

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 346/Del/2017 : Asstt. Year : 2012-13

Sh. Omkar Chadha, I-39, Jangpura Extn., New Delhi-110014	Vs	Income Tax Officer, Ward-54(3), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAEP8329G		

Assessee by : Sh. K. Sampath, Adv.

Revenue by : Ms. Rakhi Vimal, Sr. DR

Date of Hearing: 25.06.2020

Date of Pronouncement: 13.07.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-18, New Delhi dated 05.12.2016.

2. Following grounds have been raised by the assessee:

"1. Confirming the following additions made by the Assessing Officer:

a. Rs.17,29,976/- on account of capital gains;

b. Rs.50,000/- on account of disallowance of business loss.

2. Enhancing the income from capital gains by Rs.73,18,424/-."

3. Brief facts of the case are that the assessee sold a land that he inherited with stated consideration in the sale deed at

Rs. 78.75 lakh, the circle rate being Rs. 118.55 lakh, on which the appellant has made claim of exemption on account of two assets under section 54F, which is dispute before us.

4. The relevant facts related to these transactions are:

(1) The land was purchased by the father of the appellant in 1965 - 66 per Rs. 3800/-and subsequently inherited by the appellant.

(2) The land was sold on 02.12.11 to one Mr. Anuj Kumar for a sale consideration of Rs. 78.75 lakh as per the sale deed.

(3) The minimum value as per the circle rate was Rs. 1,18,55,480/- (and the stamp duty of Rs. 7.2 lakh thereon was paid by the buyer), taken at Rs. 1.20 crore.

(4) The appellant thereafter entered into an agreement for purchase of a flat with the builder M/s Ansal housing and construction, and the booking amount was paid on 20/1/2012.

(5) The total consideration for purchase of this flat was Rs. 65,41,210/-

(6) The appellant made payments from time to time and deposited Rs. 890760/- in Capital Gains Account Scheme for balance payment.

(7) The appellant also is claimed to have constructed new residential house over and above the existing residential property of the appellant at JungPura extension, spending in the process Rs. 24.2 lakh for additional construction of area 40 m².

In this backdrop, the appellant has made the computation of capital gains and the claim of exemption under section 54F as under:

Minimum Value as per Circle rates		1,18,55,480	
Actual Sales Consideration	78,75,000		
Purchase Cost Year	11.03.1966	3,800	
Valuation on 01.04.1981		3,76,000	
Indexed Cost of acquisition at CII	785	29,51,600	29,51,600
Capital Gain			89,03,880
Deduction u/s 54F		1,18,55,480	
Investment in residential Property- Ansal		64,28,424	
Construction of Residential House		24,20,000	
Capital Gains FDR	8,90,000		97,38,424
			NIL

5. During the assessment, the Assessing Officer negated the claim of the assessee in respect of investment in the second residential house taking a view that the exemption is limited to investment in one residential property only.

6. After giving option to the assessee who chose to avail the benefit in respect of the flat taken from M/s Ansal, the AO restricted the exemption to investment in that flat, and denying the exemption in respect of construction in the existing residential property, which is under challenge. A related issue on which an enhancement of taxable income of the assessee, wherein the Id. CIT (A) denied the deduction completely, for

violation of requisite conditions stipulated in clause (a)(ii) to Sec. 54F.

7. Heard the arguments of both the parties and perused the material available on record.

8. We are taking up the issue of complete denial of exemption u/s 54F by the Id. CIT (A). The Section 54F reads as under:

"[Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset: or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]"

9. The Id. CIT (A) observed that the assessee has made a claim u/s 54F for investment of residential property at Ansal for Rs.64,28,424/- and also claimed deduction on account of construction of residential house for Rs.24,20,000/-. The Id. CIT (A), invoked the Clause (b) mentioned above and denied the deduction completely. The Id. AR in relation to the sub-clause (iii) of the Clause (a) submitted that the assessee has added two rooms in his already existing residential property and the

sub-clause (iii) is not applicable and hence the provision (a) to Section 54F is not applicable.

10. We find that the decision of the Id. CIT (A) denying the entire claim is not in consonance with the provisions of the Act. The assessee has to be allowed for at least one of the investment made.

11. Having said so, the issue of allowability of the deduction on the investment made in two different properties out of the capital gains is being examined.

A. Claim U/s 54F for Investment for residential property for Rs.64,28,424/- or

B. Claim for Construction of residential house of Rs.24,20,000/- or both.

12. We have examined the case of Gita Duggal 257 CTR 208 wherein the Hon'ble High Court held that "the expression "a" residential house should be understood in a sense that building should be of residential nature and "a" should not be understood to indicate a singular number. Also, section 54/54F uses the expression "a residential house" and not "a residential unit". Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires building, which may be constructed, for the sake of convenience, in such a manner a 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 satisfied. There is nothing in these sections which require the residential house constructed in a

particular manner. The only requirement is that it should be for 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 that the income authorities cannot insist upon that requirement. A person may construct a house according his plans, requirements and compulsions. A person may construct a residential house in a manner that he may use the ground floor for his own residence and let out the first having an independent entry so that his income is augmented. It is quite common to find arrangements, particularly post-retirement. One may build a house consisting of 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 caved out with an independent entrance so that it can be let out. He may even arrange for his children and family to there, so that they are nearby, an arrangement which can be mutually supportive. He construct his residence in such a manner that in case of a future need he may be dispose of apart thereof as an independent house. There may be several such considerations for a person while constructing a residential house. The physical structuring of the residential house, whether it is lateral or vertical, cannot come in the way of considering building as a residential house. The fact that the residential house consists of se independent units cannot be permitted to act as an impediment to the allowance of deduction under section 54/ 54F. It is neither expressly nor by necessary implication prohibited."

13. We have also examined the case of CIT Vs Syed Ali Adil 260 CTR 219 wherein it was held that expression "a residential

house" in section. 54 (1) has to be understood in the sense that the building should be of residential nature and "a" should not be understood to indicate a singular number. Where an assessee had purchased two residential flats, he is entitled, exemption under section 54 in respect of capital gains on sale of its property on purchase both the flats, despite the fact that the flats, despite the fact that the flats were purchased by separate sale deeds. Deduction is allowable even if the flats are on different floors. On facts, as the two flats purchased by the assessee are adjacent to one another and have a common meeting point, the deduction cannot be denied.

14. In the case of Anand Basappa 91 ITD 53, the Co-ordinate Bench of ITAT at Bangalore observed as to whether 'a residential house' should be treated as 'one residential house' or whether 'more than one residential house' can be considered eligible for deduction under Section 54. The Tribunal observed as under:

"Reading the provisions of Section 54-it can be held that there is no bar like Section 54F to claim deduction for more than one residential house. If the assessee is holding 'a residential house' called building-A and on sale of such house if the assessee acquires property-X, the assessee is eligible for deduction under Section 54. Similarly, in the same year, if the assessee sells residential house 'B' and acquires a house property 'Y' out of such proceeds, still the assessee is eligible for deduction under Section 54. This means that there is no bar in acquiring more than one residential house to claim deduction under Section 54 unlike Section 54F. If this be the case, then it can be held that if the assessee acquires even two adjacent houses to meet his needs out of the proceeds of only one residential house, he cannot be denied exemption under Section 54. What is to be examined is whether the conditions of Section 54 are satisfied at

the time of investment in each property. In the present case, it can be seen that both the properties were acquired simultaneously i.e. within the period specified in Section 54. To put it in different words, when the assessee sold the original property and earned capital gain out of same, what is to be seen is whether the sale proceeds of original asset has been utilised in acquiring another house property. We find that both the apartments were acquired simultaneously and hence the conditions for acquiring 'a residential house' within the time specified are complied with. The assessee is therefore eligible for deduction under Section 54 in respect of both the apartments simultaneously acquired. We, therefore, examine as to whether 'a residential house' should be treated as 'one residential house' or whether 'more than one residential house' can be considered eligible for deduction under Section 54. Reading the provisions of Section 54-it can be held that there is no bar like Section 54F to claim deduction for more than one residential house. If the assessee is holding 'a residential house' called building-A and on sale of such house if the assessee acquires property-X, the assessee is eligible for deduction under Section 54. Similarly, in the same year, if the assessee sells residential house 'B' and acquires a house property 'Y' out of such proceeds, still the assessee is eligible for deduction under Section 54. This means that there is no bar in acquiring more than one residential house to claim deduction under Section 54 unlike Section 54F. If this be the case, then it can be held that if the assessee acquires even two adjacent houses to meet his needs out of the proceeds of only one residential house, he cannot be denied exemption under Section 54. What is to be examined is whether the conditions of Section 54 are satisfied at the time of investment in each property. In the present case, it can be seen that both the properties were acquired simultaneously i.e. within the period specified in Section 54. To put it in different words, when the assessee sold the original property and earned capital gain out of same, what is to be seen is whether the sale

proceeds of original asset has been utilised in acquiring another house property. We find that both the apartments were acquired simultaneously and hence the conditions for acquiring 'a residential house' within the time specified are complied with. The assessee is therefore eligible for deduction under Section 54 in respect of both the apartments simultaneously acquired."

15. We have also examined the rationale enunciated in the case of Sardarmal Kothari 302 ITR 286 as to the liberal construction of the provisions of the Act.

16. The Id. DR argued that there has been an amendment in the provisions of the Act wherein "a residential house" has been amended as "one residential house" and argued that this amendment is clarificatory in nature, hence the case laws mentioned above are no more applicable to the instant case. Relying on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs Rajendera Kumar in ITA No. 65/2013, the Id. DR argued that any amendment which was introduced to rationalized and clear the existing ambiguity and doubts are to be treated as retrospective in nature. We find that this amendment is clearly mentioned to be w.e.f. 01.04.2015 and hence unable to agree with the argument of the Id. DR that the amendment is clarificatory in nature.

17. In the instant case, the issue is different from what has been examined in the case laws cited by the Id. Counsel of the assessee. In all the situations, the Courts upheld the deduction in the situations where the multiple units were either adjacent or on the same floor or on the different floors or multiple units in the same residential complex owing to division of property.

Whereas in the instant case, there was no such division of property among the members and the investments are at different locations one being the investment in residential property at Jungpura of Rs.24,20,000/- and the other being at Ansal properties in NCR. No case law has been brought to our notice wherein two distinctly placed properties have been allowed for claim of deduction u/s 54F. Keeping in view, the geographical distances, the investment in two differently placed properties cannot be termed to be "a residential house" even after resorting to liberal interpretation of "a residential unit". All the case laws relied by the counsel are found to be factually different from the instant case.

18. Hence, keeping in view, the provisions of Section 54F, the amendments, the ratio of judgments wherein two residential units are considered as "a residential house" and keeping view the facts of the instant case wherein the assessee has invested in two distinctly identifiable properties at separate locations, we hereby hold that the assessee is eligible to claim deduction on the investment of capital gains in the Ansal property of Rs.64,28,424/- and Rs.8,90,760/- invested in the capital gains bonds. The investment in the residential property at Jungpura of Rs.24,20,000/- is liable to be taxed under the head "capital gains".

Business Loss:

19. The assessee was in the trading business of car seat covers. During the year, the loss computed at Rs.3,13,826/- has been set off against the other income. The AO observed that as against receipt of Rs.10,522/-, the assessee has claimed

expenses on account of depreciation on car, salary of employee, petrol and other expenses. The AO disallowed 50% of the salary expenses of the employees. We hold that the salary paid by the assessee to the employees cannot be disallowed without bringing anything on record to prove that such payments were bogus in nature. Hence, the disallowance made by the AO is hereby directed to be deleted.

20. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 13/07/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 13/07/2020

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR