

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 767 OF 2016

Commissioner of Income Tax -17 .. Appellant

Versus

Kalpana Hansraj .. Respondent

-
• Mr. Suresh Kumar for the Appellant
.....

**CORAM : AKIL KURESHI &
B.P. COLABAWALLA, JJ.**

DATE : JANUARY 7, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short) dated 17.4.2015. Following question has been presented for our consideration:-

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in confirming the order of CIT(A) in allowing the exemption u/S. 54F of the Act, when property which was transferred was residential house?"

2. Respondent - assessee is an individual. For the assessment year 2006-07, in the return filed by the assessee, the Revenue objected to the assessee's claim of

exemption under Section 54F of the Income Tax Act, 1961 ("the Act" for short) on the ground that the assessee had sold a flat which was in the nature of residential unit and therefore, Section 54F would not apply. In the appeal, the Commissioner gave relief to the assessee upon which the issue reached the Tribunal. The Tribunal, by the impugned judgment, dismissed the revenue's appeal by making following observations:-

"5. We have considered the rival contentions of the Ld. Representatives of both the parties and have also gone through the records. The Ld. CIT(A) has categorically discussed the factual position of the case that the assessee had booked a residential flat on 15.01.1981. The builder failed to complete the construction and the dispute travelled to the Hon'ble Bombay High Court. The Hon'ble Bombay High Court had appointed a committee/receiver with a direction to complete the construction. The construction of the building was not complete up to Feb 2011 as has been gathered by the Ld. CIT(A) from the letter dated 17.02.2011 issued by the said committee of court receiver. The assessee, however, in the year 2005 had sold the unconstructed / under construction unit resulting in taxable long term capital gains. The Ld. CIT(A) has categorically held, after appreciation of the factual matrix of the case, that the property transferred by the assessee could not be termed to be a residential house. The findings of the Ld. CIT(A) have been reproduced above. The provisions of section 54F are beneficial provisions enacted for the purpose of promoting the construction/purchase of residential houses. The property in question sold by the assessee could not be constructed by the builder for a sufficient long time and the same could not be categorized as

residential house and therefore the claim of the assessee has rightly been allowed by the Ld. CIT(A) under section 54F of the Act. We do not find any infirmity on the order of the Ld. CIT(A) in this respect. There is no merit in the appeal of the Revenue and the same is accordingly dismissed."

3. Perusal of sub-section (1) of Section 54 of the Act would show that the exemption would be available to an assessee being an individual or Hindu Undivided Family where the capital gain arises from the transfer of a long-term capital asset, not being a residential house provided the remaining conditions of the said provisions are satisfied. In this context, as noted, the revenue's objection is that the assessee had sold a flat which was in the nature of residential unit. The Tribunal, however, found that the facts of the case are somewhat peculiar. The assessee had booked a flat on 15.1.1981. The builder failed to complete the construction and the scheme ran into multiple legal disputes. These disputes travelled to the Bombay High Court. The Bombay High Court appointed a committee in the nature of Receiver and was asked to observe the completion of the construction. Under such circumstances, the construction was completed sometime on February, 2011. In the meantime, the assessee had sold the flat in the year 2005

which she had booked. The same was still under construction. The same resulted into long-term capital gain. It was in such peculiar facts that the Tribunal held that the assessee cannot be said to have transferred a capital asset in the nature of residential house. We may recall that the assessee had booked the flat far back in January 1981 and till the time, she sold for the same in the year 2005, completion of Construction was nowhere in the sight. It was only with the intervention of the High Court and the steps taken by the Committee appointed by the High Court that the construction could be completed much later in the year 2011. In the peculiar facts of this case, therefore, we do not find any error in the view of the Tribunal. Tax appeal is dismissed.

[B.P. COLABAWALLA, J.]

[AKIL KURESHI, J]