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Income Tax Appellate Tribunal - Mumbai

Hem Chandra R Gavankar, Mumbai vs Income Tax Officer-21(1)(2), ... on 30 November, 2018

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai

Before Shri Saktijit Dey, Judicial Member

ITA No. 7451/Mum/2017
(Assessment Year: 2006-07)

Shri Hem Chandra R. Gavankar B-305 Athashri Baner Off. P.K. Shrodd Road Baner, Pune 411045	Vs.	Income Tax Officer-21(1)(2) 2nd Floor, Piramal Chamber Parel, Mumbai 400012

PAN - ACLPG6019L

Appellant   Respondent

Appellant by: None
Respondent by: Shri S.K. Bepari

Date of Hearing: 27.09.2018
Date of Pronouncement: 30.11.2018

ORDER

Per Saktijit Dey, JM This appeal filed by assessee is directed against the order of the Commissioner of Income Tax (Appeals)-33, Mumbai dated 18.07.2017 and it relates to A.Y. 2006-07.

2. There is a delay of 80 days in filing the present appeal. After considering the reasons for delay as explained by the assessee in the delay condonation petition and the affidavit accompanying it, I am satisfied that the delay in filing of the appeal is due to sufficient cause. Accordingly, I condone the delay and hear the appeal for adjudication on merit.

3. The dispute in the present appeal is confined to denial of deduction claimed under section 54 of the Income Tax Act, 1961 (hereinafter "the Act").

4. Brief facts of the case are that the assessee, an individual, initially did not file his return of income for the impugned assessment year within the due date as prescribed under section 139(1) of the Act. Subsequently, on the basis of AIR information that the assessee has sold an immovable Shri Hem Chandra R. Gavankar property during the relevant previous year but has not offered any capital gain, the Assessing Officer (AO) reopened the assessment under section 147 of the Act. During the assessment proceedings the AO on the basis of information available on record and submission made by the assessee having found that the assessee in the relevant previous year has sold a flat for a consideration of `38,40,480/- proceeded to compute the long term capital gain. After allowing the benefit towards purchase cost of the property and indexation the AO quantified the net long term capital gain at `35,07,490/-. The assessee being 50% owner of the property sold, the AO added an amount of `17,53,750/- at the hands of the assessee being 50% of the net long term capital gain. Being aggrieved by the aforesaid decision of the AO, the assessee preferred appeal before the learned

CIT(A). In the course of hearing of the appeal before the First Appellate Authority the assessee made two fold submissions. Firstly, it was submitted that the AO has wrongly allowed benefit of cost of acquisition at `67,000/- by relying upon the DVO report whereas the cost of acquisition as per the valuation report of the Registered Valuer should be allowed at `3,85,000/-. The second submission made by the assessee was that since the capital gain derived by the assessee was invested in purchase of new flat/residential house the benefit under section 54 of the Act should be allowed. As regards the first contention of the assessee, the learned CIT(A), after examining the claim of the assessee in the context of facts and material on record, accepted that the cost of acquisition of the original asset should be adopted at `3,85,000/- as per the valuation report of the Registered Valuer. As regards the claim of deduction under section 54 of the Act, the learned CIT(A) after referring to the provisions of Section 54 of the Act was of the view that for claiming benefit under the said provision the assessee must invest the capital gain/sale consideration in purchase of house property in its own name. In other words, for availing benefit under the aforesaid provision the assessee must be the owner of the property and/ or must be having legal title over the of the new legal owner of the new house property. For coming to such conclusion the learned CIT(A) primarily relied upon the decision of the Hon'ble Bombay High Court in the case of Praksh vs. ITO (2008) 312 ITR 40. Since, the new house property/ Shri Hem Chandra R. Gavankar flat in respect of which the assessee claimed deduction under section 54 of the Act was purchased in the name of assessee's wife and adult daughter, the learned CIT(A) denied assessee's claim of deduction under section 54 of the Act. While doing so, the learned CIT(A) observed that the assessee had not claimed deduction under section 54 either in the return of income filed for the impugned assessment year or in the course of assessment proceedings. Being aggrieved by the aforesaid decision of the learned CIT(A) the assessee is before the Tribunal.

5. Pertinently, instead of engaging a counsel or appearing in person for representing his case, the assessee has chosen to file a written submission by letter dated 10.04.2018 and has requested disposal of his appeal on the basis of the written submissions.

6. The learned Departmental Representative (D.R.) relying upon the observations of the learned CIT(A) as well as the decision of the Hon'ble Bombay High Court in the case of Prakash (supra) submitted, the assessee having invested the capital gain in a house property purchased in the name of his wife and adult daughter, is not eligible for deduction under section 54 of the Act.

7. I have considered rival submissions and perused the material on record. The core issue arising for consideration before me is, whether the assessee is eligible to claim deduction under section 54 of the Act in respect of investment made in a house property/flat purchased in the name of wife and adult daughter? A reading of Section 54 sub-section (1) of the Act makes it clear that the capital gain derived by the assessee from sale of the original asset if invested by him in purchase of a new asset within the stipulated period would be eligible for deduction under the said provision. In the present case there is no dispute with regard to the source of investment in the new house property. It is also a fact on record that the original asset sold by the assessee giving rise to the capital gain was owned by him with his wife. The AO has also taken note of the aforesaid fact and assessed 50% of the long term capital gain at the hands of the assessee. Insofar as the claim of deduction under section 54 of the Shri Hem Chandra R. Gavankar Act is concerned, the assessee, though, has admitted that the

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property was purchased in the name of his wife and daughter, however, he has submitted that the provisions contained under section 54 being a beneficial provision it should be construed liberally and benefit under the section should be allowed to the assessee. Further, the assessee submitted, interpretation of Section 54 and 54F no way suggest that the new house property, wherein, the assessee invested the capital gain has to be purchased in the name of the assessee. He submitted, the provision only requires the assessee to invest the capital gain in purchase of a new house property. Thus, he has submitted, if the assessee can demonstrate that the investment in purchase of a new property, even though in the name of wife, was made by the assessee from the capital gain, conditions of section 54 will be fulfilled. In support of his contention though the assessee has relied upon certain judicial precedents, however, relevant citations have not been provided in the written submission. Be that as it may, while considering more or less identical issue relating to the claim of deduction under section 54F of the Act, the Hon'ble Bombay High Court in the case of Prakash (supra), had an occasion to interpret the provisions of Section 54/54F of the Act. The Hon'ble High Court held that for claiming deduction under the aforesaid provisions the new house property must be owned by the assessee and/or having legal title over the same. Therefore, as per the ratio laid down in the aforesaid decision of the Hon'ble Jurisdictional High Court if the new house property in respect of which the assessee has claimed deduction under section 54/54F of the Act is not purchased in the name of the assessee, no deduction under the said provisions can be claimed. Though, I must observe, there are judicial precedents holding contrary view including the decision of the Hon'ble Delhi High Court in the case of ITO vs. Kamal Waha 351 ITR 4. However, since I am bound by the decision of the Hon'ble Jurisdictional High Court rendered in the case of Praksh (supra), following the ratio laid down therein I hold that since the purchase of new property/flat is in the name of assessee's wife and adult daughter and not in assessee's own name, the assessee is not eligible to claim deduction under section 54 of the Act.

Shri Hem Chandra R. Gavankar Accordingly, I uphold the decision of the learned CIT(A) on this issue by dismissing the ground raised.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30th November, 2018.

Sd/-

(Saktijit Dey) Judicial Member Mumbai, Dated: 30th November, 2018 Copy to:

1. The Appellant

2. The Respondent

3. The CIT(A) -33, Mumbai

4. The Pr.CIT - 21, Mumbai

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5. The DR, "SMC" Bench, ITAT, Mumbai By Order //True Copy// Assistant Registrar ITAT, Mumbai Benches, Mumbai n.p.