

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2471/MUM/2023
(Assessment Year: 2016-17)**

Gopalkrishna Pandu Shetty,

503/504, Darshan Tower,
Chikuwadi, Borivali (West),
Mumbai - 400092

[PAN: AKXPS6590C]

.....

Appellant

**Assistant Commissioner of Income
Tax, Circle 32(1), Mumbai,**

Room No. 702, Kautilya Bhavan,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051

Vs

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Respondent

Appearance

For the Appellant/Assessee : Shri Manish Sheth
For the Respondent/Department : Shri Manish Ajudiya

Date

Conclusion of hearing : 05.12.2023
Pronouncement of order : 01.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 18/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) dismissed the appeal of the Assessee against the Assessment Order, dated 19/12/2018, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- "1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not considering the claim of Rs.98,91,500/- of the assessee regarding deduction u/s 54 of The Income Tax Act, 1961 against long term capital gain on sale of residential properties.*
- 2 *On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have considered that the assessee himself is signatory as seller director in purchase agreement and also as an individual buyer and hence the registering of the property would not have been possible with registering authorities.*
- 3 *On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have considered that section 54 nowhere stipulates that to claim section 54 deduction, the purchased property must be in the name of the assessee. It only stipulates that the assessee should have purchase residential property. In the case of your appellant, the new property is purchased by the assessee himself even though in the name of his wife as benamidar owner and not real owner.*
- 4 *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in relying on the decision of the Hon'ble Bombay HC in the matter of Prakash S/o Timaji Dhanjode v. ITO Ward 15(1), Nagpur (173 Taxmann v. 311) which is with respect to section 54F and not with respect to section 54 of The Income Tax Act, 1961.*
- 5 *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in making addition of Rs.4,89,826/- as an income from undisclosed sources."*

All the five grounds raised by the Appellant are directed against the denial of deduction under Section 54 of the Act and are, therefore, taken up together hereinafter.

3. The relevant facts in brief are that the Appellant is an individual. In the return of income for the Assessment Year 2016-17, the Appellant claimed deduction under Section 54 of the Act in respect of payment

of INR 98,91,500/- made towards the purchase of new residential house property. It is admitted position that aforesaid payment was sourced from aggregate sale consideration of INR 1,71,00,000/- [INR 81,00,000/- plus INR 90,00,000/-] received by the Appellant from the sale of two residential properties owned by the Appellant. Since the new residential house property was registered in the name of the wife of the Appellant, the Assessing Officer denied the claim of deduction under Section 54 of the Act and brought to tax INR 1,35,14,034/- as Long Term Capital Gain (LTCG) in the hands of the Appellant vide Assessment Order, dated 19/12/2018, passed under Section 143(3) of the Act.

4. Being aggrieved, the Appellant preferred appeal before CIT(A). However, the ground raised in appeal on this issue was dismissed by the CIT(A) vide order, dated 18/05/2023 by placing reliance upon the judgment of the Hon'ble Bombay High Court in the case of Prakash s/o Timaji Dhanjode Vs. Income Tax Officer, Ward No. 1(5), Nagpur : [2008] 173 Taxman 311 (Bombay).
5. The Appellant is now before us in appeal challenging the denial of deduction claimed by the Appellant under Section 54 of the Act.
6. Ld. Authorised representative for the Appellant appearing before us submitted that there were bonafide reasons for getting the sale deed of the new residential house property registered in the name of the wife. Referring to the Agreement for Sale, dated 04/03/2015, the Ld. Authorised Representative for the Appellant submitted that aforesaid agreement was actually executed by the Appellant on behalf of the seller (i.e. Neo Housing & Infrastructure Development Limited). The Appellant was told that the Appellant could not execute the aforesaid agreement on behalf of seller as well as the purchaser. Therefore,

the new residential house property was purchased in the name of Appellant's wife even though entire sale consideration was paid by the Appellant. The Ld. Authorised Representative for the Appellant vehemently contended that the sole reason for denial of deduction claimed by the Appellant under Section 54 of the Act was that the new residential house property was in the name of the wife of the Appellant. It was submitted that the Hon'ble Delhi High Court had, in the case of Commissioner of Income Tax – XII Vs. Kamal Wahal: [2013] 351 ITR 4 had allowed the claim of deduction under Section 54F of the Act in respect of a residential house property purchases of an assessee in the name of his wife. The aforesaid decision was followed by the Delhi Bench of the Tribunal in the case of Bhagwan Swaroop Pathak Vs. Income Tax Officer, Ward -1(3), Gurgaon, Haryana : [ITA No. 2754/Del/2019, dated 05/03/2020]. Reliance was also placed on the decisions of Hon'ble Madras High Court in the case of CIT Vs. V. Natarajan: [2006] 287 ITR 271.

7. Per contra, the Ld. Departmental Representative relied upon the decision of Hon'ble Bombay High Court in the case of Prakash s/o Timaji Dhanjode (supra) on which reliance was placed by the CIT(A) while confirming the disallowance of deduction claimed by the Appellant under Section 54 of the Act.
8. We have considered the rival contention and perused the material on record including the judicial precedents cited during the course of hearing.
9. On perusal of the record it emerges that the new residential house property was purchased from Neo Housing & Infrastructure Development Limited [hereinafter referred to as 'the Seller Company'). The Appellant was director of the Seller Company and

was duly authorized to enter into agreements/sale deed vide Board Resolution dated 23/05/2014, passed by the Board of Director of the Seller Company. The Agreement for Sale, dated 04/05/2015, was to be executed by the Appellant on behalf of Seller Company. The Appellant was of bonafide belief, as per advice received, that the Appellant could not execute a valid agreement for sale on as seller in his capacity as a director of the Seller Company as well as a purchaser in his individual capacity. Therefore, the new residential house property was purchased by the Appellant in the name of his wife. The issue that arises for consideration in the present appeal is whether, given the peculiar facts of the case, the Appellant is entitled to claim deduction under Section 54 of the Act in respect of a new residential house property purchased in the name of his wife. In this regard, we note that the Hon'ble Delhi High Court has, in the case of **Commissioner of Income Tax – XII Vs. Kamal Wahal: [2013] 351 ITR 4** granted benefit of deduction under Section 54F of the Act to an assessee in case of new residential house property purchased in the name of his wife. The relevant extract of the judgment of Hon'ble Delhi High Court read as under:

"3. The assessee is an individual. He retired from IOCL. His income consists of income by way of salary, from house property and other sources. He inherited 50% share in a residential house in E-2/13, Vasant Vihar, Delhi in 2003 from his father. This was in July 1968. The other half share was inherited by his brother. In the year which ended on 31.03.2008, both the brothers jointly sold the property which gave rise to proportionate capital gains in the assessee's hands. In computing the capital gains, the assessee claimed deduction under Section 54F on the ground that the sale proceeds were invested in the acquisition of a vacant plot for Rs. 31,25,100/- and the purchase of a residential house for Rs. 34,35,700/- in the name of his wife.

4. The assessing officer while completing the assessment, took the view that under Section 54F, the investment in the residential house should be made in the assessee's name and in as much as the residential house was purchased by the assessee in the name of his

wife, the deduction was not allowable. He reduced the deduction and computed the capital gains accordingly.

5. On appeal, the CIT (Appeal) accepted the assessee's contention based on the judgment of the Madras High Court in CIT v. V. Natarajan [2006] 287 ITR 271/154 Taxman 399 and that of the Andhra Pradesh High Court in Mir Gulam Ali Khan v. CIT [1987] 165 ITR 228/[1986] 28 Taxman 572.

6. The revenue preferred an appeal before the Tribunal questioning the decision of the CIT(Appeals). The Tribunal, however, by the impugned order, agreed with the decision of the CIT (Appeals) and in doing so followed the judgment of the Madras and Andhra Pradesh High Courts cited supra and also another judgment of the Karnataka High Court in DIT, International Taxation v. Mrs. Jennifer Bhide [2011] 203 Taxman 208/15 taxmann.com 82. It also noted the judgment of the Bombay High Court in Prakash v. ITO [2008] 173 Taxman 311 in which a contrary view was taken but preferred the view taken by the Madras and Karnataka High Courts adopting the rule laid down by the Supreme Court in CIT v. Vegetable Products Ltd [1973] 88 ITR 192 which says that if a statutory provision is capable of more than one view, then the view which favours the tax payer should be preferred. The Tribunal also observed that Section 54F being a beneficial provision enacted for encouraging investment in residential houses should be liberally interpreted.

7. We have no hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgments of the Madras and Karnataka High Courts (supra) are in favour of the assessee, the revenue fairly brought to our notice a similar view of this Court in CIT v. Ravinder Kumar Arora [2012] 342 ITR 38/[2011] 203 Taxman 289/15 taxmann.com 307. That was also a case which arose under Section 54F of the Act. The new residential property was acquired in the joint names of the assessee and his wife. The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee's wife. This view was disapproved by this Court. It noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not

require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed "a residential house".

8. This Court in the decision cited alone also noticed the judgment of the Madras High Court (supra) and agreed with the same, observing that though the Madras case was decided in relation to Section 54 of the Act, that Section was in pari materia with Section 54F. The judgment of the Punjab and Haryana High Court in the case of CIT v. Gurnam Singh [2010] 327 ITR 278/[2008] 170 Taxman 160 in which the same view was taken with reference to Section 54F was also noticed by this Court.

9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue.”(Emphasis Supplied)

10. On perusal of above, it is clear that the Hon'ble Delhi High Court has taken note of the judgments of various High Courts including the judgment of Hon'ble Bombay High Court on which reliance was placed by the Revenue while concluding that the predominant judicial view was that for the purpose of Section 54F of the Act (*pari materia with Section 54 of the Act*) was that deduction under Section 54F of the Act is to be allowed in case of purchase of new residential house property purchased by an assessee in the name of his wife. The Hon'ble Delhi High Court noted that in that case there was no dispute that entire consideration for the purchase of new residential house

property came from proceeds arising from sale of immovable property and there was no contribution from the wife. The facts and circumstances of the present case are identical to the facts and circumstances of the case before the Hon'ble Delhi High Court. In the present case also, there was no dispute that the entire consideration for the purchase of new residential house property was sourced from aggregate sale consideration received by the Appellant from the sale of two residential properties owned by the Appellant. The Appellant has also been able to provide a reasonable explanation for purchase of new residential house property in the name of his wife. In view of the aforesaid, given the facts and circumstances of the present case and the above judgment of Hon'ble Delhi High Court, we hold that the Appellant is entitled to claim deduction under Section 54 of the Act in respect of the new residential house property purchased in the name of his wife. The addition of INR 1,35,14,034/- as LTCG in the hands of the Appellant is, therefore, deleted. Ground No. 1 raised by the Appellant is allowed while all the other grounds are dismissed as being infructuous.

11. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 01.03.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 01.03.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai