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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No.1106 of 2011**

% Decision Delivered On: 27th September, 2011

COMMISSIONER OF INCOME TAX . . . APPELLANT

Through: Mr. Abhishek Maratha, Sr. Standing Counsel.

VERSUS

RAVINDER KUMAR ARORA . . .RESPONDENT

Through: Dr. Rakesh Gupta, Advocate.

CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The sole issue raised in this appeal is that whether the exemption under Section 54F of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is extendable to the assessee for the total consideration paid by him, for the purchase of the new asset (the residential property) in the joint name or the exemption would be limited to the extent of the share of the assessee in the said purchased property. This has arisen in the following circumstances:

The assessee filed his return for the Assessment Year 2007-08 showing total income of ₹64,32,220/-. In the assessment proceedings, it was noticed by the AO that the assessee is proprietor of M/s. Arora Service Station and is running a petrol pump. During the relevant year, the assessee has shown long term capital gain of ₹45,49,045/- on sale of plot of land bearing Khasra No.526/1, Min and Old No.526, MIN Khasra No.552 and Old Khasra No.37 situated at Mohuddinpur Kanwani, Tehsil Dadrai, District Gautam Budh Nagar, UP. This plot of land was purchased by the assessee in his name on 27.1.1989. As per the details filed by the assessee, it was noticed by the AO that this land was sold for a sale consideration of ₹4,33,00,000/- to M/s. Nirala Developers Pvt. Ltd. vide sale deed dated 01.7.2006. Out of total gain arising from sale of land, the assessee claimed exemption of capital gain to the extent of ₹3,18,59,276/- under Section 54F of the Act on account of purchase of a new house property. The assessee vide reply dated 19.11.2009 field a copy of the purchase deed through which a residential house bearing No.8, Block No.7, situated in layout plan of Safdarjung Enclave, New Delhi was purchased on 01.3.2007 for a total consideration of ₹3,28,15,000/- and

claimed exemption under Section 54F of the Act for ₹3,18,59,276/-.

2. On going through the purchase deed of the above residential house, it was noticed by the AO that the purchase deed was made jointly in the names of the assessee and his wife Smt. Manju Arora. The assessee had claimed exemption under Section 54F of the Act with reference to the whole amount invested in the said house property. The AO vide questionnaire dated 04.12.2009 asked the assessee to explain his claim of exemption under Section 54F of the Act with reference to the whole amount invested in the said house inasmuch as the property was purchased jointly with his wife. The assessee vide reply dated 15.12.2009 submitted that wife's name was only included in the sale deed just to avoid any litigation after his death though all the funds invested in the said house were provided by the assessee himself as was clear and evident from the Bank Statement. The assessee, therefore, submitted before the AO that the exemption under Section 54F of the Act is to be allowed with reference to the full amount of purchase consideration paid by him for the aforesaid residential house.

3. The assessee's submission was considered by the AO. The AO noted that though all the payments were made by the assessee, the residential house was purchased jointly in the names of the assessee and his wife. The AO then referred to Section 54F of the Act only to the extent of his right in the new residential house purchased jointly with his wife. The AO, therefore, allowed 50% of the exemption claimed under Section 54F of the Act as against total claim of ₹3,18,59,276/- made by the assessee. The AO allowed claim only to the extent of ₹1,59,29,638/- and the balance 50% being ₹1,59,29,638/- was disallowed.

4. Aggrieved by that order, the assessee filed the appeal before the CIT (A), which was also dismissed. However, in further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), the assessee has succeeded there as the Tribunal has held that the assessee is entitled for benefit of Section 54F of the Act with reference to the total investment of ₹3,28,15,000/-.

5. In these circumstances, the instant appeal is filed by the Revenue under Section 260A of the Act, which we have admitted on the following substantial question of law:

> "Whether the ITAT was correct in law in granting the exemption u/s 54F of the Income Tax Act, 1961, to the assessee for the whole consideration of Rs.3,28,15,000/- for the purpose of the new asset (the residential property) in the joint name of the assessee and his wife, and not to the extent of 50% share of the assessee in the new asset?"

6. With the consent of the learned counsel for the parties, we have heard the matter finally at this stage itself and in our opinion, the question of law is to be decided in favour of the assessee and against the Revenue. Section 54F(1) of the Act needs to be noted:

> **"Section 54F. CAPITAL GAIN ON TRANSFER OF CERTAIN CAPITAL ASSETS NOT TO BE CHARGED IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE.**
>
> (1) Subject to the provisions of sub-section (4), where in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the 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 date constructed 842a , a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, 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 :

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 three years 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

(b) 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".

Explanation : For the purposes of this section, - "Net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

7. Plain reading of the aforesaid provision indicates that in order to get benefit of this Section, the assessee should, *inter alia*, "purchase" a house. As per the Revenue, this house has to be purchased in the name of the assessee only

and benefit is not given if it is purchased by the assessee jointly with his wife.

8. At the outset, important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house though in his own name but along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of the registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the house. The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a single penny has been contributed by the wife in the purchase of the house. The Tribunal also noted the argument that the property was purchased by the assessee in the joint name with his wife for '*shagun*' purpose and because of the fact that the assessee was physically handicapped. The Tribunal further concludes that as a matter of fact, the assessee was the real owner of the residential house in question.

9. On the aforesaid facts, we are of the view that the conditions stipulated in Section 54F stand fulfilled. It would be treated

as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife. If the view of the Assessing Officer (AO) or the contention of the Revenue is accepted, it would be a derogatory step.

10. Even when we look into the matter from another angle, facts remain that the assessee is the actual and constructive owner of the house. In ***CIT Vs. Podar Cements (P) Ltd. & Ors.***, (1997) 226 ITR 625 (SC), the Supreme Court has also accepted the theory of constructive ownership. Moreover, Section 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only. Here is a case where the house was purchased by the assessee and that too in his name and wife's name was also included additionally. Such inclusion of the name of the wife for the above-stated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee.

Objective of Section 54F and the like provision such as Section 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Section 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied on hyper technical ground. Andhra Pradesh High Court in the case of ***Late Mir Gulam Ali Khan Vs. CIT***, (1987) 165 ITR 228 (AP) has held that the object of granting exemption under Section 54 of the Act is that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gains are concerned. The word "assessee" must be given wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word "assessee" as that would frustrate the object of granting exemption.

11. We also find judgments of other High Courts giving benefit of Section 54F(1) of the Act when the house of the assessee is purchased jointly with his wife. In the case of ***CIT Vs. Natrajan***, (2007) 287 ITR 271 (Mad), though this case was decided in relation to Section 54 of the Act, the said Section is *pari materia* of Section 54F(1) of the Act. Likewise, the Punjab & Haryana High Court in the case of ***CIT Vs. Gurnam Singh***, (2010) 327 ITR 278 took the same view while discussing the provisions of Section 54 of the Act which is again *pari materia* of Section 54F(1) of the Act.

12. We, thus, answer the question in favour of the assessee and dismiss this appeal with cost quantified @ ₹10,000/-.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

SEPTEMBER 27, 2011
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