

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA.No.5568/Del./2015
Assessment Year 2012-2013

Dr. Jasvir Singh Rana 106, First Floor, Jor Bagh, New Delhi. (Appellant)	vs.	Income Tax Officer Ward 50(3), New Delhi. (Respondent)
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Assessee By : Shri P.N. Mehta, CA
Revenue By : Shri Arun Kumar Yadav, Sr. DR

Date of Hearing : 28.08.2017
Date of Order : 22.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Dr. Jasvir Singh Rana by filing the present appeal sought to set aside the impugned order dated 29.7.2015 passed by the Commissioner of Income-tax (Appeals), 17, New Delhi for the asstt. year 2012-13 on the grounds interalia that :-

1. *"On the facts and circumstances of the case the Assessing Officer has erred in computing long term capital gain at Rs. 99,57,265/-.*
2. *That the Commissioner (Appeals) is wrong in not granting exemption under section 54 and 54F of the Income Tax Act on the amount invested for the purchase of residential plot and deposits made under capital gain in the Bank.*
3. *That without prejudice to the above ground no. 1 and 2 The Commissioner (Appeals) has erred in not taking into account the provisions of section 54(2) of the Income Tax Act and section 54 F of the Income Tax Act.*
4. *That without prejudice to the above ground no. 1 and 2 where the amount is unutilized within the period mentioned in section 54 and 54F and the unutilized portion is to be taxed after three years from the date of transfer of the original asset.*
5. *That the order passed by the Commissioner (Appeals) is against the law and facts of the case."*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : during the scrutiny proceedings A.O. noticed that the assessee claimed income under the head "Capital Gains" from sale of immovable property and jewellery out of which assessee made investment for purchasing a residential house/ plot for a sale consideration of Rs. 75,85,818/- to M/s. Unitech Acacia Project Private Limited which was provisionally allotted to him. Assessee also invested balance amount of Rs. 25 lacs in the capital

gain account scheme and claimed u/s 54 and 54F of the Income Tax Act (in short 'the Act'). A.O. being dissatisfied with the explanation furnished by the assessee proceeded to conclude that the assessee has failed to fulfill the condition laid down u/s 54 and the period of two years from the purchase of house property and three years for the construction of the house property has already been expired in the month of July, 2014 and thereby rejected the claim of the assessee for Rs. 75,85,548/- and Rs. 25,00,000/-. A.O. also rejected the claim of the assessee qua capital gain of Rs. 76,450/- claimed as deduction from the sale of gold jewellery of Rs. 9,43,600/- u/s 54F on the ground that the assessee was required to purchase a residential property or construct a residential house within one year and three years respectively and thereby assessed the total income of assessee at Rs. 1,06,70,645/-.

3. Assessee carried the matter before Ld. CIT(A) by filing an appeal who has dismissed the same. Being aggrieved assessee has come before Tribunal by way of filing of present appeal.

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly assessee has received an amount of Rs. 1.62 crores on account of sale of residential property bearing No.1-B, Pusa Road, New Delhi on which capital gain comes to Rs.99,57,265/-; that the assessee invested Rs. 75,85,818/- u/s 54 of the Act and deposited capital gain of Rs. 25 lac ; that the assessee sold gold jewelry of Rs. 9,43,600/- after claiming deduction of indexed cost and has declared capital gain of Rs. 76,450/- claimed u/s 54 of the Act; that the assessee was allotted a plot No. 0030 at Main street No. 05 in Unitech Golf and Country Club by making payment of Rs.75,85,548/-; that assessee has invested the balance amount of Rs. 25 lac in the capital account scheme.

6. From the undisputed facts, and the order passed by the revenue authorities below the first question arises for determination in this case is

"As to whether A.O./CIT(A) have erred in computing in long term gain of Rs. 99,57,265/- by not granting exemption u/s 54 and 54F of the Act on the amount invested for the purchase of residential plot and deposits made under capital gain scheme in the bank."

7. Perusal of the agreement entered into between the assessee and M/s. Unitech Acacia Projects Pvt. Ltd. goes to prove that the possession of the plot was to be handed over to the assessee within a period of six months. Revenue authorities below. A.O./Ld. CIT(A) have denied the benefit of section 54 of the Act to the assessee on the ground that the assessee has failed to purchase or construct residential house within period of one year and there years as the case may be. Benefit of section 54F is denied on the ground that the amount of capital gain remained unutilized.

8. Assessee's contention before the bench is he has made all out efforts to get the possession of the plot in question by approaching the Hon'ble High Court of Allahabad alongwith 84 other petitioner by filing a writ petition and he has also filed a complaint before the

Hon'ble National Consumer Disputes Redressal Commission at New Delhi. This contention of the assessee is proved from the documents available at page 16 to 18 of the paper book.

9. Assessee also brought on record a letter dated 11.1.2011 written by M/s. Unitech Hi-Tech Developers Ltd. offering transfer of the plot on sub lease basis in accordance with sanction and approval accorded by Noida authorities.

10. From the letter dated 25.4.2016 issued by Unitech Golf and Country Club and provisional possession certificate duly signed by project Engineer of the developer at page 20A and 20B of the paper it is proved that provisional possession of the plot in question has been delivered to the assessee.

11. When it is not in dispute that the assessee has paid an amount of Rs. 75,85,818/- which is 95% of the total sale consideration for purchase of the property to M/s. Unitech High-Tech Developer (Rs. 7,41,250/- on 20.1.2011 and Rs. 68,44,298/- on 23.3.2011) through banking channel and also deposited Rs. 25,00,000/- under capital gain the right in personam was created in favour of the

assessee from the date of entering into an agreement dated 11.1.2011 in favour of the assessee. It does not matter if the registration of the sale deed has not been made in favour of the assessee because transfer of the property is to be taken from the date of agreement in favour of the assessee. Moreover the assessee has made frantic efforts to take the possession of the property from the developer by approaching Hon'ble High Court of Allahabad as well as National Consumer Disputes Redressal Commission.

12. Hon'ble Delhi High Court in case cited as **Balraj v. Commissioner of Income-Tax [2002] 254 ITR 22 (Del)** held that for the purpose of attracting the provisions of section 54 of the Income-tax Act, it is not necessary that the assessee should become the owner of the property as registration of the document was not imperative. So once the assessee has paid substantial amount to purchase the property within a period of one year he has become entitled for exemption u/s 54 of the Act.

13. Similar view has been taken by the Hon'ble Delhi High Court in the case cited as **CIT vs. R.L. Sood 245 ITR 727** held that when the agreement of purchase consideration for a new flat has been

made within one year of the sale of old property and now actual possession of the new property was delivered after one year the benefit of section 54 is available to the assessee.

14. So far as question of not having utilized an amount of Rs. 25 lacs deposited in capital gain account by the assessee is concerned the same shall be charged to tax in accordance with proviso to section 54(2) of the Act.

15. In view of what has been discussed above, question framed as answered in favour of the assessee and consequently appeal filed by the assessee is hereby allowed.

Order pronounced in the open Court on 22nd September, 2017.

sd/-

sd/-

(B.P. JAIN)
ACCOUNTANT MEMBER

(KULDIP SINGH)
JUDICIAL MEMBER

Delhi, Dated 22.9.2017

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

