IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.700 of 2015

Smt.C.Anuradha ... Appellant / Appellant

Vs.

The Income Tax Officer,
Business Ward – I (1),
Chennai – 600 034. ... Respondent / Respondent

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai dated 6th July 2012 in I.T.A.No.952/Mds/2012.

For Appellant : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

At the admission stage, this Tax Case Appeal was admitted on 31.08.2015 and the following substantial questions of law were framed for being answered:-

i. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that assessee is entitled for deduction under Section 54F only in respect of one residential flat?

ii. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that assessee is not entitled for deduction under Section 54F in respect of two residential flats received in consideration for the land given on joint development basis?

iii. Whether the Tribunal was justified in adopting different yardsticks for allowing deduction under Section 54F in respect of the appellant and the co-owners?

2. This Tax Case Appeal is directed against the Impugned Order dated 06.07.2012 passed by the Income Tax Appellate Tribunal [In short "Appellate Tribunal"] in I.T.A.No.952/Mds/2012 for the Assessment year 2003-2004.

3. By the Impugned Order dated 06.07.2012 in I.T.A.No.952/Mds/2012, the Appellate Tribunal has dismissed the appeal filed by the appellant. Operative portion of the Impugned Order reads as under:-

“5. We have heard both the sides, perused the records and gone through the orders of the authorities below. The only issue for consideration before us is whether the assessee is eligible for exemption u/s 54F for two houses or for one house. The assessee owned a piece of land jointly with others and entered into joint development agreement and she received more than one apartment and claimed exemption u/s 54F of the Act. She relied on the decision of the Hon'ble Karnataka High Court in the case of CIT v. Smt. K.G, Rukminiamma, reported in (2011) 196 Taxman 87. In this case the Hon'ble Karnataka High Court has considered section 54 of the Income Tax Act, 1961 and by following the decision in the case of Anand Basappa v. ITO (2005) 1(11) ITCL 283 granted relief to the assessee. In the present case the claim of the assessee is for exemption u/s 54F of the Income Tax Act, 1961. In this connection the Mumbai Special Bench of the Tribunal in the case of ITO v. Ms. Sushila M. Jhaveri (107 ITD 327) (Mum.) (SB) while considering the exemption under sections 54 and 54F has categorically held that the assessee was entitled to exemption under section 54 in respect of investment in only one flat of her choice. The Hon'ble Punjab & Haryana High Court by considering the Special Bench decision of the Tribunal in the case of Ms. Sushila M. Jhaveri, supra and also considering the case of CIT v. Anand Basappa (309 ITR 329) (Kar) has observed that exemption against purchase of two flats was allowed having regard to the finding that both the flats would be treated to be one house as both had been combined to make one residential unit.

The said judgment thus proceeds on different facts and situation and upheld the order of the Tribunal that the assessee is only eligible for exemption in respect of one house. We find that the decision of the Hon'ble Punjab & Haryana High Court squarely applies to the facts of the case. We, therefore, by following the decision of the Special Bench of the Tribunal in the case of Ms. Sushila M. Jhaveri, supra, and also the decision of the Hon'ble Punjab & Haryana High Court in the case of Shri Pawan Arya (supra) find no infirmity in the order of the learned CIT(A). Apart from the above, the learned CIT(A) by following the Tribunal order in the case of Naresh Kumar J. Shah (supra) held that benefit of section 54F is available only to single residential unit and rejected the claim of the assessee. No material was brought to our notice that the above said order of the Tribunal was reversed or modified by the High Court. Therefore, this appeal filed by the assessee is dismissed.

6. In the result, the appeal is dismissed."

4. The appellant had filed a Return of Income on 11.12.2003 for the Assessment Year 2003-2004 admitting a total income of Rs.8,891/- under the head "Long Term Capital Gains". On 07.04.2004, the Return of Income was processed under Section 143(1) of the Income Tax Act, 1961. Subsequently, the assessment was reopened by issuance of notice to the appellant under Section 148 of the Income Tax Act, 1961 on 30.05.2005. Assessment was completed under Section 143(3) read with Section 147 of

the Income Tax Act, 1961 on 23.11.2007 for the Assessment Year 2003-2004 by the Assessing Officer.

5. The returns were scrutinized pursuant to notice dated 30.05.2005, issued under Section 148 of the Income Tax Act, 1961, whereby the appellant had adopted the value of the property on 01.04.1981 and thereby denied the exemption claimed under Section 54F of the Income Tax Act, 1961. The Commissioner of Income Tax (Appeals) vide order dated 13.05.2008 in I.T.A.No.133/2007-2008, provided relief to the appellant on both the issues, which the Revenue contested.

6. Thereafter, the Appellate Tribunal vide order dated 13.11.2009 in I.T.A.No.1934 of 2008 endorsed the revised valuation adopted by the Assessing Officer and set aside the orders of the lower authority qua the issue of claim of deduction / exemption under Section 54F of the Income Tax Act, 1961 and remanded the case back to the Assessing Officer to pass a fresh order after examining the requisite details and evidence to be produced by the appellant as per law and after giving opportunity of hearing to the appellant.

7. Pursuant to the above, a fresh assessment order was passed by the Assessing Officer on 29.12.2010 under Section 143(3) read with Section 254 of the Income Tax Act, 1961. The Assessing Officer vide order dated 29.12.2010, concluded the taxable Long Term Capital Gains of the appellant as Rs.2,69,388/- and arrived at the following amounts as tax, surcharge etc., payable by the appellant:

Sale Consideration (as in the order u/s 143(3) dated 23.11.2007)		: Rs. 12,12,183/-
LESS: Indexed cost (as per order of the Hon'ble High Court)		: Rs. 6,15,750/- --------------------
LTCG		: Rs. 6,06,433/-
LESS: Exemption u/s 54F for one flat admeasuring 890 sq. ft.		: Rs. 2,87,045/- ---------------------
Taxable LTCG (Rs.3,19,388/- - Rs.50.000/-)		: Rs. 2,69,388/-
Tax Payable	Rs. 53,878/-	
SC	Rs. 2,694/-	
EC	Rs. 1,131/-	
Interest u/s 234A	Rs. 2,885/-	
u/s 234B	Rs. 21,350/- -------------------	Rs. 81,938/- ------------------

This should be paid as per DN & Challan enclosed herewith.

Penalty proceedings under Section 271(1)(c) of the IT Act, 1961 are being initiated separately.

8. On further appeal before the Appellate Commissioner in I.T.A.No.554/2010-2011, the Appellate Commissioner dismissed the appeal vide order dated 17.02.2012.

9. Against the order of the Appellate Commissioner dated 17.02.2012, the appellant filed further appeal in I.T.A.No.952/Mds/2012 before the Appellate Tribunal. The said appeal was also dismissed on 06.07.2012.

10. Aggrieved by the order of the Appellate Tribunal, the appellant has preferred this appeal before this Court.

11. We have considered the arguments advanced by the learned counsel for the appellant and the learned Senior Standing Counsel for the respondent Revenue.

12. The Appellate Tribunal by the Impugned Order has dismissed the appeal on 06.07.2012 in I.T.A.No.952/Mds/2012 based on the decision of the Punjab and Haryana High Court in **Shri Pawan Arya** Vs. **CIT,**

(2011)-TIOL-01-HC-P&H-IT considering the decision of the Special Bench of the Tribunal, Mumbai in **ITO** Vs. **Ms.Sushila M.Jhaveri, (2007) 292 ITR 1 (Mum.) / 107 ITD 327 (Mum.) (SB)** and the decision of the Karnataka High Court in **Anand Basappa** Vs. **ITO, (2005) 1 (11) ITCL 283**.

13. In **ITO** Vs. **Ms.Sushila M.Jhaveri, (2007) 292 ITR 1 (Mum.) / 107 ITD 327 (Mum.) (SB)**, the Special Bench of the Tribunal, while considering the exemption under Sections 54 and 54F of the Income Tax Act, 1961, has categorically held that the assessee was entitled to exemption under Section 54 of the Income Tax Act, 1961 in respect of investment in only one flat of her choice.

14. The Punjab and Haryana High Court in **Shri Pawan Arya** Vs. **CIT, (2011)-TIOL-01-HC-P&H-IT**, affirmed the views of the Special Bench of the Tribunal, Mumbai in **ITO** Vs. **Ms.Sushila M.Jhaveri, (2007) 292 ITR 1 (Mum.) / 107 ITD 327 (Mum.) (SB)** and the decision of the Karnataka High Court in **Anand Basappa** Vs. **ITO, (2005) 1 (11)**

ITCL 283, and observed that exemption against purchase of two flats was allowed having regard to the finding that both the flats would be treated to be one as both had been combined to make one residential unit.

15. Under Section 54F of the Income Tax Act, 1961, an assessee should not be in possession of a residential house on the date on which the transaction resulting in Long Term Capital Gains takes place to avail the benefit of exemption.

16. Section 54F of the Income Tax Act, 1961, provides that if an assessee has a residential house, such an assessee cannot seek the benefit of Long Term Capital Gain. Under this provision, the expression “residential house” is preceded by article 'a'. Even if the residential house is shared by an assessee, his right and ownership in the house, to whatever extent, is exclusive and nobody can take away his right in the house without due process of law.

17. Section 54F of the Income Tax Act, 1961 deals with the situation where capital gain arises from transfer of any Long Term Capital

Gain / Asset and assessee has, within a period of one year before or (two years) after the date on which the transfer took place purchased, or has within a period of three years after that constructed a residential house, the capital gain shall be dealt with in accordance with the following provisions of Section 54F(1) of the Income Tax Act, 1961, that is to say,-

> *(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under Section 45;*
> *(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under Section 45.*

18. As per *Proviso* to Section 54F(1)(a)(i) of the Income Tax Act, 1961, where the assessee, owns more than one residential house, other than the new asset on the date of transfer of the original asset. *Proviso* to Section 54(1)(a)(i) of the Income Tax Act, 1961 reads as under:-

> *"Provided that nothing contained in this sub-section shall apply where-*
> *(a) the assessee,-*
>
> *(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or*

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(iv) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property"."

19. Dealing with an identical situation, the Hon'ble Division Bench of this Court in **M/s.Tilokchand & Sons** Vs. **Income Tax Officer,** (2019) 413 ITR 0189 (Mad), observed as under:-

"20. We have discussed about the two decisions from the Karnataka High Court, which, in our opinion, dealt with similar controversy as is raised before us herein. The only difference which we find is that the purchase of the residential houses in the present case is at different address in the same city of Madurai. In ***D.Ananda Basappa*** *case stated (supra), two flats in question were admittedly adjacent to each other and which were joined to become one residential house. In the case of* ***Khoobchand M.Makhija*** *(supra), two door nos are given viz., 623 and 729, but the complete addresses and even the name of the*

*city is not clear in the facts narrated in the said Judgment. But in our considered opinion, the difference of location of the newly purchased residential house(s) will not alter the position for interpretation of the word '**a residential house**' to the effect that it may include more than one or plural residential houses, as held by Karnataka High Court, with which we respectfully agree. The location of the newly purchased houses by the same assessee viz., HUF out of sale consideration received on the sale of original capital Asset or a residential house in the given circumstances of availability of such residential houses as per the requirement of the HUF will not alter the position of interpretation.*

21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the word 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y. 2015-2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same Assessee *should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee-HUF in the present case, in our opinion, complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in **CIT** Vs. **D.Ananda Basappa** ((2009) 309 ITR 329 (Karn.)) & **Khoobchand M.Makhija** (supra) cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case.*

*22. The decision of Punjab and Haryana High Court relied upon by the learned counsel for the Revenue, in which the Division Bench of the said Court finding a distinction with **D.Ananda Basappa**'s case (supra) on facts, without expressing contrary opinion in detail, held that no Substantial Questions of Law arose, renders little help to the arguments advanced by the learned counsel for the Revenue.*

23. Therefore, we are of the considered opinion that the present Appeal filed by the Assessee deserves to be allowed and the same is accordingly allowed and the questions of law *framed above are answered in favour of the Assessee and as against the Revenue. No order as to costs."*

20. A similar view was earlier taken by a Division Bench of this Court in **Commissioner of Income Tax** Vs. **V.R.Karpagam,** (2015) 373 ITR 0127 (Madras) for the Assessment Year 2007-2008. It reads as under:-

"10. The above-said amendment to Section 54F of the Income Tax Act, which will come into effect only from 01.04.2015, makes it very clear that the benefit of Section 54F of the Income Tax Act will be applicable to constructed, one residential house in India and that clarifies the situation in the present case, i.e, post amendment, viz., from 01.04.2015, the benefit of Section 54F will be applicable to one residential house in India. Prior to the said amendment, it is clear that a residential house would include multiple flats/residential units as in the present case where the assessee has got five residential flats. We may also mention here that all the Authorities below have clearly understood that the agreement signed by the assessee with M/s.Mount Housing Infrastructure Ltd., is that the assessee will receive 43.75% of the built-up area after development, which is construed as one block, which may be one or more flats. In that view of the matter what was before the Assessing Officer is only equivalent of 56.25% of land transferred, equivalent to 43.75% of built up area received by the assessee. This built up area got translated

into five flats. Hence, we are of the opinion that the transaction in this case was not with regard to the number of flats but with regard to the percentage of the built up area, vis-a-vis, the Undivided Share of Land.

11. *In similar circumstances, this Court, by order dated 04.01.2012 in T.C.(A)No.656 of 2005 held as follows:*

> *"The above provision refers to a residential house meaning thereby that even if there are four different flats and if it is considered for the property assessed as one unit and one door number is given, it should be construed as a residential unit, namely, one unit. In that sense, the said provision is available to the assessee."*

12. In the decision reported in (2012) 75 DTR 56 Dr.(Smt.) P.K.Vasanthi Rangarajan, this Court, while dealing with the benefit of exemption under Section 54F, followed the above-said decision of this Court in T.C.(A)No.656 of 2005 and granted the benefit to the assessee under Section 54F of the Income Tax Act on the investment made in the four flats.

13. Hence, the above-said decisions of this Court make it clear that the property should be assessed as one unit, even though different flats are available. Here also, as per the assessment order, all the flats have one door number, namely, Door No.29F, Race Course, Coimbatore.

14. In the light of the above, we find no question of law much less any substantial question of law arises for consideration in this Tax Case (Appeal). Accordingly, this Tax Case (Appeal) stands *dismissed. No costs.”*

21. An Explanatory Note was also made to the provisions of the Finance (No.2) Act, 2014 in Circular No.01/2015 dated 21.01.2015 bearing Reference F.No.142/13/2014-TPL. It reads as under :-

> *"20.2 The provisions contained in sub-section (1) of section 54F of the Income-tax Act, before its amendment by the Act, inter-alia, provided that where capital gains arises from transfer of a long-term capital asset, not being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house, then, the portion of capital gains in the ratio of cost of new asset to the net consideration received on transfer is not chargeable to tax.*
>
> *20.3 Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-section (1) of section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.*
>
> *20.4 Similarly, sub-section (1) of section 54F of the Income-tax Act has been amended to provide that the exemption is available if the investment is made in one residential house situated in India."*

22. Thus, it is clear only with effect from the amendment to Section 54F of the Income Tax Act, 1961 vide Finance (No.2) Act, 2014, the restriction has been imposed for registering exemption to one residential house in India. The dispute in the present case pertains to the Assessment Year 2003-2004 which is long after the amendment to Section 54 of the Income Tax Act, 1961.

23. Therefore, the substantial questions of law is answered in favour of the appellant - assessee and as against the Revenue.

24. This Tax Case Appeal, is thus, allowed. No costs.

[R.S.K., J.] **[C.S.N., J.]**

14.10.2024

Neutral Citation : Yes / No

kkd / arb

To

The Income Tax Officer,
Business Ward – I (1),
Chennai – 600 034.

R.SURESH KUMAR, J.
and

C.SARAVANAN, J.

kkd / arb

T.C.A.No.700 of 2015

14.10.2024