

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'F', MUMBAI**

**BEFORE SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER &  
SHRI VIVEK VARMA, JUDICIAL MEMBER**

**I.T.A. NO. 7159/Mum/2010  
Assessment Year : 2006-07**

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| Smt. Veena Gope Shroff,<br>Flat No. 34, Ellora Building,<br>4 <sup>th</sup> Road, Khar (W),<br>Mumbai 400 052.<br><br><b>PAN: ACLPS 1971 P</b><br>(Appellant) | Vs. | The Income Tax Officer 19 (1)(2),<br>Mumbai.<br><br>(Respondent) |
| Appellant by  | :   | Mr. Vimal Punmiya.   |
| Respondent by   | :   | Mr. A.K. Mod.  |

**Date of Hearing: 21-06-2012.**

**Date of Pronouncement: 04-07-2012.**

**ORDER**

**Per VIVEK VARMA, JM:**

This appeal by the assessee is directed against the order dated 16-07-2010 of CIT(A) for the assessment year 2006-07. The assessee in this appeal has raised basically one issue of computation of LTCG .

2. The dispute is regarding computation of Rs. 61,87,271/- as against Rs. 3,25,800/- as long term capital gain on account of surrender of flat, as declared by the assessee.

3. The facts in brief are that the assessee vide development agreement dated 08.07.2005, had surrendered her own flat of carpet

area 866 sq.ft. to the builder and in lieu of the surrender of the flat, the assessee had been allotted new flat of carpet area 1040 sq.ft. and also given cash compensation of Rs. 11,25,800/- Rs. 8,00,000/- out of the cash compensation received by the assessee, had been invested in NABARD bonds which was claimed as exempt under section 54EC and the balance Rs. 3,25,800 was shown as LTGC. Since the assessee had acquired the new flat in lieu of the old flat, capital gain arising on account of the transfer of the old flat was treated as exempt under section 54 of the Income tax Act, 1961 (the Act).

4. The AO however, observed that for applicability of provisions of section 54, the assessee should have purchased a house property within one year before or two years after the date of transfer or constructed a new residential house within a period of 3 years from the date of transfer. In this case, the assessee had neither purchased nor constructed the house property. The AO, therefore, held that the assessee was not entitled for exemption under section 54 of the Act. He, therefore, did not allow the claim of deduction under section 54. The AO arrived at the sale consideration in respect of transfer of the old flat and computed the same at Rs. 86,89,960/- consisting of sum of Rs. 75,64,160/- being market value of the new flat and Rs. 11,25,800/- being cash compensation and thus, long term capital gain was computed at Rs. 61,87,271/- after deducting the indexed cost of acquisition from the sale consideration.

5. In appeal, CIT(A) agreed with the AO that exchange of old flat with new flat constituted transfer and the capital gain was therefore taxable. He also agreed with the AO that the assessee had not fulfilled the conditions of section 54 for allowing exemption under the said section. He therefore, confirmed the disallowance made by AO.

6. Aggrieved by which the assessee is in appeal before the Tribunal.

7. Before us, the AR for the assessee submitted that the provisions of section 54 are applicable in case the assessee transfers a residential house and purchases a new house within a period of one year before or after 2 years after date of transfer or constructs a residential house within a period of 3 years from the date of transfer. In this case, the assessee had exchanged the old flat with a new flat which amounted to transfer, which was also admitted by the revenue authorities. Thereafter, the new flat had been built by the builder and possession handed over to the assessee which amounted to construction of a new flat which had been done within a period of 3 years from the date of transfer as the construction of the new flat was completed on 14.6.2007. In this connection, he referred to the letter dated 30.5.2007, by the builder, addressed to society in which it was mentioned that possession of the flat would be given on 14.06.2007, and which was actually given on 15-06-2007 (letter of possession on record). The AR also referred to the decision of the Tribunal in the case of Jatinder Kumar Madan v/s ITO in I.T.A. No. 6921/Mum/2010

(where one of us was a party) wherein another occupant i.e. Mr. J. K. Madan was one of the signatories of the same agreement as that of the assessee, in which it was held that acquisition of new flat under a development agreement with a builder in exchange of old flat amounted to construction of new flat and therefore, the time period of 3 years from the date of transfer as mentioned in section 54 would apply for the acquisition of new flat.

8. The DR on the other hand supported the order of authorities below and argued that provisions of section 54 were not applicable as the assessee had neither purchased a new residential house nor constructed a new residential house.

9. We have perused the records and considered the rival contentions carefully. The dispute is regarding allowability of exemption under section 54 of the Act and computation of long term capital gain in respect of exchange of old flat with a new flat and cash compensation under development agreement with the builder. The revenue authorities have held that since assessee had neither purchased a new flat or constructed a new flat, the provisions of section 54 are not applicable. We, however, do not subscribe with the view taken by revenue authorities. The exemption under section 54 is allowable in case the assessee transfers a residential house and within a period of 1 year before or 2 years after the date of transfer, purchases a new residential house or constructs a new residential house within a period

of 3 years from the date of transfer. In this case, the assessee had exchanged old flat with new flat to be constructed by the builder under development agreement which amounts to transfer under section 2(47) of the Act. Thus, the only other condition which is required to be satisfied is that assessee either purchases a new residential flat within the prescribed limit or constructs a new residential flat within a period of 3 years from the date of transfer. The acquisition of a new flat under a development agreement in exchange of the old flat amounts to construction of new flat. This view is supported by the decision of the Tribunal in the case of another co-owner in the case of J. K. Madan (supra). Therefore, the provisions of section 54 are applicable and assessee is entitled to exemption if the new flat had been constructed within a period of 3 years from the date of transfer. The AR has also argued that entire cash compensation received by the assessee amounting to Rs. 11,25,800/- cannot be taxed as capital gain as assessee had invested a sum of Rs. 8,00,000/- lacs in NABARD bonds under section 54EC. Since cash compensation was part of consideration for transfer of the old flat and the assessee had invested the money in NABARD bonds, the exemption under section 54EC will be available. As regards the completion of new flat within a period of 3 years, assessee has filed a copy of letter dated 30.05.2007 of the builder in which it has been mentioned that the builder had applied for occupation certificate and possession was to be given on 14.6.2007,

which in fact was given the very next day, i.e. 15-06-2007. We, therefore, allow the claim of exemption under section 54, and set aside the order of CIT(A) and direct the AO to allow the claim of the assessee.

10. In the result, appeal is allowed.

Order pronounced in the open Court on this day of 04/07/2012.

Sd/-  
**(B.RAMAKOTIAH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(VIVEK VARMA)**  
**JUDICIAL MEMBER**

Mumbai: 04/07/2012.  
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