

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.483 OF 2016

Pr.Commissioner of Income Tax-23 ... Appellant

V/s.

Mr.Peter Savio Pereira ... Respondent

Mr.A.R.Malhotra with Mr.N.A.Kazi for the Appellant.
Mr.K.Gopal with Mr.Tanmay Phadke with Ms.Neha Paranjpe i/by
Mr.Jitendra Singh for the Respondent.

**CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : NOVEMBER 26, 2018.**

P.C.:-

1. Revenue has filed this appeal against the judgment of Income Tax Appellate Tribunal ("Tribunal" for short) dated 27th February, 2015.

2. Following question is pressed before us :

"Whether in the facts and circumstances of the case, the Hon'ble ITAT was justified to hold that market value of flats should be considered as investment towards purchase/construction of new House property for purpose of 54(1) deduction

computation, when the assessee had practically not made any payment in money terms or in kind towards the value of the flats and car space receivable from the builder?”

3. The issue pertains to the assessment year 2007-08. Respondent-assessee is an individual. He owned 75% share in a residential property called “Violet Valley” situated at Bandra, Mumbai, remaining 25% share was that of the sister of the assessee. During the period relevant to the assessment year in question, the said property was sold for a consideration of Rs.3.05 crores in cash. The purchaser additionally agreed to provide three flats of specified carpet area and three parking spaces in the same scheme which was part of the consideration that the sellers would receive from the purchaser.

4. In the return filed the assessee adopted the fair market value of the property as on 1st April, 1981 at Rs.35,00,000/- The assessee also claimed exemption under Section 54 of the Act pointing out that the allotment of the flats was in the nature of the assessee's investments in new residential property. The Assessing Officer did not accept the assessee's claim of

exemption under Section 54 also noticing that the assessee had not included the value of the flats towards the total sale consideration received by the assessee. We are informed that upon being so pointed out the assessee had also agreed to include the price of the flats as part of the sale consideration received by him upon sale of the immovable property.

5. The issue eventually reached the Tribunal in an appeal filed by an assessee. The Tribunal was of the opinion that the exemption could not be denied to the assessee. The Tribunal in its order made following observations:-

“9. It is clear from the above that residential house was given to the assessee in consideration of the sale of old house. The sale consideration was partly received in cash and partly in the form of new flats to be constructed on the plot of old house sold by assessee. The new flats agreed to be given to assessee amounts to investment by assessee in residential house. Therefore, the AO was not justified in adding back the additional consideration given in the form of allotment of three flats by declining claim of deduction under Section 54 of the I.T. Act.

10. In the present case before us, the assessee has purchased/constructed the new residential property and paid the consideration equivalent of price by payment in kind. Therefore, the assessee is entitled for exemption u/s. 54 of I.T.Act, 1961 in respect of

these flats.”

6. In the nutshell, therefore, the Tribunal notices that the assessee had received sale consideration partly in cash and partly in form of new flats to be constructed and to be allotted to the assessee. The Tribunal, therefore, correctly came to the conclusion that the assessee's investment in such new flats amounts to investment for acquisition of new residential house. The Tribunal, therefore, correctly held that the Assessing Officer was not justified in disallowing the exemption under Section 54 of the Act. No question of law arises. Tax Appeal, therefore, dismissed.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

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