

Income Tax Appellate Tribunal - Panji

Girish L Ragma, Panaji vs Department Of Income Tax on 8 August, 2014

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH, PANAJI

BEFORE SHRI P.K. BANSAL, HON'BLE ACCOUNTANT MEMBER

AND SHRI D.T. GARASIA, HON'BLE JUDICIAL MEMBER

ITA NO. 116/PNJ/2014

:

(ASST. YEAR : 2010-11)

Asst. Commissioner of Income Vs. Shri Girish L. Ragma

Tax, Circle-1(1), Panaji, Goa
(Appellant)

2nd floor, M/s. Ashraya Constructions,
Landscapre Shire, Caranzalem, Goa
PAN : AFAPR0792K (Respondent)

Assessee by : Srinivas Nayak, CA

Revenue by : Nishant K., Ld. DR

Date of Hearing : 15/07/2014

Date of Pronouncement : 08/08/2014

ORDER

PER D.T. GARASIA :

1. This appeal is filed by the Revenue against the order of CIT(A) dt. 19.12.2013 for A.Y 2010-11 by taking the following effective grounds of appeal:

"1. The order of the learned CIT(A) is opposed to law and facts of the case.

2. The Ld. CIT(A) has erred in deleting the additions of Rs. 1.64 crores on account of Long Term Capital Gains when the assessee did not construct new house nor purchased a new house as per condition laid down in section 54 of I.T. Act. The assessee's contention was that he is in possession a new residential house which proved wrong on spot verification.

3. The Ld CIT(A) has erred in granting exemption u/s. 54 without assessee fulfilling any of the conditions prescribed therein.

4. The Ld CIT(A) erred in not considering the other ground on which addition was made, being the assessee had not returned any property income from the properties sold."

2. The brief facts of the case are that the Assessee filed return of income declaring income of Rs.43,93,660/-. The Assessee is a civil engineer by profession and started his business as sub-contractor 16 years back. The Assessee has his own firms named M/s. Ashraya Constructions and M/s.

Ashraya Real Estate Developers. In A.Y 2010-11 the Assessee got Rs.1,64,22,535/- as Long Term Capital Gains but invested in purchase of new residential house as per Sec. 54 of the Act. The Assessee has in financial year 2009-10 sold two residential properties and invested the amount to purchase new residential property as per Sec. 54 of the Income Tax Act, 1961. The Assessee sold property bearing no. 17117, Matriz No. 1, Santa Inez, Panaji to Shri Arjun Mangaldas for total consideration of Rs.81,00,000/- vide sale deed dt. 17.9.2009. The property was in the name of the Assessee. From the sale proceeds, Assessee got Long Term Capital Gains of Rs.33,60,000/-. The Assessee sold another property bearing Flat no. E-102, Matriz no. 1258, Survey no. 235/1 Taleigao to Shri Shobhit Gupta for sale consideration of Rs.1,60,00,000/- by memorandum of understanding. The property was in the name of the Assessee and his wife. Thus, the Assessee has received Long Term Capital Gains of Rs.1,30,62,535/- + Rs.33,60,000/- totalling to Rs.1,64,22,535/-. The Assessee and his wife, Smt. Ashwini Ragha planned to purchase a residential property from M/s. Ashraya Real Estate Developers (his own firm). On 16.3.2010 the Assessee and his wife made agreement with M/s. Ashraya Real Estate Developers to purchase flat at Taleigao for total consideration of Rs.1,75,00,000/-. In the agreement of sale it is clearly mentioned that M/s. Ashraya Real Estate Developers will construct the flat and hand over to the Assessee within 2 years and that M/s. Ashraya Real Estate Developers has applied for conversion of land with Addl. Collector at Panaji and also applied for No Objection with Town Planning and Public Works Dept. The Assessee has paid Rs.1,64,75,600/- to M/s. Ashraya Real Estate Developers before 3 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) 31.3.2010. The Assessee has made agreement with his own firm. The AO has discussed Sec. 54 of the Income Tax Act and as per Sec. 54 of the Act, the Assessee has to satisfy that the Assessee has within period of one year before or two years after date on which the transfer took place, purchased or within a period of 3 years after that date constructed a residential house. If the Assessee is unable to utilize the Long Term Capital Gains, it has to be kept in bank and utilized later according to the provisions of sub-section of Sec. 54 of Income Tax Act, 1961. The Assessee has invested Rs.1,64,22,535/- to purchase a new residential house from M/s. Ashraya Real Estate Developers with an agreement that the Assessee has to be handed over possession within two years. According to Sec. 54 Assessee has to purchase a residential house within two years from the date of transfer. The Assessee has sold two residential properties. If we consider the date of transfer of the second property, then, the Assessee should get house occupancy certificate from M/s. Ashraya Real Estate Developers before 1.12.2011. The AO has verified and made site inspection alongwith the Assessee and it was found on the spot that construction was going on and only pillars were constructed (car parking) and there was no residential house. Therefore, the Assessee was called personally and following questions were put to the Assessee :

"Q.No.6. Please give details of the properties you sold during the year 2009-10. Ans. I have sold two properties in the financial year 2009-10. They are, 1) Flouse no.11/125/2, of chalta number 326 of PT sheet 77, Panaji and 2) Flat number E-102, in CABO Complex, Landscape town, Dona Paul, Talegao.

Q.No.7. How much long term capital gains you got out of the above sales? Ans. I got Rs.1,64,22,535/- as Long Term Capital Gains from the above two sales.

Q.No.8. Why you have not offered the LTCG for tax?

Ans. The existing flat was small and I wanted to shift to Dona Paul. I invested the LTCG to purchase the new Residential House.

Q.No.9. From whom you made agreement to purchase a residential property?

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Ans. I Made agreement with M/s Ashray real Estate Developers to purchase the new Residential property.

Q.No, 10. That means you have made agreement with your own firm to purchase residential property.

Ans. Yes. As I was already into this field, I thought why I have to invest in others property so I made investment in my own Firm i.e., M/s Ashray Real Estate Developers.

Q.No.16. Whether you received the flat from Ashray real estate developers? Ans. No, I have not received the flat till date as it is under construction.

Q.No, 17. Whether you received the occupancy certificate till date? Ans. No, I have not received occupancy certificate till date. The entire property was under litigation, so partitioning and sanad of the plot was not possible. Only in 2012 the partition was done and in the same year sanad was given. Because of this construction got delayed. M/s Ashray Real Estate Developers Will complete the construction by march, 2013 and may get occupancy certificate in march,, 2013.

Q.No.18. On 07-12-2012, I made visit to your site where you proposed to build the flat. Along with me, you and your Chartered Accountant Mr. Shanbhag also visited the spot. In that spot there was no flat, but some construction was going on and only car parking slot was constructed. As a partner of M/s Ashraya Real Estate developers when you will finish the construction of the flat and hand it over to Mr. And Mrs Girish Laxman ragha?

Ans. Yes it is true and it is proposed to finish it by March, 2013.

Q.No. 19. It violates provisions of section 54 of Income tax Act 1961, why the Long term Capital Gains received by you in the financial year 2009-10 should not be added back to the total income and taxed?

Ans It was not intentional and I as a purchaser and seller was not having any malafied intentions. M/s Ashraya Real Estate Developers filed letter with Deputy collector for partition in 2010 itself but the request was kept in abeyance by Deputy collector stating that a civil suit bearing civil suit no. 6/2009/A is pending. I or M/s Ashray Real Estate Developers have not done anything wrong but because of procedural delay and also because of legal obstructions the project could not be perceived in time. So I request you to consider my exemption claim favourably and not to acid back the amount to my return income.

Q.No. 20. Do you have anything else to say?

Ans. No, I don't have anything to say."

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From the questions and answers the AO was of the view that the Assessee has not received the house before due date. The Assessee was aware that permission was delayed because of litigation. After lapse of two years when the Assessee has not received the house, they should have offered long term gain to tax but the Assessee has not done so and when the spot inspection was done, it was established that there was no house on said site and Assessee agreed that they have not received the house. The AO was of the view that Assessee's intention was not to offer long term capital gains for taxation and he tried to escape from the liability to pay taxes. The AO also held that the Assessee has invested for purchasing residential house but the vendor has not handed over the house to them is not acceptable because the vendor is the Assessee himself. Therefore, action of Assessee of making payment to his own firm for purchasing residential house is questionable and the AO has relied on the following decisions and disallowed the same :-

- 1) M.B. Ramesh Vs ITO (Kar) 320 ITR 451 "Exemption u/s 54 denied relying on Panchayat records which showed that no residential property on the site- Upheld"
- 2) Shantaben P. Gandhi Vs CIT (Guj) 129 ITR 218 "To claim exemption u/s 54, the construction of the new house should be within two years after the transfer of the existing house and not before the date of transfer"
- 3) 28 taxmann.com 286 (Chandigarh - Trib.) [2012] "Assessee would not be entitled to deduction under section 54F on her failure to construct new residential property within specified period on plot purchased by her out of sale proceeds of her old property"
- 4) CIT Vs V.R. Desai (Ker) 197 Taxman 52 CAPITAL GAINS 439 "Sec. 54F -- Net sale consideration should be deposited in Capital gains account scheme in bank or utilized for construction of house before the due date of filing of return".

5) V.K.S. Bawa Vs ACIT (ITAT, Del) 53 ITD 232

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Property in legatee vests as soon as assent of executor is granted, which may be express or implied -- Mutation not done by Land Revenue authorities is not relevant -- Assessee is owner of property -- 54F claim not allowable since assessee already owns a property"

6) Ranjit Narang Vs CIT (All) 317 ITR 332 "Capital gains invested in bank and claimed exemption u/s 54F Not utilized within the 3 year period -- Chargeable u/s 45 as income of the previous year in which the 3 year period expires"

The matter carried to CIT(A) and CIT(A) has allowed the appeal by observing as under :

8. The facts emerging from the assessment order and discussion held during the course of assessment proceedings, can be summarized as under:

i) The assessee sold two residential houses in order to build one bigger house for self-occupation.

ii) The assessee bought a piece of land from a third party in an auction conducted by a bank.

iii) The assessee paid money to M/s Ashray Real Estate Developers, a partnership firm, wherein, the assessee (an engineer) and his wife (an architect) are partners to construct the residential house.

iv) Once the construction of the house commenced, the assessee came to know that there was some problem with the title of the land. Since the assessee bought the land in a Bank auction, he had no idea that there could be a deficiency in the title of the land.

v) Because of the litigation, the construction of the house came to stand still and the house could not be completed within the stipulated time limit provided u/s

54.

vi) Once, the legal battle was over, the construction recommenced and the house was finally completed and completion certificate was received vide certificate dated 16.12.2013.

9. On perusal of complete facts of the case, it can be appreciated that the A.O. refused deduction u/s 54 because construction of new house could not be completed within two years of sale.

On the other hand, the appellant prayed that the construction could not be completed because of circumstances beyond his control. He should not be denied deduction and penalised for no fault of his as the litigation was not anticipated and 7 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) beyond his control. The A.O., in his support has placed reliance on many judicial pronouncements, which are analysed as under:

i) M. B. Ramesh vs ITO (Kar) 320 ITR 451.

In this case exemption u/s 54 was denied relying on panchayat records which showed that there was no residential property on the site.

In my opinion, ratio of the above quoted judgement is not applicable in the instant case, as it is not in dispute that the appellant actually constructed a residential house.

ii) Shantaben P. Gandhi Vs CIT (Guj) 129 ITR 218 In this case exemption was denied as the new property was not completed within the stipulated time limit.

Ratio of CIT Vs V. R. Desai (Ker) 197 Taxman 52 and V. K. S. Bawa Vs ACIT (ITAT Del) 53 ITD 232 are not applicable in the instant case because the appellant actually started construction of the house property, so he did not need to deposit money in the capital gain account.

On the other hand, the appellant has placed reliance on the decision in the case of CIT Vs Sardarmal Kothari & Anr.

In this case, the Hon'ble Madras High Court upheld the order of the Hon'ble ITAT. Wherein the ITAT decided as under:

"In order to get the benefit u/s 54F, the assessee need not complete the construction of the house and occupy the same. It is enough if the assessee establishes that the assessee had invested the entire net consideration within the stipulated period".

There is no dispute about the fact that in the instant case, the assessee paid entire amount to M/s Ashray Real Estate Developers for the purpose of construction of house, immediately on receipt of sale consideration of old houses, within the period stipulated in S.54. For circumstances beyond the control of the assessee, the construction could not be completed.

In my opinion, the, facts of the instant case are covered by the decision of above discussed decision and therefore, the A.O. is directed to allow deduction amounting to Rs. 1,64,22,535/- u/s 54 to the assessee and delete the addition made.

In the result, the appeal is allowed."

3. The ld. DR submitted that as per Sec. 54 of the Income Tax Act the Assessee has to satisfy the AO that he has sold the residential property and residential property has to be sold in previous year. The Assessee has not offered any income with respect to the two properties he has sold, therefore, whether the Assessee has sold the residential property or not is not clear from the return filed by the Assessee. Moreover, Assessee has invested the Long Term Capital Gains in his own firm and Assessee could not get the possession within two years. Time limit is prescribed u/s 54 of the Income Tax Act, therefore, AO is justified in his action and CIT(A) has without considering the decisions of various High Courts allowed the claim of the Assessee.

4. The ld. AR has filed written submission which reads as under :

1. The assessee is individual having business of civil construction and real estate development. During the year the assessee had income from house property, business, capital gains and other sources.

2. The assessee had filed its Return of Income on 29.09.2010 declaring income of Rs. 43,93,660/-. Enclose as per Annexure - I.

3. The assessee is subject to tax audit u/s. 44AB of the Income tax Act, and necessary report has been furnished during the course of Assessment proceedings.

4. The assessee has been assessed by Asst. Commissioner of Income tax, Circle 1(1), Panaji, Goa, and have passed the assessment order u/s. 143 (3) of the Income Tax Act.

5. Scrutiny notice u/s 143(2) of the IT Act, was issued to the assessee on 30/8/2011 and the AO passed the assessment order u/s 143(3) of the IT Act', disallowing the assessee claim u/s 54 of the IT Act, of Rs.1,64,22,535/-. Annexure - II.

6. During the assessment year, the assessee had sold two residential house properties, specifically flat at Lawande Manor, St.Inez, Panaji, for Rs.81.00 lacs (Purchased in June'2004) and flat at Cabo Housing Complex at Landscape Town-Phase II, for Rs.160.00 lacs (Purchased in Sept'2005).

7. Flat at Lawande Manor was owned by Shri. Girish Ragha and was sold to Shri. Arjun Mangaldas by executing the sale deeds dated 17/09/2009 for Rs.81.00 lacs. Enclosed find the copy of the sale deed. Annexure -- III.

8. Flat at Cabo Housing Complex at Landscape Town was owned jointly by Shri. Girish Ragma and his wife Smt. Ashwini Ragma and was sold to Shri. Shobit 9 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) Gupta vide memorandum of understanding dated 01/12/2009 and subsequent sale deed dated 20/12/2010 for Rs. 1.50 crores. Further, amount of Rs.10.00 lacs was received towards the furniture & fixtures hence the total consideration was at Rs.1.60 crores. Enclosed find the copy of the MOU, possession letter and sale deed. Annexure -- IV.

9. The assessee invested the sale proceeds in purchase of residential house property flat at survey no. 206/10, Taleigao, Tiswadi, Panaji, Goa, from M/s. Ashraya Real Estate Developers and executed agreement to sale dated 16.05.2010 for Rs.17500000/-. Enclosed find the copy of the agreement. Annexure - V.

10. M/s. Ashraya Real Estate Developers is a partnership firm of Shri. Girish Ragma and his wife Smt. Ashwini Ragma which is engaged in the business of undertaking land developmental work, civil construction etc., on its own. Enclosed find the copy of the partnership deed. Annexure - VI.

11. Based on the agreement to sale the assessee paid Rs.16475600/- to M/s.

Ashraya Real Estate Developers by 31/03/2010, as detailed towards purchase of the flat. Receipts of the payments made are enclosed. As per Annexure -- VII.

12. Assessee claimed exemption u/s 54 of the Income Tax Act'1961 of Rs.1,64,22,535/- towards the purchase of the new residential house property.

13. During the course of the assessment proceedings the assessee had explained the details of the capital gain and also made the submissions towards the exemption claimed u/s 54 of the Income Tax Act'1961.

14. Without considering the submissions made by the assessee, the AO has passed the order u/s 143(3) of the Income Tax Act'1961, dated 31.01.2013 considering net taxable income of Rs.2,08,16,195/- after disallowing deduction of Rs.1,64,22,535/- claimed by the assessee u/s 54 of the IT Act.

In this connection we wish to make following submissions for your kind consideration.

1. On sale of above two residential house properties assessee earned long term capital gain of Rs.1,64,22,535/- during the year.

2. Assessee sold the two residential properties in order to purchase bigger house for the family and as such he availed the exemption u/s 54 of the Income Tax Act'1961, by investing the total long term capital gain, towards purchase of residential house property and executed agreement to sale with M/s. Ashray Real Estate Developers (in short "Developer") for the same.

3. As per the agreement to sale executed by the assessee, the assessee paid 94% of the total cost i.e. Rs.1,64,75,600/- upfront to the developer and the balance of Rs.10,24,400/- to be payable at the time of sale deed.

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4. M/s. Ashray Real Estate Developers is partnership firm of Shri. Girish Ragma and his wife Smt. Ashwini Ragma formed in year 2006 and are carrying on the business of civil constructions, real estate development and work contracts. Further, it should also be noted that Shri. Girish Ragma is a qualified Civil Engineer and Smt. Ashwini Ragma is a qualified Architect and both of them look after the business of the partnership firm in very professional manner. Further, the partnership has executed number of real estate contracts and files its income tax returns under PAN AAMFA9760F

5. AO has disallowed the exemption u/s 54 of the Income Tax Act'1961, claimed by the assessee on the ground that possession of the new residential flat purchased by the assessee was not obtained within 2 years from the date of transfer and also that the assessee has purchased the flat from the partnership firm where he and his wife are the only partner.

6. We reproduce section 54 of the Income Tax Act'1961 as below:

54. [(1)] [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 appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and 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, then], instead of the capital gain being charged to income- tax as income of the 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 [is greater than the cost of [the 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 under section 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. [(2) 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 11 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) 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 sub-section (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 sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,--

(i) the amount not so utilised shall be charged under section 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.

7. As noted above the assessee has sold two residential house properties and utilized the capital gain made on the sale of the properties towards purchase of new residential house property. Assessee had appropriated the total capital gain towards the purchase of new house property within six months from the date of sale of the house properties.

8. Although the assessee paid the amount towards the purchase of the residential house property to the developer, but the developer was not able to handover the duly completed flat to the assessee in time due to following reasons which led to delay in completion of the flat.

i. Before the execution of the agreement to sale towards the purchase of the flat, the developer had carried out the following:

a. Developer had purchased plot no.14, at "EDCON PARADISE", Taleigao, Panaji, Goa, on which the developer had agreed to construct the building in which the assessee had booked the flat. Copy of the sale deed enclosed. Annexure -- VIII.

b. On purchase of the plot the Developer had applied for partition of the land with the Addl. Collector, North Goa and had also applied for No objection certificate from the Town and Country Planning department and Public Works department for construction of the building. Further, the developer also applied for the construction license with the Village Panchayat of Taleigao. Copies of different approvals applied and obtained are enclosed. Annexure - IX.

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ii. While perusing the matter of availing approvals from the different

department after executing the agreement to sale with the assessee, the developer came to know about the litigation of the entire property 20948 square meters out of which the developer had purchased 548.30 square meters. Legal case document are enclosed. Annexure -- X.

iii. Although the property was purchased through bank auction, the litigation on the property delayed the process of starting the construction on the plot.

iv. After due convincing to the Government authorities in regard to the pending legal matters of the total property, the developer was able to obtain the licenses which prolonged for more than two years, the developer started the work on the building and completed the same in January'2014. Copy of the occupancy certificate enclosed. Annexure - XI.

v. The delay in the completion of the construction from the developer was on account of litigations on the property, which the developer was never aware as the litigation was between the original owners and the bank and not of the developer.

vi. Further, the initial application for partition of the land made by the developer was rejected by the collector giving the reason of legal case on the property. Copy of the partition rejection letter is enclosed. Annexure -- XII.

vii. As such the delay was on account of matters which were outside the control of the developer and are out to be condoned.

9. Further, the clause 6 of the agreement with the developer in regard to the delivery of the flat reads as follow: "The VENDOR shall complete and deliver possession of the SAID APARTMENT within a period of 24 months from the date of Agreement". As such the assessee had purchase the residential flat to avail the benefit of section 54 of the Income Tax Act and has also confirmed that the same will be delivered to him within two years.

10. Further the clause 7 of the agreement with the developer reads as follows:

"The VENDOR shall not be liable for delay in delivery of possession of the SAID APARTMENT due to any Act of God, Force Majeur, non-availability of construction material or due to any notice/order/rule of any authority, delay in the issuance of Occupancy Certificate or such other unforeseen circumstances beyond the control of the VENDOR and the VENDOR shall be entitled to such reasonable extension of time as may be necessary to complete the construction of the SAID APARTMENT".

11. As such in all probabilities the constructed flat was supposed to be delivered to the assessee within two years, but due to unforeseen circumstances as explained above there was delay in completion of the flat, which has been completed and handed over to the assessee in January'2014.

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12. Further, the assessee purchased the flat from his partnership firm M/s. Ashray Real Estate Developers, which is an independent entity doing its own business and filing income tax return, as the firm had the present project in hand as per the requirement of the assessee and also that the firm is into the business of real estate development, assessee found it appropriate to purchase the flat from the partnership firm.

13. Further, the AO has totally ignored the plea of the assessee taken on oath on 21/12/2012 that the delay in construction was on account of legal / government department delay's and there was nothing in the hands of the assessee or the developers to complete the project in time.

14. Further, the AO has relied upon number of judicial pronouncements which are not relevant considering the actual facts and as noted by the CIT(A) in his order.

15. We rely upon the following decisions in favour of our case.

i. [2000] 108 TAXMAN 227 (DELHI) Commissioner of Income-tax v. R.L Sood.

"If the substantial amount is paid in terms of purchase agreement within the stipulated period, the exemption under section 54 is available even if the possession is handed over after the stipulated period."

ii. [2008] 302 ITR 286 (MAD.) HIGH COURT OF MADRAS, Commissioner of Income-tax v. Sardarmal Kothari. "In order to get the benefit under section 54F, the assessee need not complete the construction of the house and occupy the same. Circular No. 667, dated 18-10-1993 ([1993] 204 ITR (St.) 103) would not in any way advance the case of the revenue to come to the conclusion that in order to have the benefit under section 54F, the construction should have been completed."

16. As rightly noted by the CIT (A) in his order while deleting the additions made by the AO that "the assessee paid entire amount to M/s. Ashray Real Estate Developers for the purpose of construction of the house, immediately on receipt of sale consideration of the old houses, within the period

stipulated in S.54. For circumstances beyond the control of the assessee, the construction could not be completed" and as such directed the AO to delete the entire additions amount to Rs.1,64,22,535/-

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Further, all the above issues were raised by us with the CIT (A) and also the documents were submitted during the course of the assessment proceedings as such assessee request for taking the above on record and disposal of the appeal while upholding natural justice."

5. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the Assessee has sold two properties; Flat at Lawande Manor for Rs. 81 lacs and Flat at Cabo Housing 14 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) complex for Rs. 1.60 crore. The flat at Lawande Manor was owned by Shri Girish Ragha and sold to Shri Arjun Mangaldas by sale deed. Flat at Cabo Housing complex was jointly owned by Shri Girish Ragha and his wife Smt. Ashwini Ragha and sold to Shri Shobhit Gupta by sale deed. This fact is not disputed by the AO. The Assessee has invested the sale proceeds in purchase of residential property at Taleigao, Tiswadi, Panaji from M/s. Ashraya Real Estate Developers and executed agreement to sell. M/s. Ashraya Real Estate Developers is a partnership firm of Shri Girish Ragha and his wife, Smt. Ashwini Ragha. M/s. Ashraya Real Estate Developers is engaged in the business of undertaking land development work, civil construction on its own. Assessee has executed agreement with M/s. Ashraya Real Estate Developers for purchase of new residential house and paid all this money to M/s. Ashraya Real Estate Developers. The Assessee has invested Rs.1,64,22,535/- to purchase a new residential house from M/s. Ashraya Real Estate Developers with the agreement that the house has to be handed over within two years. As per Sec. 54 of the Income Tax Act, Assessee has sold two residential properties; one on 17.9.2009 and other on 1.12.2009. The last property was sold on 1.12.2009, therefore, the Assessee has to get the house and occupancy certificate from M/s. Ashraya Real Estate Developers before 1.12.2011. The Assessee has made payment on 16.3.2010. CIT(A) has in para 8 of his order held that M/s. Ashraya Real Estate Developers has started making construction but thereafter there was some problem with the title of the land. Since the Assessee bought the land in a bank auction, he had no idea that there could be deficiency in the title of the land. Thereafter, case was filed before the Collector and the matter was resolved and ultimately the Assessee got the occupancy certificate of the property on 17.1.2014. The copy of the occupancy certificate is produced at pg. 173 of the paper book. Now, the question before us is that as per Sec. 54 of the Income Tax Act when any Capital Gains arises from transfer of long term capital asset being building or land appurtenant thereto and being a residential 15 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) house, the income of which is chargeable under 'income from house property' and within one year before or two years after the date on which the transfer took place the Assessee has purchased or within period of three years after that constructed a residential house, then, instead of Capital Gains being chargeable to income tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the provisions of the section, that is to say, if the amount of the capital gain is equal to the cost of the new residential house, then, there will be no Capital Gains chargeable under the Act and Assessee is entitled for exemption u/s 54 of the Act.

In the case in hand the Assessee has sold the second property on 1.12.2009. The Assessee has made the payment on 16.3.2010. The Assessee was required to get the house and occupancy certificate

on/before 1.12.2011. However, the Assessee got occupancy certificate of the property on 17.1.2014. As per Sec. 54 the Assessee is required to get the occupancy certificate within two years but the possession was handed over to the Assessee only on 17.1.2014. The Assessee submitted documentary evidence before us to show that after purchasing the property there was a civil suit filed by the other parties (copy filed at pg. 143-172 of the paper book) and Assessee could not start construction and licence for constructing the house was obtained by the Assessee on 16.5.2011. The Assessee's construction was delayed, therefore, Assessee has taken the contention before CIT(A) that though the Assessee has made the payment but the Assessee could not get the possession within three years. CIT(A), in his order, relied upon the decision of the Hon'ble Madras High Court in the case of CIT vs. Sadarmal Kothari, 302 ITR 286 (Chennai) wherein it is held that in order to get the benefit u/s 54 of the Income Tax Act, the Assessee need not complete the construction of house and occupy the same. If the Assessee has invested the money and the occupancy certificate is got delayed which is beyond the control of the Assessee, then, the Assessee is entitled for 16 ITA NO. 116/PNJ/2014 (ASST. YEAR : 2010-11) deduction u/s 54 of the Act. Moreover, one more decision in the case of CIT vs. R.L. Sood, 108 Taxman 227 (Delhi) wherein it is held that if substantial amount is paid in terms of purchase agreement within the stipulated period, exemption u/s 54 is available even if the premises is handed over after the stipulated period. We find that in the instant case the Assessee has paid the amount within the time but Assessee got the occupancy certificate after three years. Still, the Assessee is entitled for deduction u/s 54 of the Act. CIT(A), in his order, has rightly held that the Assessee is entitled for deduction u/s 54 of the Act and our interference is not required.

6. In the result, the appeal filed by the Revenue stands dismissed.

7. Order pronounced in the open court on 08.08.2014.

Sd/-
(P.K. BANSAL)
Accountant Member

Sd/-
(D.T. GARASIA)
Judicial Member

Place : PANAJI / GOA

Dated : 08.08.2014

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Copy to :

- (1) Appellant
- (2) Respondent
- (3) CIT(A) concerned
- (4) CIT concerned
- (5) D.R
- (6) Guard file

True copy,

By order