

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 323/Ahd/2019
Assessment Year 2015-16

Hitesh G Somani, 8 Sevak Nagar, Race Course Circle, Behind Gautam Nagar, Alkapuri, Vadodara-390007 PAN: ALUPS5813L (Appellant)	Vs	The ITO, Ward-1(2)(2), Vadodara (Respondent)
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Revenue by: Shri R.R. Makwana, Sr. D.R.
Assessee by: Shri Sakar Sharma, A.R.

Date of hearing : 08-09-2021
Date of pronouncement : 21-09-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2015-16, arises from order of the CIT(A)-5, Vadodara dated 15-01-2019, in proceedings under section 143(3) r.w.s. 153A of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised following grounds of appeal:-

		Tax effect relating to each Ground of appeal
1	The Ld. CIT (A) erred on facts and in law in restricting	Rs. 7,66,598/- being Tax 120% of

	<i>exemption u/s 54 to Rs. 24,25,513/- against Rs. 62,58,503/- claimed by the appellant in respect of newly acquired residential house while computing Long Term Capital Gain</i>	<i>Rs. 38,32,990/- Plus Rs. 22,998/- being Education Cess]3% of tax amount) Total Rs. 7,89,596/-</i>
2	<i>The Ld. CIT (A) erred on facts and in law in treating one residential house to be as three independent residential houses for the purpose of computing exemption u/s 54,</i>	
	<i>Total tax effect</i>	<i>Rs. 7,89,596/-</i>

3. The fact in brief is that return of income declaring total income of Rs. 11,12,090/- was filed on 29th August, 2015. The case was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 20th Sep, 2016. During the course of assessment, the Assessing Officer noticed that assessee has sold residential house for a total consideration of Rs. 75 lacs. The total capital gain on the sale of the house arrived at the hand of the assessee was Rs. 62,58,503/- on which assessee has claimed exemption u/s. 54 of the Act for making investment in purchasing of three units of residential flats for total consideration of Rs. 77 lacs. The Assessing Officer stated that exemption u/s. 54 of the act is not available to the assessee in view of the amendment made in the section 54 of the act w.e.f. 1st April, 2015 which is reproduced as under:-

"In section 54 of the Income-tax Act, in sub-section (1), for the words "constructed, a residential house", the words "constructed, one residential house in India" shall be substituted with effect from the 1st day of April, 2015."

On query, the assessee explained that he has claimed deduction with regard to one residential house and also placed reliance on various judicial pronouncements. However, the Assessing Officer has not agreed with the submission of the assessee and stated that the amendment made w.e.f. 1st April, 2015 is of clarificatory in nature and in view of the amendment

assessee is entitled for exemption of capital gain income u/s. 54 of the act in one residential house only which comes to Rs. 24,25,513/- as against the exemption claimed by the assessee against three units. Therefore, claim of exemption to the extent of Rs. 38,32,990/- was disallowed and added to the income of the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee holding that as per the amendment in Finance Act, 2014 applicable w.e.f. assessment year 2015-16 wherein legislature has clarified that exemption is available only for investment in one house.

5. During the course of appellate proceedings before us, the Id. counsel has submitted paper booked comprising copies of documents and details of information furnished before the Assessing Officer and Id. CIT(A). The Id. has counsel referred letter dated 28th July, 2017 vide which detailed submission was made before the Assessing Officer along with documentary evidences demonstrating that three units were not independent as there was single entry and exit and they have combined three adjacent residential units on the same 9th floor into one combined flat to get larger flooring area and purchased unit was a part of the builder tailor made combined flat on the same floor specifically constructed for the allottee. The Id. counsel has also contended by referring to the page no. 79 of the paper book comprising single sale agreement made for all the three units. The Id. counsel has also placed reliance on the decision of Hon'ble High Court of Delhi in the case of Geet Duggal (2013) 30 taxmann.com (Delhi) and decision of Bombay High

Court in the case of CIT vs. Devdas Nayak (2014) 49 taxman.com 30 (Bombay), decision of Hon'ble High Court of Karnatka in the case of CIT vs. Smt. K.G. Rukmaniamma (2011) 196 taxman 86 (Kar) and decision of ITAT Ahmedabad in the case of Mohmmedanif Sultanali Pradhan vs. Dy. CIT (2020) 114 taxman.com 508 (Ahmedabad-Trib). On the other hand, ld. Departmental Representative supported the order of lower authorities.

6. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, assessee had invested the sale consideration received on sale of immovable property in purchasing combined three adjacent flats as a residential house. As per sale deed dated 17th June, 2014 on 18th July, 2014 the builder has issued allotment letter for single combined residential flat to the assessee. With the support of documentary evidences, the assessee has demonstrated that all the three units were not independent as there was single entry and exit and stated that it was one residential house. The assessee has also enclosed copy of allotment letter dated 17th July, 2014 in the paper book wherein the developer has stated that tailor made combined flats on the same floor was specifically constructed for the allottee and there shall be single entry and exit for the allottee and maintenance as per the society rules would be applicable in singular manner on the built up area of 3045 square feet. We have also gone through the judicial pronouncement referred by the ld. counsel in the case of Geet Duggal (2013) 30 taxmann.com (Delhi). The relevant part of the findings of the Hon'ble High Court of Delhi is reproduced as under:-

"Section 54/54F uses the expression "residential house". The expression used is not "a residential unit". This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these

sections which require the residential house to be constructed in a particular manner. The only requirement is that it is residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction, under Section 54/54F. It is neither expressly nor by necessary implication prohibited.”

We have also gone through the judicial pronouncement in the case of CIT vs. D. Ananda Basappa (2009) taxman 4 (Kar). The relevant part of the decision of Hon’ble High Court of Karnataka is reproduced as under:-

“Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residential purpose - Assessment year 1996-97 - Whether expression 'a residential house' as occurring in section 54(1) should be understood in a sense that building should be residential in nature and 'a' should not be understood to indicate a singular number - Held, yes - Whether when an HUF's residential house is sold and members of HUF, keeping in view future needs in event of separation, invest capital gain in purchasing more than one residential building, benefit of exemption under section 54(1) would be available to HUF -Held, yes”

We have also gone through the judicial pronouncement in the case of Mohmmedanif Sultanali Pradhan vs. Dy. CIT (2020) 114 taxman.com 508 (Ahmedabad-Trib). The relevant part of the decision of the ITAT Ahmedabad is reproduced as under:-

“Section 54F of the Income-tax Act, 1961 - Capital gains - Exemption of, in case of investment in residential house (Purchase of two adjoining flats) - Assessment year 2015-2016 - During relevant year, assessee claimed exemption under section 54F on long-term capital gain invested in two bungalows which were adjacent to each other and used as one residential unit - Assessing Officer disallowed same on ground that assessee could have claimed exemption under section 54F with respect to investment in one bungalow only - However, under provisions of section 54F, no definition/clarification about area of residential property, has been provided, hence, one assessee can buy huge bungalow/property say thousand square meters and can claim deduction subject to conditions - Whether therefore, assessee could not have been deprived of benefit conferred under statute merely on reasoning that there were two different registries of buildings/properties as from point of view of assessee, it was single property - Held, yes - Whether further, in view of fact that both properties purchased by assessee were located in same geographical area, assessee would be entitled for exemption provided under section 54F - Held, yes [Paras 7.1, 7.2 and 7.4] [In favour of assessee]”

We find that issues and facts raised before the Tribunal in the case of the assessee are similar to the facts and issue adjudicated by the Co-ordinate Bench of the ITAT Ahmedabad in the case of Mohmmedanif Sultanali Pradhan vs. Dy. CIT (2020) 114 taxman.com 508 as referred above. Therefore, it would not be appropriate for us to deviate from the view taken in the above case without pointing out any material change in facts and circumstances in the case of the assessee. Since identical issue was dealt with by Tribunal in the above referred case, therefore, following the principle of consistency, we direct the Assessing Officer to allow the deduction claimed by the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21-09-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 21/09/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद