IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.293 of 2022 (O&M)
Date of decision: 09.08.2023

Pr. Commissioner of Income Tax-1, Chandigarh

…Appellant

Vs.

Jangpal Singh Tanwar

…Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel, for the appellant.

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Ritu Bahri, J.

1. The instant appeal under Section 260A of the Income Tax Act, 1961, has been filed against the order dated 22.06.2022 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Chandigarh, whereby appeal filed by the respondent-assessee, for the assessment year 2016-2017, against the order dated 21.03.2021 passed by the Principal Commissioner of Income Tax, Chandigarh, has been accepted.

2. The present appeal relates to the assessment year 2016-2017, for which, the assessee-respondent had filed return on 05.08.2016 declaring an income of Rs.4,21,230/-. The said return was accepted by the Assessing Officer vide order dated 07.12.2018 (Annexure A-1). The income had been declared under the heads "*Salaries*" and "*Income from Other Sources.*" Thereafter, during proceedings under Section 263 of the Act, the Principal Commissioner of Income Tax, vide order dated 21.03.2021

(Annexure A-2), set aside the order of the Assessing Officer on the ground that he (Assessing Officer) had failed to examine the assessee's eligibility under Section 54F of the Income Tax Act. The Assessing Officer was directed to pass a fresh order. Against the said order, the assessee preferred an appeal before the Income Tax Appellate Tribunal, Chandigarh.

3. On appeal, the Tribunal observed that the assessee is a retired pensioner and he had sold residential plot No.227, Mansa Devi Complex (MDC) at Urban Estate, Panchkula, for a sale consideration of Rs.1,28,50,000/- on 14.12.2015. The said plot had been allotted to him by HUDA on 10.12.2010 for a sum of Rs.10,83,815/-. As per the computation of income placed on record, he had earned capital gain of Rs.97,78,721/- on this plot. During the assessment proceedings, the assessee had purchased House No. 365, Sector 20A, Chandigarh on 18.12.2015 jointly in his name and in the name of his wife Smt. Sumitra & son Sh. Sukhbir Singh for a sale consideration of Rs.1,82,00,000/-.

4. During re-assessment proceedings, the Revisional Authority had held that the assessee had invested Rs.60,00,000/- only for purchasing the above said property. Since, he was owner of the house to the extent of 1/3rd share, it was held that he could claim exemption of Rs.46,16,671/- under Section 54F of the Income Tax Act, but the assessee had claimed exemption of Rs.98,78,721/-. The opinion of the Revisional Authority was that the assessee had claimed exemption in excess to the tune of Rs.51,62,050/-.

5. However, on appeal, the Tribunal observed that the assessee had produced the bank statements before the Assessing Officer as well the Revisional Authority. Sh. Sukhbir Singh, son of the assessee, had taken a

house loan and this fact has been ignored by the Revisional Authority. The total price of the property was Rs.1,28,50,000/-, which included the loan taken by Sh. Sukhbir Singh, son of the assessee-respondent. The Long Term Capital Gain of Rs.97,78,721/- was also invested by the assessee by purchasing a house i.e. H.No.365, Sector 20A, Chandigrh. Since the entire amount had been invested in the property, which was not disputed by the Revenue, the Tribunal held that there was no evidence to support the conclusion that only 1/3rd share was belonging to the assessee. The assessee-respondent had invested the entire amount for purchasing the property and his son had also contributed in the same after taking loan from the bank. In that situation, merely mentioning the name of his wife and son as co-owners of the property, would not dis-entitle the assessee to claim exemption. The Tribunal had also clarified that the judgment passed in ***Kamal Kant Kamboj vs. ITO,*** 397 ITR 240 (P&H), referred to by the Revenue, will not be applicable to the facts of the present case, as in that case, the assessee had invested money in the property exclusively in the name of his wife and in this background, he could not claim exemption for long term capital gain under Section 54F of the Act. However, in the present case, the respondent-assessee has invested the entire money in buying a house and his son had also borrowed a loan for purchasing the said property. Merely mentioning the names of his wife and son as co-owners of the property, would not dis-entitle the assessee to claim exemption under Section 54F of the Act.

6. The argument raised by learned counsel for the appellant that the matter should have been remanded to the Assessing Officer, is also rejected on the ground that the assessee is a retired pensioner and the fact regarding sale

of his plot in Panchkula and thereafter, purchase of a house in Chandigarh, is not being disputed by the appellant-authority. The issue relates to the fact that the assessee is owner of the house only to the extent of 1/3rd share and remaining share in the house belongs to his wife and son respectively. After selling his plot in Panchkula, the assessee had invested his entire money while purchasing a house in Chandigarh. Therefore, the Tribunal has rightly held him entitled to seek exemption under Section 54F of the Act.

7. After going through the impugned judgment, no ground is made out to interfere therein, as the same has been passed after appreciating the facts in the right perspective. No substantial question of law arises for consideration.

8. Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

09.08.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No