

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "H" BENCH, MUMBAI**

BEFORE SHRI SHAMIM YAHYA, AM & SHRI RAVISH SOOD, JM

**ITA No. 6884/MUM/2014
(Asst. Year : 2009-10)**

ITO (IT)-3(1), Room No.114, 1 st Floor, Scindia House, Ballard Pier, N.M. Road, Mumbai – 38	vs.	Ms. Kavita Gupta, Flat No. 1901-A, Sahyadri, Upper Govind Nagar, Malad (East), Mumbai – 400 069
		PAN No. ANRPG 0004 E
(Appellant)		(Respondent)

Assessee by : Shri Sandeep Shridhar, CA.
Department By : Shri M.C. Omi Ningshen,D.R

Date of hearing : 05/04/2018.
Date of pronouncement : 11/04/2018.

ORDER

PER RAVISH SOOD, JUDICIAL MEMBER

The present appeal filed by the Revenue is directed against the order passed by the CIT(A)-10, Mumbai, dated 16.07.2014, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income-tax act, 1961 (for short 'Act'), dated 30.12.2011 for A.Y 2009-10. The Revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

"On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the exemption under section 54 of the IT Act on the basis of the decision of the Special Bench ITAT in the case of Sushila M Zaveri without appreciating the fact that the assessee invested the LTCG in four separate flats as shown in the sanction plan of BMC and the builder constructed building in

accordance with the plans, designs and specifications approved by the concerned local authority.”

2. Briefly stated, the facts of the case are that the assessee had filed her return of income for A.Y 2009-10 on 31/03/2011, declaring income of Rs. 3,71,950/-. The return of income filed by the assessee was processed, as such under section 143(1) of the Act. The case of the assessee was thereafter taken up for scrutiny assessment under section 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the Assessing Officer that the assessee during the year under consideration had sold her residential bungalow situated at Lokhadwala complex, Andheri (W), Mumbai for a consideration of Rs. 3,00,00,000/-and had purchased four flats vide four separate agreements for flat Nos. 1901, 1902, 1903 & 1904 in “A” wing, Sahyadri Tower, Upper Govind Nagar, Near Western Express Highway, Malad (E), Mumbai, each of which had a separate kitchen and separate entrance. The Assessing Officer observed that the assessee had claimed exemption under section 54F of the Act in respect of the investment made in the aforesaid four flats purchased by her. The Assessing Officer being of the view that as per Sec. 54F the assessee was entitled for purchase of one flat against the long term capital gain on transfer of certain capital asset, therefore, called upon the assessee to justify the exemption claimed by her in the return of income. The assessee in her reply submitted before the Assessing Officer that though she had purchased the residential flats as a single residential house, but however, the builder had transferred the same through four

separate agreements. The assessee in order to drive home her contention that the aforesaid four flats were purchased by her as a self contained single residential unit, placed on record of the A.O the floor plan of the building, which was an annexure of the respective purchase agreements. The assessee further in order to fortify her aforesaid claim, also furnished with the Assessing Officer the copies of the society bills for the aforesaid four units, as per which the same were divided into two units i.e. Flat No. A/1901/1902 (area 1620 sq. ft) & Flat No. A/1903/1904 (area 1710 sq.ft).The aforesaid submissions of the assessee did not find favour with the Assessing Officer, who was of the view that as the flats under consideration were one room kitchen apartments built for lower income group, therefore, the same were clearly in the form of four separate independent residential units. However, the Assessing Officer taking cognizance of the fact that as per the society bills for flat Nos. 1901/1902 and 1903/1904, two flats were considered as a single unit, therefore, concluded that two residential units were purchased by the assessee, and as such exemption in respect of investment made in respect of one residential unit was to be allowed to her as per the mandate of Sec. 54F of the Act. The Assessing Officer in the backdrop of his aforesaid conviction, restricted the entitlement of the assessee towards claim of exemption under section 54F in respect of investment of Rs. 1,04,53,894/- made by her in the residential unit comprising of flat Nos. 1903/1904, and brought the balance Long term Capital gain (for short 'LTCG') of Rs. 88,57,355/- to tax.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The assessee, in the course of the appellate proceedings reiterated the submissions which he had made before the Assessing Officer. The assessee further in order to impress upon the CIT(A) that the aforesaid four flats constituted a single residential unit, placed on record the photographs of the said flats. The CIT(A) after deliberating on the contentions raised by the assessee and the material placed on record by her, called for a remand report as well as directed the Assessing Officer to make a field enquiry and confirm as to whether all the four units purchased by the assessee constituted respective single residential units or a composite residential unit. That pursuant to the aforesaid directions of the CIT(A), the Assessing Officer directed his Income Tax Inspector to carry out a field enquiry and furnish his report after carrying out a spot verification of the property. The Income Tax Inspector after carrying out a spot verification of the concerned property, reported to the Assessing Officer that the flat Nos. 1901,1902,1903 and 1904 were though four units, but however, the same had been merged into one composite flat having a common entrance door, and was used as a formal residence of the assessee. The CIT(A) after receiving the remand report from the Assessing Officer, concluded that as reported by the Income Tax Inspector, the residence of the assessee was comprised of four separate units, therefore, the claim of the assessee that she had invested towards purchase of one residential house was well in order. The CIT(A) in the backdrop of the aforesaid facts, concluded that now when it was a conceded factual position that the assessee had merged the four

flats into one residential unit, therefore, the claim of exemption under section 54 was rightly raised by her. The CIT(A) while observing as hereinabove, took a support of the order of the “Special Bench” of the Tribunal in the case of **ITO-19(3)-4, Mumbai vs. Sushila M. Jhaveri (2007) 107 ITD 327 (Mum.)(SB)**.

5. The revenue, being aggrieved with the order of the CIT(A), had carried the matter in appeal before us. At the very outset of the hearing of the appeal, the Id. Authorised Representative (for short, 'A.R') for the assessee submitted that the issue involved in the present appeal was squarely covered by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT-21, Mumbai vs. Devdas Naik (2014) 366 ITR 12 (Bom)**, wherein the Hon'ble High Court had held that where acquisition of two flats had been done independently, but however, the said flats were constructed in such a way that the adjacent units or flats could be combined into one, and eventually were merged into a single unit and were used for the purpose of residence by the assessee, the claim of the assessee towards exemption under section 54 could not be denied. The Id. A.R also placed reliance on the judgment of the Hon'ble High Court in the case of **CIT -12 vs. Raman Kumar Suri (2013) 212 Taxman 411 (Bom.)**. The Id. A.R further in order to fortify his aforesaid claim, also took support of the order of the **Hon'ble High Court of Andhra Pradesh** in the case of **CIT-II, Hyderabad vs. Syed Ali Adil (2013) 352 ITR 418 (AP)**, and an order of a coordinate bench of the Tribunal on the aforesaid proposition in the case of **Nilesh Pravin Vora & Yatin**

Pravin Vora vs. ITO (2016) 45 ITR (Trib) 228 (Mum). Per contra, the Id. Departmental Representative (for short, 'D.R') relied on the order passed by the Assessing Officer.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has been sought for adjudicating as to whether the claim of exemption raised by the assessee under section 54 in her return of income as accepted by the CIT(A), is in order, or not. We have deliberated on the facts of the case and find that the issue involved in the present appeal lies in a narrow compass. We have given a thoughtful consideration to the facts of the case and find that the controversy on the fact as to whether the assessee had acquired four independent residential units or a composite residential unit, stands resolved on a perusal of the report dated 22/08/2013 filed by the Income Tax Inspector, who pursuant to the directions of the CIT(A), after carrying out a spot verification of the property under consideration had reported that the Flats /units nos. 1901, 1902, 1903 and 1904 were merged/constituted into one flat having common entrance door. The relevant extract of the report of the Income Tax Inspector is reproduced as under:-

"As directed , I visited the formal residence of Smt. Kavita Krishna Gupta on 22/8/2013 at Sahyadri Tower Co-op Society, Upper Govind Nagar, Malad – East, Mumbai – 400 097 to verify the assessee's claim that whether all the four units purchased by the assessee constitute a single residence or not.

The factual report are as under:-

The society is located in posh area of Malad-East, Each floor contain 4 entrance door for 4 flats, 2 units constitute a single flat and single entrance door.

For example:- 1) on 18th Floor, there are 4 flats.

Flat No. 1801/1802 – 1 flat (2 Units constitute single flat having common entrance door)

Flat No. 1803/1804 – 1 flat (2 Units constitute single flat having common entrance door)

Flat No. 1805 - 1 flat

Flat No. 1806 - 1 flat

Total -4 flats. Four different people are staying in each flat.

But on 19th Floor – There are 3 flats

Flat No. 1901/1902/1903/1904-1 flat (4 units constitute /merged in 1 flat having common entrance door), (formal residence of Smt. Kavita Krishna Gupta)

Flat No. 1905 - 1 flat

Flat No. 1906 - 1 flat

Total - 3 flats

The wall between flat No. 1901/1902 and flat No. 1903/1904 was removed, so all units constitute one flat, at present Mr. Pankaj Shah and Vanita Pankaj residing there, society issued two different bills one for 1901/1902 and another for 1903/1904.”

We are of the considered view that as canvassed by the Id. A.R before us, the issue that where an assessee had independently acquired multiple flats, which however, were joined/merged together and used by the assessee as a single residential unit, the claim for exemption under section 54 in respect of total investment made towards acquisition of the said flats cannot be denied, stands settled as on date by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT-21, Mumbai vs. Devdas Naik (2014) 366 ITR 12 (Bom)**. We find that the Hon'ble High Court in the aforesaid judgment had concluded that that where acquisition of two flats had been done independently by the assessee, but however, the said flats were constructed in such a way that the adjacent units or flats could be combined into

one, and eventually had been merged into a single unit and were used for the purpose of residence by the assessee, the latter's claim of exemption under section 54 could not be denied. Still further, we find that a similar view was also earlier taken by the Hon'ble Jurisdictional High Court in the case of **CIT-12 vs. Raman Kumar Suri (2013) 212 Taxman 411 (Bom)**, wherein the Hon'ble High Court upholding the order of the Tribunal had concluded that where the assessee had acquired one residential house consisting of two flats, it cannot be said that the assessee had purchased two residential houses. We, are of the considered view that as the issue involved in the present appeal is squarely covered by the aforesaid judgments of the Hon'ble High Court of Bombay, therefore, finding no infirmity in the order of the CIT(A), which we find is well in conformity with the view taken by the Hon'ble High Court, thus, find no reason to dislodge the same. The order passed by the CIT(A) is upheld.

7. In the result, the appeal filed by the Revenue is dismissed.

Order Pronounced in open Court on this 11th day of April, 2018.

Sd/-
(SHAMIM YAHYA)
Accountant Member

sd/-
(RAVISH SOOD)
Judicial Member

Dated : 11th April, 2018.

vr/-

Copy to:

1. *The Assessee-* Ms. Kavita Gupta, Flat No. 1901-A, Sahyadri, Upper Govind Nagar, Malad (East), Mumbai –69
2. *The Revenue* – ITO (IT)-3(1), Room No.114, 1st Floor, Scindia House, Ballard Pier, N.M. Road, Mumbai - 38
3. *Ld.CIT*
4. *Ld. CIT(A)-10, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

(Dy./Asst. Registrar),
ITAT, Mumbai.