



IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI  
BEFORE SHRI R.C.SHARMA, AM  
&  
SHRI PAWAN SINGH, JM  
ITA No.298/Mum/2016  
(Assessment Year :2012-13)

Mr. George Britto Jesudas A-2, Prakriti Building Shrishti Complex, Sector 5A, Mira Road (East) Thane – 401 107	Vs.	ITO – 2 (3), B-Wing, 6 <sup>th</sup> Floor, Ashar IT Park, Road No.16-Z, Near Ambika Nagar Wagle Industrial Estate, Thane – 400 604
<b>PAN/GIR No.</b>		
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	Shri Virendra Singh Khurana
Revenue by	Shri V. Vidhyadhar
<b>Date of Hearing</b>	<b>26/12/2017</b>
<b>Date of Pronouncement</b>	<b>19/01/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-1, Thane dated 16/10/2015 for A.Y.2012-13 in the matter of order passed u/s.143(3) of the IT Act.

2. The only grievance of assessee relates to decline of claim of exemption u/s.54F on the plea that assessee has purchased more than one residential house out of the sale proceeds of capital gain.
3. Rival contentions have been heard and record perused.
4. Facts in brief are that the assessee filed his Return of Income for the A.Y 2012-13 wherein long term capital gains arising on Sale of

Industrial Gala amounting to Rs. 63,97,196/- was reported on the Sale Consideration of Rs. 75,00,000/-. Against the said long term capital gains, the assessee acquired two residential flats namely a) Mayur Shrishti for - Rs. 38,03,010/- and b) Shanti Gardens for Rs. 37,73,590/- comprising two agreements. The flat at Shanti Gardens is just one as shown in the plan placed at pages 208-209, annexed as part of the original agreements. Accordingly, the investment from the sale of the Industrial gala has been made in two flats, the combined total cost of which works out to be Rs. 75,76,600/-. We found that that the said Industrial Gala owned by the assessee, was being used in partnership by the assessee and his only brother, and since their business was not doing well, the same was closed and the industrial gala sold. The purpose of the purchase thereupon of the said two Flats was for the use of the family of the assessee, as each of the two brothers needed a separate flat each as per the growing needs of the family as each of the two brothers. Accordingly exemption u/s 54F was claimed, thus offering Long term Capital gains to tax at Nil value. However, AO declined assessee's claim of exemption u/s.54F on the plea that two residential flats were adjacent to each other and in view of the proviso to Section 54F which interalia stipulate that nothing contained in this sub-section shall apply where assessee purchases any residential house other than the new asset within a period of one year after the date of transfer of the original asset. AO has however, disallowed even claim in respect of one house.

5. By the impugned order, CIT(A) confirmed the action of the AO after observing as under:-

*(1) Exemption u/s. 54F was available in respect of one residential property and not multiple residential units as claimed by the appellant*

*(2) As per clause (a)(ii) of proviso to section 54F(1), if an assessee purchases any residential house other than the new asset within a period of one year after the date of transfer of the original asset, then exemption u/s. 54F(1) of the I.T. Act, is not available.*

6. Now, assessee is in appeal before us against the above order of CIT(A).

7. It was argued by learned AR that the assessee in furtherance to the object of buying a house property for the family bought two residential properties, deduction u/s 54F would still be allowable having due regard to:

(i) the amendment which took effect from 1-4-2015, which specifically made the deduction applicable to purchase of **one ,residential house only** w.e.f. A.Y. 2015-16. This meant that the Parliament had recognized / accepted the fact that prior to the said date, the benefits of the deduction under section 54F were available for investment in more than one residential house properties. Following judicial pronouncements support this proposition.

- **D. Ananda Basappa - 309 ITR 329-** Kar. (against which the department's appeal to the Supreme Court was dismissed),
- **K.G. Rukminiamma** (Kar), 331 ITR, 211 and
- **CIT vs. Geeta Duggal** 257 CTR 208 (Del).

8. It was further submitted that all the above decisions support the contention of the assessee, the flats were either adjacent or in the same or one building, though on different floors, so as to constitute a residential house. It was further submitted that the logic and ratio decidendi of the said decisions is that the purpose of the purchase of the residential premises must be for the use of the family even if the flats are not necessarily combined as one flat. This logic and reasoning would extend to independent residential flats as well.

9. Reliance was placed on the decision of Karnataka High Court in the case of CIT vs. Late Khoobchand M. Makhija, decided on 18<sup>th</sup> December 2013.

10. On the other hand, learned DR relied on the order of the lower authorities.

11. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR before us during the course of hearing. The issue under consideration is squarely covered by the decision of Karnataka High Court in the case of CIT vs. Late Khoobchand M. Makhija order dated 18/12/2013 wherein Hon'ble Court held as under:-

*16. In the instant case, one residential house is sold. Out of the sale consideration, it was open to the assessee to purchase a big residential house so as to accommodate both his sons, in which event in terms of Section 54 (1), he would have been entitled to the benefit of the said Section. However, instead of purchasing one big house, having regard to the fact that both his sons are grown up, have families and in order*

*to see that in future there won't be any litigation or disharmony, he chose to purchase two small residential houses to accommodate both his sons.*

*17. It is clear that the assessee was not attempting to evade tax. In fact, after purchasing two residential houses, still there remained unutilized capital gain, which he has offered for tax. Therefore, as held in the aforesaid Rukminiamma's case, the context in which the expression "a residential house " is used in Section 54 makes it clear that it was not the intention of the legislature to convey the meaning that it refers to a single residential house. The letter "a" in the context, which is used, should not be construed as meaning singular, but being a indefinite article, the said expression should be read in consonance with the other words "buildings and lands" and therefore, the singular "a residential house" also permits use of plural by virtue of Section 13(2) of the General Clauses Act.*

*18. Therefore, we are of the view, in the facts and circumstances of this case, the acquisition of two residential houses by the assessee out of the capital gains falls within the phrase "residential house" and accordingly, the assessee is entitled to the benefit conferred under Section 54(1) of the Act. However, we make it clear that while interpreting this word, the Court or the Tribunal or the authorities have to keep in mind the facts of the particular case. When we have held "a" cannot be read as singular, it also cannot be read as multiples and so as to avoid paying tax under Section 45 of the Act. Therefore, in the facts and circumstances of this case, we answer the first substantial question of law raised in favour of the assessee and against the Revenue.*

12. It is clear from the above decision of Hon'ble Karnataka High Court that exemption u/s.54 is available even in respect of two house property / flats being acquired out of the sale proceeds of long term capital gain. Applying proposition of law to the facts of the instant case, we found that assessee has invested more than the sale proceeds of the industrial gala for purchase of two flats. Respectfully following the decision of Karnataka High Court, we do not find any merit for decline of assessee's claim of deduction u/s.54 for investment in two flats out of sale proceeds of long term capital gains within the stipulated period provided in the Act.

**13. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 19/01/2018

**Sd/-**  
**(PAWAN SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/01/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai