

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. 1791/Mum/2011
Assessment Year: 2007-08**

ITO 19(2)(4) R. No. 310, 3 rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai- 400 012	Vs.	Narinder Kaur Bhatia 501, Elegant Orchid, Tagore Road, Santacruz(w) Mumbai- 400 054 PAN: AAJPB 9900F
(Appellant)		(Respondent)

Assessee by : Shri Subhash S. Shetty
Revenue by : Shri R. N. D'souza

Date of hearing : 16.10.2014
Date of Pronouncement : 12.11.2014

ORDER

PER AMIT SHUKLA, JM:

This appeal has been preferred by the Revenue against the order dated 16.12.2010 passed by the Ld.CIT(A) -30, for the quantum of assessment passed u/s 143(3) for the A.Y. 2007-08, on the following grounds:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) had erred in allowing the exemption claimed of Rs.1,14,63,654/- u/s 54 of the I.T. Act, 1961 against the property sold for consideration of Rs.1,25,00,000/- on 07.02.2007 ignoring the fact that:-

- (a) *The assessee has purchased property jointly with her son and daughter in law on 28.12.2005 which is beyond one year before the date of sale.*

- (b) *The assessee had made two payments of Rs.5 lacs each on 13.12.2005 and 16.05.2006 with respect to the purchase of new property.*
- (c) *The assessee further purchase the undivided shares of her son in the flat for consideration of Rs. 1,10,00,000/- as per agreement dated 20.03.2007 which was also claimed as exempt as with the time prescribed u/s 54 of the I.T. Act, within 2 years from the date of sale of original flat.*

2. *The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored."*

2. The brief facts of the case are that, the assessee is an individual who had purchased a residential flat in Sagar Apartment, Pali Hill Road, Khar, Mumbai on 08.01.1981 for purchase consideration of Rs.1,48,000/- The total cost of the flat including stamp duty was Rs.1,65,000/-. The assessee sold the said flat on 07.02.2007, for sale consideration of Rs.1,25,00,000/- and after applying the index cost, long term capital gain was computed as under:-

(a)	<i>Cost of Flat</i>	<i>Rs.1,65,000/-</i>
(b)	<i>Index Cost</i>	<i>Rs.8,56,350/-</i>
	$\frac{1,65,000 \times 519}{100}$	
(c)	<i>Sale consideration of Flat</i>	<i>Rs.1,25,00,000/-</i>
	<i>Less: Transfer fee paid to society</i>	<i>Rs.1,80,000/-</i>
	<i>Net –sale Consideration</i>	<i>Rs.1,23,20,000/-</i>
(d)	<i>Long Term Capital Gain on sale of Flat</i>	<i>Rs.1,14,63,650/-</i>

The assessee had purchased a new residential flat No. 501, Elegant Orchid at Santacruz (West), Mumbai jointly with her son, Gurdeep Singh Bhatia and daughter-in-law Smt. Gurbir Kaur Bhatia, vide agreement for sale dated 28.12.2005. The assessee had made following payments to the builder in pursuance of the said agreement:-

<u>Date of Payment</u>	<u>Mode of Payment</u>	<u>Amount Paid</u>
13.10.2005	By Cheque	5,00,000
16.05.2006	By Cheque	5,00,000

3. Thereafter the assessee entered into agreement for sale on 20.03.2007 with her son, Gurdeep Singh Bhatia for purchasing his undivided share for Rs.1,10,00,000/- in the said flat, as per the following the payment

<i>Sl No.</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Name of Bank</i>	<i>Amount</i>
1	546409	18.06.2005	Union Bank of India	1,00,000
2	546410	19.07.2005	Union Bank of India	1,70,000
3	546412	16.12.2005	Union Bank of India	1,00,000
4	700784	08.03.2007	Union Bank of India	50,00,000
5	700786	20.03.2007	Union Bank of India	50,00,000
6	-	30.04.2007	Cash	6,30,000
7	-	-	Total	1,10,00,000

Thus the total cost of flat to the assessee was Rs.1,20,00,000/-, which was reflected in her balance sheet as on 31st March 2008 in the following manner. (Rs.)

Amount Paid to Vendor of Flat :	10,00,000/-
Amount Paid to Gurdeep Singh Bhatia for acquiring his undivided share in said Flat:	<u>1,10,00,000/-</u>
	<u>1,20,00,000/-</u>

This amount of Rs.1,20,00,000/- was claimed as deduction u/s 54 on the ground that purchase of new flat fell within time limit prescribed u/s 54 in the following manner.

- (a) *Rs.5,00,000/- paid to builder during construction period on 16.05.2006 is within one year before the date of sale of original flat i.e. from 07.02.2007 falls within time period prescribed u/s 54 of I.T. Act, 1961.*
- (b) *That payments made to Shri Gurdeep Singh Bhatia vide agreement for sale dated 20.03.2007 are also within time prescribed u/s 54 of I.T. Act. 1961 i.e. within 2 years from date of sale of original flat.*
- (c) *Hence payments of Rs.1,15,00,000/- made fro purchase of new residential flat falls within prescribed time u/s 54 of I.T. Act, 1961.*

4. However, the assessing officer denied the claim of exemption u/s 54 on the ground that, the assessee had already acquired the flat no. 501 at Elegant Orchid, Santacruz, jointly with her son and her daughter-in-law from Excess Reality Pvt. Ltd. Since this purchase transaction has taken place on 28.12.2005, which is beyond the period of one year from the date of sale, therefore, the same is not eligible for exemption u/s 54. Further the acquiring the share of her son vide agreement dated 20.03.2007, is not a new property purchased by the assessee, but only a repayment in respect of the property which has already been acquired on 28.12.2005. Further the subsequent purchase agreement dated 20.03.2007 for purchasing the share of her son, no stamp duty was paid. Thus on these courts the assessee is not eligible for exemption u/s 54. Accordingly he added the long term capital gain of Rs.1,14,63,650/-.

5. Before the Ld.CIT(A) the assessee made detailed submissions which have been dealt by the Ld.CIT(A) from pages 6 to 8 of the appellate order. The Ld.CIT(A) after examining the records and the submissions of the assessee held that, so far as the payment of Rs.5,00,000/- made on 16.05.2006 is concerned the same falls within one year before the date of sale of original flat hence qualifies for

exemption u/s 54. Therefore, to the extent of Rs.5,00,000/- assessee is entitled for exemption and not for entire Rs.10,00,000 as claimed by the assessee. Further after analyzing the purchase agreement of the flat and other records, Ld.CIT(A) found that Shri Gurdeep Singh, son of the assessee had made the payment of Rs.1,22,38,750/-, towards the purchase consideration for the flat, which was reflected in his books of account and in his balance sheet before the date of sale of undivided share in the flat to his mother. The purchase agreement did not specify the shares of co-owners, that is, they are 1/3rd each. When the assessee had made the payment of Rs.1,10,00,000/- to her son for purchasing of undivided share, vide agreement dated 07.02.2007, it tantamount purchase only. This conclusion was based on various decisions of the High Courts in the following manner:

"Finally regarding contention of AO that purchase of further undivided share in flat at Elegant Orchid from son by appellant is not New Property within the meaning of section 54, the learned AR on behalf of appellant relied on judgment of Gujarat High Court in case of Chandanben Maganlal. In this case, it is held by the Hon'ble high court that appellant purchased 15% share in a house property owned by her husband and son would qualify for exemption u/s 54 of the I.T. Act. In case of Vidya Prakash Talwar, he has been residing on ground floor of a new house and she further constructed 1st floor and barsati in new house and started residing on 1 st floor, Delhi High Court Held that appellant was entitled to exemption of capital gains u/s 54 of the Act. This judgment of Delhi High Court was applied in case of P.V.Narasimhan by Madras High Court. In case of 8.8.Sarkar- assessee spent amount both on purchase of new House Property and on further construction on it, Calcutta High Court held that exemption is available in respect of both the amounts, that is to say either purchasing a house property within one year before or acquiring house within 2 years where both the conditions are fulfilled within the time stipulated, the assessee is entitled to relief u/s 54 of the act I have considered the issues carefully and respectfully following the judgments of Hon. High Courts I hold that purchase of undivided share by appellant on 20-03-2007

within stipulated provided u/s 54 from her son in the flat of which she was already part owner amounts to new property and therefore assessee is also entitled to exemption u/s 54 of the act in respect of purchase consideration Rs.1,10,00,000/-. Hence, the A.O. is directed to allow exemption u/s 54 of the Act in respect of both the amounts i.e. Rs.5,00,000/- and RS.1,10,00,000/-."

6. Before us, Ld. DR strongly relied upon the order of the AO and submitted that purchase of the share of her son in which she was already co-sharer at the time of purchase, cannot be held to be a fresh purchase of house so as to qualify for the benefit of section 54. Further original purchase agreement was dated 13.12.2005, in pursuance of which assessee had made part payment, therefore, it cannot be held that the assessee had purchased house within the period of one year before the date of sale. Therefore the exemption u/s 54 has rightly been denied by the AO.

7. On the other hand learned counsel for the assessee strongly relied upon the order of the Ld.CIT(A) and the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Chandan Ben Maganlal reported in (2000) 245 ITR 182.

8. We have heard rival submissions and also perused the relevant findings given in the impugned order. The assessee had purchased a residential flat on 08.01.1981, which was sold on 07.02.2007 for a sale consideration of Rs.1,25,00,000/-. The long term capital gain on such sale amounted to Rs.1,14,63,650/-. Before the said sale, assessee had entered into an agreement to purchase a residential flat, being flat no. 501 Elegant Orchid at Santacruz (west), Mumbai along with her son, Gurdeep Singh Bhatia and daughter-in-law, vide agreement dated 28.12.2005 and payment of Rs.5,00,000/- was made. Another payment of Rs. 5 lakhs was made on 16.05.2006. This payment of Rs. 10 lakhs

was claimed as exemption u/s 54, which has been restricted to Rs.5 lakhs by the Ld. CIT(A). Thereafter the assessee had entered into an agreement with her son Gurdeep Singh Bhatia on 20.03.2007, who was the co-owner, for purchasing his undivided share in the new flat for sum of Rs. 1,10,00,000/-. The payment schedule has already been recorded above. The department's case is that, firstly, the purchase agreement for new flat on was 28.12.2005, which is beyond the period of one year before the date of sale and secondly, the purchasing of undivided share in the flat from the son does not amount to purchase of a flat; and therefore on these two counts, exemption u/s 54 is not available to the assessee. On the first issue Ld.CIT(A) has held that the payment of purchase consideration to the extent of Rs.5 lakhs which was made on 16.05.2006, falls within the period of one year before the date of sale of original flat and hence this amount is eligible for exemption u/s 54. The other part of the Rs. 5 lakhs paid on 13.10.2005 was denied by him, as it was beyond period of one year. To this extent the finding of the Ld.CIT(A) is factually and legally correct therefore no inference is called for and same is affirmed.

9. Now coming to the other part of the issue, whether purchasing of share of the son who is co-sharer in the flat amounts to purchase or not. We find that this issue, in principle, is settled by the decision of Hon'ble Supreme Court in the case of CIT Vs. T.N. Aravinda Reddy reported in (1979) 120 ITR page 46 (SC) wherein it was held that the word 'purchase' in section 54(1) had to be given a common meaning, that is, buying for a price or equivalent of a price on by payment in kind or adjustment towards debt or for other monetary consideration. In the case before the Hon'ble Supreme Court, four brothers were the

members of HUF, who had partitioned a joint family property, leaving an undivided common house. The three brothers executed a release deed in favour of the elder brother for a consideration which was treated as purchase of the house by the elder brother. The elder brother had sold one of his house and out of the sale proceeds, paid the consideration to his brothers to acquire their shares in the house. In this context it was held that the elder brother would be entitled to relief u/s 54(1) Similarly the Hon'ble Gujarat High Court in CIT Vs. Chandan Ben Maganlal has held that sale proceeds invested for purchase of interest in the residential house owned by assessee's husband and son amounts to purchase, hence entitled for exemption u/s 54. There are other High Court decisions on this score, which have been referred and relied upon by the Ld.CIT(A). Thus, following the said proposition laid down by the Hon'ble courts, we hold that the reasoning and the conclusion drawn by the Ld.CIT(A) is legally correct and the same is upheld. In the result the grounds raised by the Revenue are dismissed.

10. In the result, the appeal filed by the **Revenue is dismissed.**

Order pronounced in the open court on this 12th day of November, 2014.

**Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER**

Mumbai, Dated: 12.11.2014

*Srivastava

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR "G" Bench

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.