2024:DHC:9342-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 03.12.2024*

\+ **ITA 246/2019**

MRS. KAMLA AJMERA .....Appellant

versus

PR. COMMISSIONER OF INCOME TAX .....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Harshit Chauhan, Advocate
For the Respondent : Mr. Sanjay Kumar, Advocate

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J

1. The appellant [hereafter '***the assessee***'] has preferred the present appeal under Section 260A of the Income Tax Act, 1961 [hereafter '***the Act***'] impugning an order dated 17.09.2018 [hereafter '***the impugned order***'] passed by the learned Income Tax Appellate Tribunal [hereafter '***the learned ITAT***'] in ITA No. 347/Del/2017 in respect of the assessment year (AY) 2013-2014.

FACTUAL CONTEXT

2. The assessee had inherited a property, i.e., a Plot no. 128, Jai Jawan House Building Cooperative Society, Jaipur, Rajasthan, [hereafter '***the Plot***'] after the demise of her husband in 2005, which

had been initially purchased in the year 1983. The assessee sold the Plot for ₹77,75,000/- during the AY 2013-14. From its sale proceeds, the assessee purchased two apartments, i.e. A-1501 and A-1602 in Prateek Stylome, Sector 45, Noida, Uttar Pradesh, for sale consideration of ₹44,13,775/- and ₹42,39,275/- respectively.

3. On 31.07.2013, the assessee filed her return of income for the AY 2013-14, declaring her income as ₹7,37,560/-, comprising income of ₹41,565/- as Income from Business, and ₹7,05,996/- as Income from Other Sources. The assessee calculated her Income from Capital Gain at ₹77,21,957/-, after deducting Indexed Cost of ₹53,043/- from the total sale consideration of the Plot of ₹77,75,000/-. The assessee, however, claimed the said income as exempt under Section 54 of the Act, or in alternative, under Section 54F of the Act.

4. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and a notice under Section 143(2) of the Act was issued to her on 23.09.2014. Subsequently, a letter dated 04.09.2015 was issued by the learned Assessing Officer [hereafter '***the AO***'] wherein it was stated that the sale deed of the Plot indicated that the Plot was a mere piece of land without any structure thereon and thus, the same was only a long term capital asset, and not a residential house. Therefore, the benefit under Section 54 of the Act could not be claimed. The AO further noted that insofar as the alternative claim under Section 54F of the Act was concerned, since the assessee had purchased two residential properties i.e. two flats in Noida, the benefit under Section 54F of the Act could

also not be claimed. In response, the assessee furnished her reply on 09.10.2015, *inter alia* stating that to the best of her information, a small dwelling unit had been constructed on the Plot.

5. The AO thereafter sought information under Section 133(6) of the Act from the purchasers of the Plot, who informed that they had purchased only a piece of plot, and were raising a construction on the said Plot. The assessee, *vide* a letter dated 26.10.2015, reiterated that the Plot would qualify as a residential house, and that after selling the Plot, she had purchased two flats in the same society. However, the assessee also stated that if it was to be assumed that the Plot was a vacant land and could not be called as a residential house, then the assessee would be eligible for the benefit under Section 54F of the Act, *inter alia*, on the ground that the entire consideration was invested by her in "the residential property having two numbers 1501 & 1602 but comprising of one house". She further stated that in many other cases, more than one flat had been considered as a 'residential house' by the Revenue or held as such by the Courts.

6. The AO, taking into account the aforesaid, summarized the following facts:

> "In view of the above, the following facts emerge:
> • the property sold by the assessee is a plot only;
> • this has duly been confirmed by the purchaser;
> • the assessee has not furnished any evidence to prove that any construction activity was carried out on the said plot;
> • the only expenditure incurred in FY 2001-02 is in relation to the conversion of the property in free-hold;
> • the assessee acquired two flats vide two different allotment letters from M/s. Prateek Buildtech (India) Pvt. Ltd.;

> • the builder in compliance to notice issued s.133(6) has affirmed that the two flats cannot be converted into one unit, as claimed by the assessee in reply dated 26.10.2015 reproduced above."

7. The AO, thereafter, deputed an Inspector to make inquiries with regard to the two flats purchased by the assessee. The Inspector submitted his report on 02.11.2015, *inter alia*, stating that the two flats were located on two different floors at two different ends in the same block/tower of the society.

8. After considering the material on record and the submissions made on behalf of the assessee, the AO passed an assessment order dated 18.01.2016 under Section 143(3) of the Act and concluded that the two flats purchased by the assessee were not adjacent to each other so as to be converted into one unit. The AO also observed that by virtue of The Finance (No. 2) Act, 2014 [hereafter '***the Finance Act, 2014***'], an amendment had been brought in Section 54F of the Act, whereby the words 'a residential house' had been replaced with 'one residential house', and thus, the legislature had clarified that the intention was always to allow exemption in respect of one residential house only. Therefore, the AO denied any benefit to the assessee under Section 54F of the Act since the assessee had purchased two flats i.e. two residential houses. The total income of the assessee was assessed at ₹84,59,520/- which included Income from Capital Gain at ₹77,21,957/-.

9. The assessee assailed the assessment order passed by the AO before the Commissioner of Income Tax (Appeals)-19 [hereafter '***the***

CIT(A)']. By way of order dated 04.11.2016, the CIT(A) also held that the two flats purchased by the assessee could not be construed as one residential house since they were neither adjoining nor connected. The CIT(A) also observed that the amendment to Section 54F of the Act was clarificatory in nature, which had clarified that the benefit under the provision was intended only in respect of one residential house. Thus, the appeal filed by the assessee was dismissed by the CIT(A).

10. Aggrieved by the aforesaid order, the assessee preferred an appeal i.e. ITA No. 347/Del/2017 before the learned ITAT. By way of the impugned order, the appeal was partly allowed.

11. As is evident from the perusal of the impugned order, the learned ITAT was of the opinion that since the two flats purchased by the assessee were on two different floors and were neither adjacent to each other nor they could have been joined to form a dwelling house, the same could not be considered as 'a residential house'. The learned ITAT held that the assessee could claim exemption under Section 54F of the Act only in respect of one flat. The learned ITAT thus held that the assessee was eligible for a partial exemption under Section 54F of the Act, in respect of the higher amount invested in the flats i.e. ₹44,13,775/-, while the remaining amount would be chargeable to tax as long term capital gain. The relevant extracts from the decisions of learned ITAT are reproduced hereunder:

> "4. After hearing both the parties at length and on perusal of the relevant findings given in the impugned orders, we find that assessee has made the claim of exemptions of Long Term

Capital Gain U/S 54 on the ground that there was a sale of house property but later on she has made an alternative claim u/s 54F which was based on the background of the inquiry made by the Assessing Officer wherein it was found that the property which was sold was a residential plot and not house property. It is an undisputed fact that the proceeds of the Long Term Capital Gain has been invested in purchase of two flats, viz A-I50 and A-162 in one particular tower AAON for a consideration of Rs. 44,13,775/- and Rs. 42,39,275/- respectively. The assessee has been denied entire exemption u/s. 54F on the ground that, first, two flats were differently located and cannot be converted into one residential house and therefore, same cannot be considered as one house for the purpose of allowability of deduction; and secondly, the construction of the tower was not completed within the period of 3 years. Ld. CIT(A) has denied the exemption U/S 54F even with respect to one flat also on the ground that construction of the tower has not been completed within the prescribed period of three years and assessee has not purchased one residential house but two, therefore, the entire exemption cannot be given. In the details order of the Ld. CIT(A), he has observed that earlier the phrase use in Section 54F was that assessee has purchased or has constructed "a residential house" and the amendment brought in the statue amending 'a residential house' to "one residential house" has been brought w.e.f 1st April, 2014, and therefore, such an amendment being clarificatory in nature has to be given retrospective effect. Catena of judgements including of High Courts and Tribunal which has been noted by the Ld. CIT(A) in the impugned order wherein the word 'residential house' has been interpreted to mean more than one residential house and he observed that such an interpretation was based on the reasoning that if the legislature intended to restrict the investment to only one house property then instead of using the word 'a', Legislature should have used the word 'one. Such an interpretation was based on the controversies where assessee has purchased two flats which were situated adjacent to each other or side by side and the flats were purchased with intention of treating as one. Here, in this case, it is an undisputed fact that both the flats purchased by the assessee were on two different storeys and were not adjacent to each other nor could have been joined to form on dwelling unit. Without going into the interpretation as to whether 'a residential house' would mean 'one house' or plural house, because in the case of Gita Duggar (supra) Hon'ble Delhi High Court have interpreted that a residential house can

be construed to two unit only if they have been purchased to be use as one and are adjacent to each other and if there is an adjacent flat with common facilities, then same can be constituted to be "a residential house' and therefore, assessee is entitled to the benefit u/s 54/54F. However, such an interpretation cannot be stretched so as to hold that two different residential flats which are not adjacent and separated with space and on two different storeys so as to constitute 'a residential house'. Under these facts and circumstances; exemption if at all which can be claimed by the assessee in terms of Section 54F would be only with respect to one of the flat only. This is also duly supported by the judgement of Hon'ble Punjab & Haryana High Court in the case of Pavan Arya vs. CIT, reported in (2011) 11 Taxmann.com 312.

5. Now coming to the issue, whether exemption can be denied on the ground that two on which the flats were purchased were not found to be completed within the period of three years. On the perusal of the impugned assessment order, it is seen that ITI has reported that the lift was not installed and the project is still not completed, however, if the assessee has made the entire investment in the purchase of the flat and substantial construction has been completed and merely because lift has not been installed it cannot be held that benefit of exemption should be denied to the assessee. Section 54F is a beneficial provision giving benefit to the assessee who has invested the Long Term Capital Gain for a purchase of residential house. The assessee has made the entire payment and flat has been in complete possession of the assessee and simply because certain finishing work has not been done it cannot be held that exemption u/s 54F should be denied. Accordingly, we hold that assessee is entitled for exemption of Section 54F on the higher amount invested in the flat amounting to Rs. 44,13,775/- and Assessing Officer is directed to allow exemption u/s 54F for this amount and the balance would be liable for taxation under Long Term Capital gain.

6. In the result, the appeal of the assessee is partly allowed."

12. The aforesaid findings of the learned ITAT have been assailed by the assessee in the present appeal.

13. On 31.01.2024, this Court framed the following question of law for consideration:

"A. Whether the benefit as conferred by Section 54F of the Act and which uses the expression "a residential house" would stand confined to a singular unit or could it also be read as contemplating a plural interpretation?"

SUBMISSIONS ON BEHALF OF THE PARTIES

Submissions on Behalf of the Assessee

14. The learned counsel appearing for the assessee contended that the term "a residential house" under Section 54F of the Act should be interpreted to include multiple residential units within the same property or house, thereby allowing the exemption on both the residential units i.e. two flats acquired by the assessee. He relied on the decision of the Coordinate Bench in ***Commissioner of Income-tax v. Gita Duggal:*** *2013 SCC OnLine Del 752*, wherein it was held that even if a residential house consisted of multiple floors or units, it could still qualify as a single residential house for the purpose of the exemption, particularly in cases of redevelopment of the plot. According to the learned counsel, this interpretation applies to the present case, as the two flats purchased by the assessee are within the same tower, despite being on separate floors.

15. The learned counsel also pointed out that the learned ITAT, the AO and the CIT(A) erred in not appreciating that the amended law, which specifies 'one residential house', became effective only from 01.04.2015. Thus, the same was inapplicable in the facts of the present case – inasmuch as the present case relates to the AY 2013-14. He contended that law, as it stood prior to the amendment brought in by

the Finance Act, 2014, allowed for multiple units to be treated as a single residential property. In this regard, reliance was also placed on decision rendered by High Court of Madras in ***Commissioner of Income-tax, Non Corporate Ward-10(2), Chennai v. Gumanmal Jain:*** *2017 SCC OnLine Mad 13653*, wherein it was held that the exemption under Section 54F of the Act could apply to multiple apartments purchased as long as the the same were located within the same address or location, on the same piece of land, and their division into separate units or blocks did not disqualify them from exemption under Section 54F of the Act. The learned counsel for the assessee also relied on the decision of High Court of Karnataka in ***Commissioner of Income-tax v. D. Ananda Basappa:*** *2008 SCC OnLine Kar 693.*

16. The learned counsel for the assessee thus submitted that the learned ITAT misinterpreted the decision in ***Gita Duggal*** *(supra)*, and overlooked the decision in ***Gumanmal Jain*** *(supra)*, and erred in not allowing exemption under Section 54F of the Act in respect of both the flats purchased by the assessee.

Submissions on Behalf of the Revenue

17. The learned counsel appearing for the Revenue contended that the assessee had purchased two different flats on two different floors, which were not adjacent or adjoining. It is stated that the requirement of Section 54F of the Act is of ‘a residential house’ which means one single residential house. It is further stated that the AO had deputed an Income-Tax Officer to make an enquiry with regard to the flats

purchased by the assessee, and he in his report had provided that the flats are located in Block-A, on two different floors, and on two different ends, thereby meaning that the residential spaces cannot be converted into a duplex unit and cannot be used as a single dwelling unit.

18. It was contended that the exemption under Section 54F of the Act was specifically intended to incentivize investment in a single residential house upon the sale of a long-term capital asset other than a residential property. The provision's language, as well as judicial interpretations, support a restrictive reading of 'a residential house', which should be limited to one distinct residential property. In this regard, reliance was also placed on the decision rendered by the High Court of Punjab & Haryana in ***Pawan Arya v. Commissioner of Income Tax:*** *2010 SCC OnLine P&H 12590.*

19. It was thus argued that the assessee was not eligible for a complete exemption under Section 54F of the Act, and rather, was entitled to claim exemption only for one of the two flats purchased by her. It was stated that the learned ITAT had partly allowed the claim of the assessee by allowing exemption with regard to the flat which was purchased for higher value and denied exemption in respect of the flat which was purchased for a lower amount. Therefore, it was prayed that the present appeal be dismissed.

ANALYSIS & FINDINGS

20. In the present case, the issue arising for our consideration is whether the benefit provided under Section 54F of the Act, which uses the phrase 'a residential house', should be interpreted strictly as applying to a single residential unit, or if it can be construed more broadly to encompass multiple residential units.

21. Accordingly, it is to be determined whether the two flats purchased by the assessee in the one society, located in the same tower, but on different ends of two different floors, would qualify as 'a residential house' under Section 54F of the Act.

22. At the outset, Section 54F of the Act (as it stood prior to amendment brought in by Finance Act, 2014) is set out hereunder:

> "**54F**. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.—
>
> (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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 (hereafter in this section referred to as the new asset)**, the capital gain shall be dealt within accordance with the following provisions of this section, that is to say,-
>
> (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
>
> (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

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 three years 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…"

23. A reading of Section 54F of the Act reveals the following:

(i) Sub-section (1) refers to 'a residential house'. Thus, the words used are 'a' and 'house'.

(ii) A residential house has been subsequently referred to as 'a new asset' in the provision. Thus, the words used are 'a' and 'asset'.

24. In the present case, we observe that the assessee had purchased two separate flats in one society located in Noida, Uttar Pradesh. The AO observed in the assessment order that the builder of the concerned society had informed, in response to a notice issued under Section 133(6) of the Act, that the two flats could not be physically or legally combined into one unit. The AO had also directed an Inspector to conduct inquiries regarding the two flats purchased by the assessee. In his report, the Inspector confirmed that the flats were situated in Block A, but on different floors i.e. one on 15th floor and the other on 16th

floor, and at opposite ends of the same building. Further, they were separated by open space that precluded any possibility of combining them into a duplex. The AO thus observed that the two flats were not located adjacent to one another, making it impossible to consolidate them into a single unit; and that there was no written agreement between the assessee and the builder to indicate any intention to group the flats as one cohesive residential unit/house.

25. A perusal of the records, therefore, reveals that the two flats in question were purchased by the assessee through distinct allotment letters issued by M/s Prateek Buildtech (India) Pvt. Ltd. These purchases were independent of each other, and there is nothing to indicate that the two flats were intended to be combined into a single residential unit. Even otherwise, since the two flats are constructed and situated physically in a manner that it is not possible to combine them, they cannot be used as one single dwelling unit.

26. It is evident that the two flats purchased by the assessee are indeed distinct and separate, as they cannot be treated as a single residential unit. The spatial separation between the flats, which are located on different floors and at opposite ends of the building, reinforces this distinction, and leaves no ambiguity about their status as independent residential houses. To summarize, we are of the view that the two flats are distinct and complete residential units and are incapable of physically or legally being combined together to be used as one single dwelling house.

27. The Revenue, in support of its arguments, had relied on the decision in ***Pawan Arya*** *(supra)* rendered by the High Court of Punjab & Haryana. In the said case, the Court was dealing with an appeal filed by the assessee, where the issue was whether there is any restriction on considering more than one residential unit or house for exemption purposes under Section 54F of the Act. The Court held that for the purpose of claiming exemption under Section 54F of the Act, multiple residential houses located in separate cities cannot be regarded as 'a residential house'. The relevant portion of the decision reads as under:

> "2. The assessee claimed exemption on capital gains on sale of flat on the ground of acquisition of two houses. The Assessing Officer set off the capital gain against one of the houses but held the claim not to be admissible against second house. However, the CIT(A) upheld the claim of the assessee relying upon decision of Bangalore Bench of the Tribunal in ***D. Anand Basapa v. ITO*** (2004) 91 ITD 53. The said view has been reversed by the Tribunal as follows:-
>
> > "6. We have carefully considered the rival submissions in the light of the material placed before us. The facts in the present case are clear. The assessee is claiming exemption in respect of two independent residential houses situated at different locations; one is in Dilshad Colony, Delhi and the other is in Faridabad. The assessee in the Special Bench case had also purchased two residential houses against sale consideration of residential flat at 'Gulistan' situated at Bhulabai Desai Road, Mumbai. One residential property was at Varun Apartments at Varsova and the other property was at Erlyn Apartments, Bandra and it was held by the Special bench in the aforementioned case i.e. ITO v. Ms. Sushila M. Jhaveri (supra) that the assessee is entitled to get exemption only in respect of one house of her choice. Therefore, the decision of Special Bench is fully applicable to the present case and the assessee can avail exemption u/s 54 in respect of one residential house only. The factual aspect has not been disputed by ld. AR. The only dispute

before us is legal proposition that whether the assessee is entitled to get exemption in respect of two independent residential houses purchased out of sale consideration of another residential house. Therefore, the issue is decided in favour of the department and it is held that the assessee is entitled to get exemption u/s 54 in respect of one property only and no question has been raised by ld. AR regarding the choice of the property or the factual aspect of the matter.

7. So it relates to the decision relied upon by ld. AR of Hon'ble Karnataka High Court in the case of ***CIT v. D. Anand Basapa***, it may be mentioned that the said case cannot be applied to the case of the assessee on the ground that in that case the two houses purchased by the assessee were not independent properties and a factual finding has been recorded that the two apartments which were claimed to be exempted against sale consideration were situated side by side and it was also stated by the builder in that case that he has effected modification of the flats to make it as one unit by opening the door in between two apartments. On these facts, the Hon'ble High Court has observed that the fact that at the time when Inspector inspected the premises, the flats were occupied by two different tenants is not the ground to hold that apartment is not one residential unit. The fact that the assessee could have purchased both the flats in one single sale deed or could be narrated the purchase of two premises as one unit in the sale deed is not the ground to hold that the assessee had no intention to purchase two flats as one unit. From these observations of Hon'ble High Court, it is clear that while rendering the decision they have kept in mind that the purchase of two flats in the same building which were united for living of the assessee by making necessary modifications made the residential unit as one and, thus, that case could not be applied to the facts of the case of the assessee……"

3. We have heard learned counsel for the appellant.

4. As regards claim for exemption against acquisition of two houses under Section 54 of the Act, the same is not admissible in plain language of statute. In the judgment of Karnataka High Court in ***CIT v. D. Ananda Basappa*** [2009] 309 ITR 329 (Kar), referred to in the impugned order, exemption against purchase of two flats was allowed having regard to the finding that both the flats could be treated to be one house as both had been

> combined to make one residential unit. The said judgment, thus, proceeds on a different fact situation."

28. However, the learned counsel for the assessee relied on the decision in ***Gita Duggal*** *(supra)*, to argue that multiple residential units, even if built vertically or through renovations, could still be considered a single residential house under Section 54F of the Act. As far as this contention is concerned, we are of the view that in ***Gita Duggal*** *(supra)*, the finding that two residential floors would be included within the scope of 'a residential house' was based on the fact that the floors were constructed on one single plot, and were located adjacent to each other, enabling their use as one residential house. Further, in this case, the assessee previously owned the entire plot, wherein a house had been built up comprising basement, ground floor, first floor and second floor, and the assessee had entered into a collaboration agreement with a builder, who had agreed to demolish the entire house and construct it afresh comprising basement and four floors. The builder was also to get the third floor of the house, whereas the basement, ground, first and second floors were to remain with the assessee therein. The assessing officer therein had allowed exemption to the assessee only in respect of one residential unit i.e. basement and ground floor, and rejected the same in respect of first floor and second floor, on the ground that these two floors were separate independent units. It is in this background that the Court interpreted the phrase 'a residential house' under Sections 54/54F of the Income Tax Act to mean a building comprising different floors or units intended for residential use, regardless of its internal structure or

configuration. The Court noted that the statute does not mandate a particular form or layout for a house, and a residential house may consist of multiple, independently usable units – as long as the structure is designed for residential rather than commercial use. The Court also recognized that individuals often construct houses to meet personal needs, which may involve creating separate floors or sections of the property for flexibility, future income, or family arrangements.

29. In contrast, the present case differs significantly on its facts. Here, the two flats purchased by the assessee are situated on separate floors and on diagonally opposite ends. This distinction is further supported by the builder's confirmation that the two flats cannot be physically or legally combined into a single unit, making it clear that they constitute independent residential houses. Unlike in ***Gita Duggal*** *(supra)*, where adjacent floors allowed integration into one cohesive dwelling, the flats in this case are physically and legally separate and cannot be combined. Accordingly, the decision in ***Gita Duggal*** *(supra)* is not applicable to the present case, as the essential factor of adjacency is absent.

30. The learned counsel for the assessee also relied on the decision of High Court of Karnataka in ***D. Ananda Basappa*** *(supra)*, and the decision of High Court of Madras in ***Gumanmal Jain*** *(supra)*. We note that in ***D. Ananda Basappa*** *(supra)*, the two residential flats purchased by the assessee therein were adjacent to each other and the vendor had certified that necessary modifications had been done to the flats to make them as one residential apartment, and thus, the

exemption in respect of the same was allowed under Section 54 of the Act. In ***Gumanmal Jain*** *(supra)*, the flats, though located in several blocks/towers, were constructed on a piece of land which was originally owned by the assessee only. The said decisions are distinguishable on facts and not applicable to the present case.

31. The meaning and purport of the word 'a' used with the term 'residential house', as used in Section 54F of the Act, is also under question. In P. Ramanatha Aiyar's Advanced Law Lexicon, the word 'a' is *inter alia* defined as under:

> "... **"A" has sometimes the force of "ONE"**. Thus, the phrase "a year's rent" was held to be equivalent to "one year's rent". (*Amer. Cyc.*) A licence to fish "with a rod and line" does not justify more than one rod and line. (*Cambridge v. Harrison*, 72 LT 592; 64 LJMC 175)
>
> The **indefinite article 'a' tends to carry with it the concept of singularity as opposed to plurality.** Restriction to use as a private dwelling house appears to me, at least in the absence of contextual or factual contra-indications to mean restriction to a single dwelling house. *Crest Nicholson v. McAllister*, (2003) 1 All ER 46 Ch. (*Stroud, 6th Edn., 2000, Supplement, 2003*)...."
>
> (Emphasis supplied)

32. However, the word 'a' carries multiple meanings. Though it does mean and refer to 'one', its interpretation varies depending on the context in which it is used.

33. In this regard, we note that the learned counsel for the assessee referred to Section 54F of the Act (as amended by virtue of Finance Act of 2014) which now refers to 'one residential house'. He contended that the fact that the word 'a' was amended and replaced with the word 'one' makes it clear that prior to the amendment, 'a

residential house' did not not necessarily imply a single residential unit. He also stated that this was clear from the reading of Circular No.1/2015 [F.NO.142/13/2014-TPL] dated 21.01.2015 issued by the Central Board of Direct Taxes (CBDT) which mentioned that the Courts had interpreted the phrase 'a residential house' to mean and include more than one residential house.

34. Insofar as this contention is concerned, it shall be apposite to take note of the CBDT's circular dated 21.01.2015, which explained the provisions of Finance Act, 2014. The Circular mentioned that certain courts had interpreted that the exemption was also available if investment was made in more than one residential house. However, the amendment clarified that the benefit under Section 54 or 54F of the Act was intended only for investment in one residential house within India. The relevant extract of the circular dated 21.01.2015 is set out below:

> **20.3** Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-section (1) of section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.
>
> **20.4** Similarly, sub-section (1) of section 54F of the Income-tax Act has been amended to provide that the exemption is available if the investment is made in one residential house situated in India.
>
> **20.5** ***Applicability:*** - These amendments take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.

35. Thus, it appears from the above that the amendment to Section 54F of the Act was introduced to resolve any ambiguity, clarifying that 'a residential house' indeed meant 'one residential house' to

ensure consistency with the initial legislative intent. It may also be interpreted in a manner that 'a residential house' under Section 54F of the Act was never meant to cover multiple residential units. Be that as it may, this Court is not venturing into the question, initially projected by the assessee, that whether the amendment to Section 54F of the Act was clarificatory or not.

36. In this background, we note that the legislature has used the words 'new asset', and not 'new assets', in relation to 'a residential house'. As per the principles of interpretation of statutes, we see that there is no ambiguity in the words 'a residential house' or 'a new asset'. Further, even by going behind the intent of the provision, the said words would essentially mean a singular house or a singular asset and not multiple houses or multiple assets.

37. To conclude, the word 'a' would indicate 'one' or 'singular' item, entity, object, person, etc. and will not indicate 'more than one' or 'many'. In case the legislature intended to use it in plural connotation, it would have used the word 'assets' instead of 'a new asset', and not used the article 'a' before the term 'residential house'. In the said eventuality, there would have been merit in the contention of the learned counsel for the assessee that she was entitled to exemption under Section 54F of the Act even if she had invested in purchasing/acquiring multiple residential flats incapable of being structurally or legally combined and even failing the test of being adjacent. If the argument of the assessee is to be accepted, even different residential units bought in different parts of a city or different

states would have to be brought under the ambit of Section 54F of the Act, which was not the intent of the legislature.

38. However, it is essential to add a caveat that such a decision will depend on the facts of each case. As in the case of ***Gita Duggal*** *(supra)*, the plot of land and the entire house built up on the said land originally belonged to the assessee only, which was demolished and reconstructed by the builder under an agreement. The Coordinate Bench had observed that people can construct their houses in the manner they so desire, and the said observations would also indicate that the assessee in that case was constructing a house as per her own needs, after modifying the original residential house that she owned. Conversely, in the present case, the assessee had bought, and not constructed, two flats which are on two different floors and situated at diagonally opposite ends, in a manner which does not make it feasible for them to be connected structurally as one single unit.

39. This assumes significance in the backdrop of our opinion that the word 'a' used in Section 54F of the Act denotes one singular residence, along with the caveat that in case the floors or houses are so constructed as to be used as one singular unit or capable of being used as such, they may fall within the definition of a residential house.

40. Considering the facts of the case, the terminology used in Section 54F of the Act, the intent of the provision, and the judicial precedents discussed above, we conclude that the appellant's purchase of two distinct, non-adjacent flats, located on diagonally opposite ends of two different floors, even though in a same tower of a residential

society, does not fulfill the criteria for exemption under Section 54F of the Act. While it is true that the words 'a residential house' used in Section 54F of the Act (prior to amendment) were judicially interpreted to allow certain flexibility in cases where more than one residential unit could, in essence, form a single residential house, as seen in ***Gita Duggal*** *(supra)*. However, this was premised on the possible practical use of the residential units as a unified residence, the characteristics which are absent in the present case.

41. The question of law, in the instant case, is answered in favour of the Revenue and against the assessee. Accordingly, we find no error in the learned ITAT's decision to grant exemption under Section 54F of the Act in respect of only one of the two flats purchased by the appellant.

42. The appeal is accordingly dismissed.

SWARANA KANTA SHARMA, J

VIBHU BAKHRU, J

DECEMBER 03, 2024/ns