

INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C": NEW DELHI

BEFORE

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 8339/Del/2018
Assessment Year: 2013-14

DCIT, Circle 1(1)(2), Intl. Taxation, New Delhi.	Vs.	Heera Lal Bhasin Legal Heir of Lt. Sh.Mohan Lal Bhasin, S-529, 2 nd Floor, Greater Kailash, Part-II, New Delhi 110 048 PAN AFZPB1934J
(Appellant)		(Respondent)

Assessee by:	Shri S. Deora, Advocate
Department by :	Ms. Anupama Singla, Sr. DR
Date of Hearing	26.05.2022
Date of pronouncement	01.08.2022

ORDER

PER ASTHA CHANDRA

The appeal by the Revenue is directed against the order dated 30.10.2018 of the Ld. Commissioner of Income Tax (Appeals)-42, New Delhi ["CIT(A)"] pertaining to the Assessment Year ("AY") 2013-14.

2. The Revenue has taking the following grounds of appeal:-

- "1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing deduction u/s 54 of the IT Act amounting to Rs. 3,55,40,000/-.*
2. *The Ld. CIT(A) erred in holding that the expression 'a house' mentioned in section 54 of the IT Act 1961, may mean several contiguous houses.*

3. *The Ld. CIT(A) failed to appreciate that in the present case the assessee had purchased three independent residential plots and had constructed three independent houses each having all facilities like kitchen, living rooms, toilets etc. Three separate plans were approved by municipal authorities for these houses. In fact three separate purchase deeds were signed for purchase of three residential plots which were next to each other."*

3. The facts in brief are that the assessee was a non-resident Indian (NRI) who expired on 30.01.2014 in Kuwait. The return for AY 2013-14 was e-filed on 30.07.2013 by his son Mr. Heera Lal Bhasin, in his capacity as Legal Heir of his deceased father declaring income at Rs. 6,98,170/-. The assessee had sold his residential property in New Delhi for Rs. 7,00,00,000/- on 2.11.2012 resulting in Long Term Capital Gain of Rs. 6,70,18,000/- which the assessee claimed as exempt u/s 54 of the Income Tax Act, 1961 (**the "Act"**) as he invested Rs. 9,44,34,110/- in purchase of three plots in Gurgaon, Haryana and constructed houses on them after getting approved the floor plans from the District Town Planner. During assessment proceedings, the assessee contended before the Ld. AO that he purchased three plots of land and constructed a single house on all three plots; that the family of the assessee is using the aforesaid house as a single residential house; that the construction of the above mentioned house on adjacent plots enabled the assessee to build up big house and that the expression 'a residential house' in section 54 of the Act is not confined to a single flat or house. The assessee supported the above contentions by relying of the following decisions:-

- (i) CIT vs. D. Ananda Basappa 223 ITR 186 (Kar)
- (ii) CIT vs. Sunita Aggarwal 284 ITR 20 (Del)
- (iii) CIT vs. Gita Duggal 30 taxmann.com 30 (Del)

3.1 The contentions raised by the assessee were not acceptable to the Ld. AO. He was of the view that the assessee constructed three independent residential houses. It cannot, therefore be said that three houses are 'one residential house' as each of them is independent house consisting of separate kitchen, bathroom, drawing room and bed room. He referred to the

amendment in section 54(1) of the Act brought by Finance Act, 2014. He also observed that the decisions relied upon by the assessee were distinguishable on facts. Accordingly, in the assessment framed by him on 29.12.2017 under section 147 r.w. 143(3) of the Act, the Ld. AO restricted the deduction under section 54 of the Act to only one house which amounted to Rs.3,14,78,037/- resulting in addition of Rs. 3,55,40,000/- to the income of the assessee.

4. The assessee carried the matter in appeal before the Ld. CIT(A) who gave relief to the assessee by holding that the assessee's claim of deduction under section 54 is justified. He recorded his findings as under:-

"6.2 It is evident from the extracts of CIT(A) order as re-produced above that the crux of the matter is that whether the appellant is allowed deduction u/s 54 of the act particularly where the AO observed that 3 plots were purchased separately through 3 separate registered purchase deeds and three separate buildings plans were approved. The AO restricted the deduction claimed u/s 54 of the Act to only single house on the ground that the provisions of Section 54 allow the deduction only in respect of investment in one residential house. The assessee produced photographs of the considered houses during the appellate proceedings, against the first round of the assessment, which clearly show that there are 3 similar units in a single compound wall and the remand report was called from the AO to comment on the new facts ascertained during appellate proceedings vide letter dated 18.10.2016. However, no response was received in this regard from the AO.

6.3 It is interesting to note that in the assessment made after re-opening of the case, the AO held that each of 3 houses is independent house consisting of separate kitchen, separate Bathroom, separate drawing room and separate bedrooms and the same is evident from the certificate issued by District Town Planner. Accordingly, the AO held that even if 3 similar residential houses are situated in a common compound wall, it is still a case of investment in purchase/construction of 3 independent houses bearing distinct number 195,196 and 197.

6.4 In this case, the assessee has relied on the Hon'ble Delhi High Court judgment in the case of Gita Duggal. As discussed above, Hon'ble Delhi High Court in the case of Gita Duggal held that Word "a" may represent the multiple residential units so long as the same are in the same building and contiguous to each other & used as single residential house. In the present case, the claim of deduction u/s 54 of I.T. Act is for a residential house built-up on three adjacent contiguous plots. The principle of multiple residential houses/units holds good till these units are in same physical location and contiguous to each other. Accordingly, respectfully following the decision of Hon'ble Delhi High Court in the case of Gita Duggal, I find that the facts of this case justify the claim of deduction u/s 54 of the Act in respect of three residential houses as the same are contiguous to each other. Hence, the ground of appeal is allowed. "

5. The Revenue is aggrieved by the aforesaid findings of the Ld. CIT(A). The Ld. DR relied heavily on the order of the Ld. AO.

5.1 The Ld. AR submitted that the facts in the case of the assessee is squarely similar to the facts contained in the case of Gita Duggal decided by Hon'ble Delhi High Court vide order dated 21.02.2013. A copy thereof was placed on record. It is pointed out that SLP filed by the Revenue against the decision of Hon'ble Delhi High Court in Gita Duggal's case (supra) has been dismissed by the Hon'ble Supreme Court vide order dated 29.08.2014 in SLP(C) No. 4830 of 2014. It is also submitted that in Gita Duggal's case (supra) the assessee had strongly relied upon the decision of the Hon'ble Karnataka High Court in CIT vs. Smt. K.G. Rukminiamma in ITA No. 783 of 2008 vide order dated 27.08.2010 which has become final as the SLP filed by the Revenue stands dismissed by the Supreme Court. The Ld. AR also relied upon the following decisions of Delhi Bench of the Tribunal:-

- (i) Smt. Chandra Khanna vs. ACIT (ITA No. 6189/Del/2016 dated 03.02.2020)
- (ii) Sanjiv Ahuja vs. ITO (International Taxation) (ITA No. 977/Del/2017 dated 03.03.2021)
- (iii) Saroj Arora vs. ITO (ITA No. 7557/Del/2017 dated 13.01.2022)

5.2 In rebuttal of Ld. AO's reliance on the amendment in Section 54(1) introduced by the Finance Act, 2014 the Ld. AR derived support from the decision of Hon'ble Madras High Court in the case of M/s. Tilokchand & Sons. vs. ITO, Madurai in T.C.(A) No. 771 of 2009 dated 14.03.2019.

6. We have considered the rival submissions of the parties, perused the orders of the Ld. AO/CIT(A) as also the material available in the records. The case of the assessee all along has been that he sold his house in Delhi which was falling short of his needs and constructed a house on three separate plots adjoining each other to enable him to have a house for himself which could accommodate all his family members and families of his children. The intention of the assessee was to acquire one large piece of land for

construction of a large residential house. Therefore, three similar units were constructed contiguous to each other in a single common compound wall.

6.1 The Hon'ble Delhi High Court in CIT vs. Gita Duggal (supra) observed in para 8 of its order as under:-

“Section 54/54F uses the expression “a residential house”. The expression used is not “residential unit”. This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a “residential house” and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be construed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that, the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary implication prohibited.”

6.2 The Delhi High Court has recognised that a person may construct a house according to his plans, requirements and compulsions. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. The Hon'ble Delhi High Court went on to observe further that physical structuring of the new

residential house, whether it is lateral or vertical cannot come in the way of considering the building as a residential house.

6.3 The assessee before us constructed the residential house which consisted of three independent units and as per the decision of Hon'ble Delhi High Court such a residential house cannot be permitted to act as an impediment to the allowance of deduction under section 54/54F.

7. The Hon'ble Madras High Court in the case of Tilokchand & Sons (supra) held that the dislocation of newly purchased residential houses will not alter the position for interpretation of the word "a residential house" to the effect that it may include more than one residential houses.

7.1 In the decision (supra) the Hon'ble Madras High Court also considered the impact of the amendment by Finance (No.2) Act of 2014 w.e.f. 01.04.2015 which could operate only prospectively from AY 2015-16. The present case before us is prior to that. In this view of the matter, reliance upon the amended law w.e.f. 01.04.2015 by the Ld. AO is misplaced.

7.2 The Hon'ble Madras High Court in the decision (supra) also held that in the first part of section 54(1) of the Act, the words 'being a Residential House' coupled with the words 'Buildings or Lands' (plural) appurtenant purchased thereto both clearly indicate the plural sense. The Court further observed that the word 'a' in section 54(1) prior to amendment w.e.f. 01.04.2015 would normally mean one. But it can in some circumstances include within its ambit and scope plural number also. It may be two or three or even more. The very need to amend the later part of section 54(1) seems to have been to restrict such plurality to be included in word 'a' by inserting "one residential house" w.e.f. 01.04.2015.

8. Relying on the decision of Hon'ble Delhi High Court in the case of Gita Duggal (supra) in which the Hon'ble Delhi High Court quoted with approval

the decision of Hon'ble Karnataka High Court in Smt. K.G. Rukminiamma's case (supra), the Ld. CIT(A) held that word 'a' may represent the multiple residential units so long as they are in the same building and contiguous to each other and used as single residential house. In the present case the claim of deduction under section 54 of the Act is for a residential house built up on three adjacent contiguous plots. He further observed that the principle of multiple residential houses/units holds good till these units are in same physical location and contiguous to each other. We are inclined to agree with the above observations and findings of the Ld. CIT(A).

9. In view of the foregoing discussion and on the facts and in the circumstances of the case of the assessee, we do not find substance in the contentions raised by the Revenue in its appeal. Hence we hold against the Revenue.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 1st August, 2022.

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 01/08/2022

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR
ITAT, New Delhi**

Date of dictation	
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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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