

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 6500/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

Sanmeetkaur M. Kohli C/o 401, LE-Orchid, 15 th Road, Opp. Khar Gymkhana, Khar (West), Mumbai	Vs.	The Income Tax Officer, Ward(IT), 3(1)(1), Room No. 139, 1 st floor, Scindia House, Ballard Estate, Mumbai-400 038
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AFEPK4571K		

अपीलार्थी की ओर से / Appellant by	:	Shri Ajay R Singh, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Chaudhary Arun Kumar Singh, DR

सुनवाई की तारीख / Date of hearing:	18-04-2019
घोषणा की तारीख / Date of pronouncement :	18-04-2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal filed by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-57, Mumbai [in short CIT(A)], Appeal No. CIT(A)-57/Arr.113/2017-18 vide order dated 31.08.2017. The Assessment was framed by the Income Tax Officer (International



Taxation), Ward-3(1)(1), Mumbai (in short 'ITO / AO') for the A.Y. 2013-14 vide order dated 07.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in not allowing the deduction under section 54 of the Act in respect of amount transferred by her husband to the builder's account by holding that the same cannot be treated as her contribution. For this assessee has raised the following ground No. 1: -

"1. The learned CIT(A) erred in confirming disallowance to the extent of ₹ 54,81,420/- on the ground that the appellant was required to deposit the amount received from the Sale of Property, for claiming exemptions under section 54. The amount transferred by her husband to the builder can't be regarded as deposit made by her as the gift claimed to be received by her was not transferred in her name, but was paid to builder by the husband of appellant directly through NEFT."

3. Briefly stated facts are that the assessee is a non-resident. During the year under consideration, the assessee sold residential house property for a sum of ₹ 1,37,56,000/- on 06.03.2012 as Flat No. 65, Movie Tower, Oshiwara complex, Andheri (W), Mumbai-58. The assessee purchased this property in FY 2002-03 for a sum of ₹ 30,69,250/-. The assessee computed the long term capital gain after taking indexation under section 50C of the Act at ₹ 77,43,425/-. The assessee claimed deduction under section 54 of the Act on account of



investment in residential house this long term capital gain and taxable capital gain was declared at nil. The AO also noted that the investment is not made within the stipulated period and did not allow under section 54 of the Act. It was noted by the AO that the investment is not made before the due date of filing of return of income by the assessee. The AO also noted that the investment in new house is made by assessee's husband and not assessee to the extent of ₹ 70 lacs. Hence, he stated that the assessee is not entitled for claim of deduction under section 54 of the Act. The assessee replied that she has purchased a residential property jointly within three years from the date of sale and contribution of assessee in the purchase of new residential property is Rs. 82,62,005/-. The assessee explained the investment with dates as under:

Due date u/s 139(1) 31/7/2013

Due date u/s 139(4) 31/3/2015

Return filed on 24/03/2014

Date of sale of Residential property 06/07/2012

Payments dates for new residential property

27/7/2013 ₹12,62,005/- before due date u/s 139(1)

13/10/2014 ₹ 70,00,000/- before due date u/s 139(4) but after return filing.

4. Further, the assessee stated that the sum of Rs. 12,62,005/- was invested out of own source and Rs. 70 lacs was paid by her out of gift received from her husband Shri Simarjeet Singh. The assessee filed the proof of payment made by husband and declaration of gift made by



husband. As regards to the source of Shri Simarjeet Singh the husband, she explained that her husband has given gift on 13.10.2014 during assessment year 2015-16 out of the sale proceed of office premises owned by him. It was claimed by assessee that payment is made by her husband directly to the builder but it was on behalf of the assessee. But the AO has not believed the explanation made by assessee and assessed the whole as long term capital gain at Rs. 77,43,425/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) after considering the submissions of the assessee and the above facts held that the assessee is entitled for deduction under section 54 of the Act as the investment is made within the due date of filing of return under section 139 of the Act. Accordingly, the CIT(A) allowed the claim of deduction to the extent of Rs. 12,62,000/-. But he confirmed the action of the AO and denied the deduction under section 54 of the Act on the amount of Rs. 75 lacs paid by husband of the assessee as gift. For this CIT(A) decided the issue vide Para 3.3 as under: -

“3.3 Decision

1) I have gone through the submission made by the appellant before the AO and also during the course of appellant proceedings. There are two issues which have to be adjudicated before me. Whether deduction u/s. 54 of the IT Act is allowable even if the assessee has not deposited full amount in Capital Gain Account scheme till the due date of filing of return of income u/s. 139 (1) of the relevant A.Y. In the instant case part of payment for residential property was made before due date of filing return u/s. 139(1) and other payment was



made before due date u/s. 139(4) but after filing of return. As submitted by the appellant ruling of various counts. /tribunal which are already mentioned in above paragraphs, deposit in capital gain scheme due date includes date of tiling return u/s. 39(4) also. Now the second grounds of appeal is whether deposits can be made by family member which in this case is the husband of appellant.

2) From the assessment order and submission made before me it is seen that appellant sold residential property for Rs. 1,37.50,000/- . After taking indexation the LTCG as per IT Act, 1961 came to Rs. 77,43,425/-. For claiming deduction u/s. 54 of the IT Act the appellant was required to deposit this amount in Capital Gain Account Scheme. The appellant purchased flat and paid ¼ amounting to Rs. 12,62,00/- on 27-07-2013 and ₹ 70,00,000/- on by way of gift received from her husband shri Simarjeet singh Bajaj. Copy of return tiled by shri Simarjeet singh Bajaj of three years 2013-14. 2014-15,2015-16 was also submitted. Copy of bank account NRC SB A/c. with SBI (Pune from which amount of lts. 70,00,000/- was paid to builder by NEFT was also submitted. This amount was proceeds of office premise owned and sold by him.



3) *From the perusal of copy of bank A/c submitted to me it is seen that the account was not in joint name with the appellant. The amount of Rs. 70,00,000/- was transferred to builder Marvel land marks Pvt. Ltd. by the husband through NEFF directly*

4) *The appellant was required to deposit the amount received from the sale of property, for claiming exemption u/s. 54. The amount transferred by her husband cannot be regarded the deposit made by her as the gift claimed to be the received by her was not transfer in her name. So only amount of ₹ 12,62,005/- deposited by her can be claimed as allowable u/s 54.”*

Aggrieved, assessee came in appeal before Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. As regards to the dispute of entitlement of claim of deduction under section 54 of the Act whether the investment made within the stipulated period or not, the CIT(A) has allowed the claim in favour of assessee and Revenue has not challenged the same. It means, Revenue has not filed any appeal and the same is confirmed by the learned Sr. DR. The only dispute remains is whether the amount gifted by assessee's husband of Rs. 70 lacs on 13.10.2014 by making direct payments to the builder out of NRO saving Bank Account maintained with SBI, Pune can be considered as payment made by



assessee. We find that the assessee has purchased flat out of own funds to the tune of Rs. 12,62,000/- on 27.07.2013 and balanced Rs. 70 lacs were paid on 13.10.2014, which was received by assessee by way of gift from her husband. The husband's bank account copy of NRO saving bank account maintained with SBI being clearly shows that this amount was invested in purchase of this residential flat by way of transfer of amount to the builder by NEFT. For this, the learned Counsel for the assessee relied on the decision of this ITAT in the case of Deepak A Shah vs. ITO in ITA No. 526/Mum/2016 for AY 2010-11, wherein the Tribunal following the decision of ACIT vs. Dr. P.S. Pasricha (2008) 20 SOT 468 (Mum) in ITA No. 6808/Mum/2003 for AY 2001-02 vide order dated 11.01.2008 has held that the same fund may or may not be utilized for the purchase of another residential house but the requirement of law is that the assessee should purchase a residential house within the period and the source of fund is quite irrelevant. The Tribunal has considered Hon'ble Bombay High Court vide Para 7 as under: -

"7. We have heard the rival submissions and perused the relevant materials on record. We find that an identical issue arose before the ITAT 'D' Bench, Mumbai in Dr. P.S. Pasricha (supra). In that case, the assessee during the relevant previous year sold a property for Rs.1.40 crores. Then the assessee within the period specified u/s 54(1) purchased two adjoining residential flats in one building for a total consideration of Rs.104.78 lakhs and gave them on rent to two different tenants. The



assessee claimed deduction of Rs.104.78 lakhs u/s 54(1).

The AO denied the deduction u/s 54 on the ground that the sale proceeds from the original flat were not deployed fully in new flats.

At para 9 the Tribunal held:

“The revenue’s main dispute is that the sale proceeds were utilized for purchase of a commercial property and residential house was purchased out of the funds obtained from different sources, as such, the identity of heads has been changed. We do not find much force in this argument as the requirement of section 54 is that the assessee should acquire a residential house within the period of one year before or two years after the date on which transfer took place. Nowhere, it has been mentioned that the same funds must be utilized for the purchase of another residential house. The requirement of law is that, the assessee should purchase a residential house within the specified period and source of funds is quite irrelevant.”



In appeal by the revenue, the Hon'ble Bombay High Court vide order dated 07.10.2009 held:

“2. Having seen the finding of fact recorded by the Tribunal in paragraph No. 9 that the assessee had initially utilized the sale proceeds of sale of his residential flat for purchase of commercial properties and later on he purchased two residential flats within a period specified in sub section (2) of section 54 of the Act. In view of the matter, the view taken by the Tribunal cannot be faulted. The appeal is without any substance. Hence the same stands dismissed in limine with no order as to costs.

7.1 Facts being identical, we follow the order of the Co-ordinate Bench in Dr. P.S. Pasricha (supra) subsequently confirmed by the Hon'ble Bombay High Court and delete the addition of Rs.50,11,700/- made by the AO.”

6. As in the above, the Tribunal has decided the issue and Hon'ble High Court has affirmed the same view in the case of Dr. P.S. Pasricha (supra). In the instant case, the facts are that the assessee has received gift from her husband and invested a sum of Rs. 70 lacs in purchase of new residential house. The assessee has fulfilled all the conditions



prescribed under section 54 of the Act and hence, she is entitled for claim of deduction, we allow the same. The appeal of assessee is allowed.

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

Order pronounced in the open court on 18-04-2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 18-04-2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai