

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 6868/DEL/2015	
	A.Y. : 2012-13	
ACIT, CIRCLE 72(1), ROOM NO. 305, D-BLOCK, CIVIC CENTRE, NEW DELHI	VS.	SH. VINEET KUMAR KAPILA, TOWER B-3, FLAT-201, THE WORLD SPA WEST, SECTOR-30, GURGAON, HARYANA - 122001 (PAN : AAJPK0545R)
(APPELLANT)		(RESPONDENT)

Department by : Ms. Ashima Neb, Sr. DR
Assessee by : Sh. Satyen Sethi, Adv. & Sh. Suresh
Chawla, CA

ORDER

PER H.S. SIDHU, JM

This appeal by the Revenue is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-21, New Delhi dated 16.10.2015 pertaining to assessment year 2012-13 on the following grounds:-

1. Whether, the Ld. CIT(A), on the facts and circumstances of the case and also in law, has erred in deleting the addition of Rs. 1,44,14,836/- made by the AO on account of Long Term Capital Gain.

2. The appellant craves leave to add, amend, alter vary andy / or withdraw any or all the above grounds of appeal.

2. The brief facts of the case are that the assessee case was selected for scrutiny through CASS and notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred as the Act) was issued and served upon the assessee requiring him to furnish necessary details and documents along with supporting evidence. In response the assessee attended himself and submitted necessary details and documents in support of his return-of income. On 11/11/2011 the assessee sold a property Fiat No. 1101, Block:No.5, Uniworld Garden, Sec-47, Gurgaon, 'Haryana, resulting in Long Term Capital Gain amounting to Rs.1,44,14,836/- against which the assessee has claimed deduction under Chapter 54 to the extent of Rs.1,44,14,836/-. During the assessment proceedings the AO also noticed that the assessee has entered into an 'Apartment Buyer Agreement' with M/s Standard Farms Pvt. Ltd. and Tata Housing Development Co. Ltd. on 27/08/2010. In this regard on consideration of facts and submission of the assessee, the AO was of the view that the impugned acquisition of new property by the assessee through 'Apartment Buyer Agreement', amounted to "purchase" of new house and that as per the provisions of section 54 of the Act the purchase should have been made before one year of the sale of Long Term Capital Asset or within two years of the sale. According to the AO, the impugned purchase of new house was not made within the period of one year before the sale of asset against which claim u/s. 54 of the Act has been made by the assessee. Accordingly, the

deduction u/s. 54 of the Act was disallowed and assessment was completed at total income of Rs. 1,44,14,836/-. Aggrieved with the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order 16.10.2015 has allowed the deduction u/s. 54 of the Act and allowed the appeal of the assessee.

3. Aggrieved with the impugned order, the Revenue is in appeal before the Tribunal.

4. At the time of hearing, Ld. DR relied upon the order passed by the AO and reiterated the contentions raised by the Revenue in the grounds of appeal.

5. On the other hand, Ld. Counsel of the Assessee relied upon the order of the Ld. CIT(A) and reiterated the contentions made before the Ld. CIT(A). He further stated that since the Ld. CIT(A) has passed a well reasoned order, the same does not need any interference. Hence, he requested that the appeal of the Revenue may be dismissed.

6. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities. We find that Ld. CIT(A) has discussed the issue in dispute elaborately at page no. 8 to 11 vide para nos. 4 & 5 of the impugned order. For the sake of convenience, we are reproducing herewith the relevant findings of the Ld. CIT(A) as under:-

"4. OBSERVATIONS:

I have carefully considered the written submission of the appellant and also the contents of the assessment order and perused the relevant material available on record. After having carefully considered the entire facts and circumstances of the case, my conclusions on the issue raised in the grounds of appeal are as under:-

As discussed above in the introductory paragraph of this appeal order, the assessee sold his property at Gurgaon on 11/11/2011 for total sale consideration of RS.2.47 crores showing LTCG of RS.1,44,14,836/- against which assessee claimed exemption u/s 54 by investing LTCG to another property being developed by Standard Farms Pvt. Ltd. and Tata Housing Co. Ltd. In this regard, the details of transactions are given as below:-

<i>Application for booking of flat</i>	<i>27th August, 2010</i>
<i>Buyer's Apartment-Agreement</i>	<i>2nd December, 2010</i>
<i>Sale of Flat</i>	<i>11th November, 2011</i>
<i>Completion of the flat by the builder</i>	<i>August, 2014</i>
<i>Handing over the possession of the flat</i>	<i>28th August, 2014</i>

Based on the above facts the AO treated the agreement between the assessee and the builder as agreement for purchase of flat and according to him it was not a case of construction of flat. The date of filing of application with the builder, Le. 27/10/2010 was considered as date of purchase by the AO whereas the actual date of agreement was 02/12/2010 when the 'Buyer Builder Agreement' was signed by the appellant. Considering the date i.e. 27/10/2010 as the

date of purchase, the AO concluded that the purchase of new flat was made prior to one year from the date of sale of the long term capital asset. As such, claim of assessee for deduction u/s. 54 of the Act was rejected by the AO treating it the case of purchase of residential property rather than construction house. In this regard, the AO relied on Circular No. 471 & 672 concluding that the acquisition of flat from the private builder cannot be treated at par with that of flat from DDA and other institutions and, therefore, rejected the claim of the assessee. In this regard, reference is made to provision of sec.54 of the LT. Act according to which an individual can claim exemption u/s. 54 only if the purchase is made within a period of one year or two year after the date of such transfer and in case of construction, if it has been done within a period of three years after transfer of capital asset in question. As per provisions of sec. 54, for claiming deduction in the case of construction, the construction has to be completed within a period of three years from the date of transfer of capital assets i.e. 10/11/2014 in this case and that assessee has received possession of the flat well before a period of three years i.e. 28/08/2014 and, therefore, it was strongly pleaded that the assessee is entitled to claim deduction u/s 54. It is also argued that the amount paid to the builder towards purchase of flat is to be considered as construction of the flat

and not purchase of the house. As such, cost of flat was due to be paid over a period of three years from the date of signing of "builder buyer agreement" and the possession was also to be handed over before three years from date of transfer of capital asset. Based on the above argument the appellant has contended that since he got the house constructed by entering into, 'Builder Buyer Agreement', the period of three years is available to the assessee for completion of such construction from the date of transfer of capital. asset. In the case in hand, the assessee has booked new. flat with a. builder and payments were to be made in installments and the possession was to be handed over after construction and it was pleaded that this case was that of construction of new residential house and not purchase.

According to the assessee this position has been clarified by the CBDT in Circular No.672 dated 16/12/1993 in which. it was clarified that acquisition of flat through allotment by DDA was to be treated as construction of flat would apply to cooperative societies and other institutions. The most, important point of consideration is whether purchase of flat from the private builders would fall in the categories of "Other Institutions" as has been held by various courts in following judgments as cited and relied upon the assessee as under:-

1. *Kishore H. Galaiya Vs. Income Tax Officer, Ward 8(2)(3) [2012] 24 taxmann.com 11 (Mumbai)*
2. *Assistant Commissioner of Income Tax, Circle 25(3) Vs. Smt. Sunder Kaur Sujan Singh Gadh [2005]3 SOT 206 (Mumbai)*
3. *Sri Ved Prakash Rakhra Vs. Assistant Commissioner of Income Tax, Circle 6(1), Bangalore (ITAT)*
4. *Mrs. Jyoti Arun Kothari VITO, (TS-737-ITAT-2014(Mum.))*
5. *CIT v Smt. Brinda Kumeri (2001) 114 Taxmann 266 (Del.)*
6. *CIT v Kuldeep Singh (2014) 49 Taxmann.com 167 (Del.)*
7. *Farida A Dungurpurwala viTO (2014) 52 Texmenn.com 227 (Mum. Tribunal)*

In above cases the competent courts have held that the flats constructed by the private developers are also covered by Circular No.471 & 672 and, therefore, entitled for deduction u/s. 54. The moot question is whether the agreement with builder to purchase a flat that is going to be constructed, is the case of purchase or construction. In this regard Hon'ble High Court of Mumbai in the case of Hilla J.B. Vadia 216 ITR 376 held that it is a case construction. Further, on identical

question, i.e. whether the booking of flat with the builder is to be considered a case of purchase or construction was considered by Mumbai bench of Tribunal in the case of ACIT vs. Sardar Kaur Sujan Singh and it was held to be a case of construction.

In recent judgment in the case of CIT vs Bindra Kumar (2001) 114 taxman 266 Hon'ble High Court of Delhi [jurisdictional High Court] has held that the purchase of property in multi storey building amounts to construction of building within the meaning of sec.54(1) for the purpose of claiming of exemption.

I have carefully considered rival contentions, facts of the case and provisions of income tax laws and also various circulars issued by CBDT from time to time and judgements delivered by competent courts on this issue and I am of the view that booking of flat with the builder has to be treated as construction of flat by the assessee and hence period of three years would apply for construction of new house from the date of transfer of long term capital asset. As such exemption u/s 54 by the assessee is allowable. In the present case flat booked with the builder by the appellant has to be considered as a case of construction of flat and the deduction claimed by the appellant u/s 54, is to be allowed.

5. In the result, the appeal is allowed."

7. After perusing the aforesaid finding as well as the case laws and CBDT Circular discussed therein, we are of the view that booking of flat with the builder has to be treated as construction of flat by the assessee and hence period of three years would apply for construction of new

house from the date of transfer of long term capital asset. Therefore, the Ld. CIT(A) has rightly allowed the exemption u/s. 54 of the Act, because in the present case also the flat booked with the builder by the assessee has to be considered as a case of construction of flat and the deduction claimed by the assessee u/s. 54 of the Act was rightly allowed, which does not need any interference on our part, hence, we uphold the same and reject the grounds raised by the Revenue.

8. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced on 07/02/2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 07/02/2018

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches