential house whether it is literal or vertical, should not come in the way of considering the building as a residential house and there can be several independent units can be permitted in a single building for allowance of the deduction u/s 54/54F. But in the present case, the assessee has admittedly claimed deduction u/s 54 of the IT Act with respect to two different houses i.e. purchase of a new house and for repayment of loan borrowed for acquisition of another house which is situated not only in different building but also in a different area. Therefore, the judgment relied by the Ld. Counsel for the assessee is not applicable to the present case.

11. The Assessing Officer and the Ld.CIT(A) have elaborately discussed the facts and also applied the settled principles of law on the issue involved and passed well reasoned order which requires no interference from this Tribunal. Therefore, we do not find merit in the grounds of appeal of the assessee. Accordingly, we dismiss the Grounds of Appeal No. 1 to 20.

12. In the result, the Appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on this 08th Day of July, 2022

Sd/-
(DR. B. R. R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 08/07/2022
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI