

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INCOME TAX APPEAL NO.2483 OF 2011**

Commissioner of Income Tax 21,
Mumbai 400 051

...Appellant

v/s

Devdas Naik

...Respondent

Mr Abhay Ahuja for Appellant.

Mr Ajay R. Singh for Respondent.

**CORAM : S.C. DHARMADHIKARI AND
B.P. COLABAWALLA JJ.**

DATED : 10TH JUNE 2014.

P.C. :-

1. The Appeal questions the order passed by the Income Tax Appellate Tribunal confirming that of the Commissioner of Income Tax (Appeals).

2. The concurrent finding of fact in relation to Assessment Year 2007-08 is questioned on the ground that the claim of deduction under section 54 of the Income Tax Act 1961 was not tenable.

3. It is urged that the factual position has been completely misread and misconstrued so as to allow the claim.

Mr Ahuja, learned counsel appearing in support of this appeal submits that the law laid down by the Mumbai Bench of the Tribunal in the case of Income Tax Officer, Ward 19(3)-4, Mumbai v/s Ms Sushila M. Jhaveri, reported in (2007) 107 ITD 327 (MUM)(SB) and confirmed by this Court in the case of Commissioner of Income Tax v/s Raman Kumar Suri in Income Tax Appeal No.6962 of 2010, decided on 27th November 2012, is applicable only when the house purchased is a single unit. According to Mr Ahuja, in the present case, two flats, one acquired in the Respondent- Assessee's name and another jointly in the names of Respondent – Assessee and his wife but under two distinct agreements and from different sellers have been taken into consideration for the purpose of this deduction or the claim. That is contrary to the Legislative intent and also the plain language of section 54 of the Act. Therefore, according to Mr Ahuja, a substantial question of law arises for determination.

4. We are unable to agree. We found that the evidence based on which the claim was granted by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal has

been noted by the Tribunal in paragraph 4 of its order. Prior thereto, the factual position has also been noticed that the Assessee alongwith his wife jointly owned bungalow. The bungalow was sold at Rs.3/- crores. With this sum, they bought three flats, one in the Assessee's name, another in the name of Assessee and his wife and third in the name of the wife. The Assessee claimed deduction under section 54 on purchase of two flats in which he is either a sole owner or a joint owner. Though these flats were acquired under two distinct agreements and from different sellers, what has been noted by the Tribunal as also the Commissioner of Income Tax (Appeals) is that the map of the general layout plan as well as internal layout plan in regard to flat Nos.103 and 104 indicate that there is only one common kitchen for both the flats. The flats were constructed in such a way that adjacent units or flats can be combined into one. However, admitted fact is that the flats were converted into one unit and for the purpose of residence of the Assessee. It is in these circumstances, the Commissioner held that the acquisition of the flats may have been done independently but eventually they are a single unit and house for the purpose of residence.

This factual finding could have been made the basis for recording a conclusion in favour of the Assessee. We do not find that such a conclusion can be termed as perverse. Reliance placed by the Tribunal on the order passed by it in the case of Ms Sushila M. Jhaveri and which reasoning found favour with this Court is not erroneous or misplaced. The language of the section has been noted in both the decisions and it has been held that so long as there is a residential unit or house, then the benefit or deduction cannot be denied. In the present case, the unit was a single one. The flats were constructed in such a way that they could be combined into one unit. Once there is a single kitchen then, the plans can be relied upon. We do not think that the conclusion is in any way impossible or improbable so as to entertain this Appeal. In this peculiar factual backdrop, this Appeal does not raise any substantial question of law. The Appeal is devoid of any merit and is dismissed. No order as to costs.

(B.P. COLABAWALLA J.)

(S.C. DHARMADHIKARI J.)