



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"F" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA no.5303/Mum./2017  
(Assessment Year : 2013-14)

Asstt. Commissioner of Income Tax  
Circle-25(2), Mumbai

..... Appellant

v/s

Jai Kumar Gupta (HUF)  
303, Antriksha, Plot no.58  
N.S. Road no.12, HYPD Scheme  
Vile Parle (W), Mumbai 400 049  
PAN - AABHJ4840E

..... Respondent

Revenue by : Shri Rajeev Gubgotra  
Assessee by : Shri Rajesh Shah

Date of Hearing - 10.12.2018

Date of Order - 28.02.2019

**ORDER**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal has been filed by the Revenue challenging the order dated 6<sup>th</sup> June 2017, passed by the learned Commissioner (Appeals)-37, Mumbai, for the assessment year 2013-14.

2. The only issue arising for consideration in the present appeal is, whether the assessee is eligible to claim deduction under section 54 of the Income Tax Act, 1961 (for short "*the Act*")?

3. Brief facts are, the assessee is a Hindu Undivided Family (HUF). For the assessment year under dispute, the assessee filed its return of income on 31<sup>st</sup> July 2013, declaring total income of ₹ 1,11,96,530. In the course of assessment proceedings, the Assessing Officer while examining the computation of total income filed by the assessee along with the return of income, noticed that in the relevant previous year, the assessee has sold various residential as well as commercial properties and derived capital gain. From the computation of capital gain by the assessee, he found that as against the long term capital gain on sale of a residential house at Malad, though, the assessee has offered net long term capital gain of ₹ 3,37,27,264, however, it has claimed deduction of the said amount under section 54F of the Act. After calling for necessary details relating to the nature of the property and the sale transaction, the Assessing Officer observed that apart from the Dhruv Malad Building, the assessee was having one more residential property at Vapi. Therefore, he called upon the assessee to explain why claim of deduction under section 54F of the Act should not be disallowed. In reply, it was submitted by the assessee that it has wrongly claimed deduction under section 54F instead of section 54 of

the Act against the capital gain derived from the sale of Dhruv Malad Building. Therefore, he requested the Assessing Officer to allow deduction under section 54 of the Act. However, the Assessing Officer rejected the claim of the assessee. He observed, as per section 54F of the Act, the assessee is ineligible to claim deduction since on the date of transfer of Dhruv Malad Building, the assessee was owner of more than one residential house other than the new asset. Further, the Assessing Officer observed, insofar as the investment in new asset (flats) are concerned, the assessee has only received the allotment letter from the real estate development company. He observed, complete rights in the property vests with the owner only when he receives possession of the said property. Thus, on the aforesaid reasoning, the Assessing Officer ultimately rejected assessee's claim deduction both under section 54 as well as section 54F of the Act. Being aggrieved, the assessee preferred appeal before the first appellate authority.

4. Before the learned Commissioner (Appeals), the assessee reiterated its claim of deduction under section 54 of the Act in respect of capital gain arising from transfer of Dhruv Malad Building. It was submitted by the assessee, since the asset transferred was a residential house and the capital gain derived from transfer of such asset is invested in purchase of another residential house, it is eligible

to claim deduction under section 54 of the Act. Further, it was submitted by the assessee, though, before the Assessing Officer assessee has revised its claim of deduction from section 54F to section 54 of the Act, however, it was submitted, before the first appellate authority the assessee can make a fresh claim under section 54 of the Act. In support of such contention, the assessee relied upon a number of decisions including the decision of the Hon'ble Supreme Court in Goetze India Ltd. v/s CIT, [2006] 284 ITR 323 (SC). The learned Commissioner (Appeals) after considering the submissions of the assessee in the light of the ratio laid down in the decisions relied upon entertained assessee's claim of deduction under section 54 of the Act. He observed, if by ignorance of law or mistake assessee has claimed the deduction under a wrong provision, the Assessing Officer cannot take advantage of it. While observing so, learned Commissioner (Appeals) also took note of the fact that in course of assessment proceedings, the assessee had filed revised computation of total income claiming deduction under section 54 of the Act. As regards Assessing Officer's observation that allotment letter of flats does not confer ownership rights, learned Commissioner (Appeals) relying upon a number of judicial precedents of Hon'ble Supreme Court as well as different High Court and CBDT Circular no.471, dated 15<sup>th</sup> October 1986, and CBDT Circular no.672 dated 16<sup>th</sup> December 1993, held that

assessee would be eligible to claim deduction under section 54 of the Act if it has invested the capital gain within the period prescribed under section 54 of the Act and flats have been allotted in his name. Accordingly, he allowed assessee's claim under section 54 of the Act.

5. The learned Departmental Representative relying upon the observations of the Assessing Officer submitted, revised claim of deduction under section 54 of the Act by the assessee is not bonafide. He submitted, since in the return of income the assessee has claimed deduction under section 54F of the Act and revised claim of deduction under section 54 of the Act was not made through a revised return of income, assessee's claim cannot be accepted.

6. The learned Authorised Representative submitted, since there is no dispute that the Dhruv Malad Building sold by the assessee is a residential house, the appropriate provision under which the assessee can claim deduction towards investment of capital gain in new residential house is section 54 of the Act. He submitted, merely because due to ignorance of law the assessee claimed the deduction under a wrong provision i.e., section 54F of the Act, the Assessing Officer cannot take advantage of the same. He submitted, in course of assessment proceedings itself the assessee has revised its claim of deduction from section 54F to section 54 of the Act. He submitted,

assessee's claim of deduction under section 54 of the Act being bonafide and in accordance with the statutory provision, learned Commissioner (Appeals) has rightly allowed assessee's claim of deduction under section 54 of the Act. As regards the investment of capital gain in new flats and assessee's ownership over the flats, learned Authorised Representative drawing our attention to the copies of the allotment letters placed in the paper book submitted, the assessee had invested the capital gain in the new flats within the period prescribed under section 54 of the Act. He submitted, flats were allotted to the assessee on 15<sup>th</sup> March 2013. He submitted, the final sale agreements were also executed and registered before the end of the impugned financial year i.e., on 26<sup>th</sup> March 2013. In this context, he drew our attention to the copies of the registered sale deeds placed at Page-100 and 178 of the paper book, the learned Authorised Representative submitted, though the assessee had purchased two flats under two separate agreements, however, the flats are not only adjoining but are in all respect a single flat having common entrance, common kitchen, etc. Thus, he submitted, assessee's claim of deduction under section 54 of the Act was rightly allowed by the learned Commissioner (Appeals).

7. We have considered rival submissions and perused material on record. Undoubtedly, the issue in dispute hinges on assessee's claim of

deduction under section 54 of the Act. Insofar as the factual aspect relating to the aforesaid issue is concerned, undisputedly, the deduction claimed under section 54 of the Act is against the net long term capital gain arising out of sale of a residential property viz. Dhruv Malad Building. It is also a fact on record that in the return of income filed for the impugned assessment year the assessee had claimed deduction under section 54F of the Act. When the Assessing Officer referring to the provision contained under the first proviso to section 54F(1) of the Act proposed to disallow assessee's claim of deduction, the assessee filed a revised computation of income claiming deduction under section 54 of the Act. However, the Assessing Officer rejected such claim of the assessee. While considering similar claim made by the assessee, learned Commissioner (Appeals) allowed it. Therefore, for resolving the disputed issue it is necessary to examine the provisions contained under section 54 and section 54F of the Act. On a reading of section 54 of the Act, it becomes clear that in respect of long term capital gain arising from transfer of a building being a residential house, the assessee is eligible to claim deduction if the long term capital gain is invested in purchase/construction of new residential house within the stipulated period. Whereas, as per section 54F of the Act, the capital gain arising from transfer of any other long term capital asset, not being a residential house, if invested in

purchase/construction of a new residential house is eligible for deduction. Thus, it is very much clear, while section 54 of the Act is applicable to investment of long term capital gain arising from transfer of residential house, section 54F of the Act applies to long term capital gain arising from sale of assets other than residential house. In the facts of the present case, there is no dispute that capital gain arises from transfer of a residential house. That being the case, if the assessee invests the capital gain in purchase/construction of a new residential house, it is eligible to claim deduction under section 54 of the Act. Merely because the assessee, by ignorance of law or mistake, has claimed deduction under section 54F instead of section 54 of the Act, such ignorance of law/mistake on the part of the assessee cannot be utilized to its disadvantage by the Assessing Officer. The duty of the Assessing Officer is to correctly compute the real income of the assessee in accordance with the statutory provisions. While the Assessing Officer is empowered to disallow any deduction claimed by the assessee if it is not in accordance with provisions of Act, in the same manner, he is duty bound to allow deduction to the assessee if the assessee is eligible for such deduction under the provisions of the Act. Therefore, in the facts of the present case, since the capital gain arises from sale of residential house, the assessee is eligible to claim deduction under section 54 of the Act. That being the case, the

restrictions imposed under the proviso to section 54F(1) of the Act will not apply to the assessee. Therefore, we do not feel the necessity to deliberate on the issue whether the property at Vapi is a residential or commercial building. In view of the aforesaid, we do not find any infirmity in the decision of the learned Commissioner (Appeals) in this regard.

8. Having held so, now it is necessary to examine whether the investments made by the assessee in the new assets (flats) would qualify for deduction under section 54 of the Act.

9. The Assessing Officer while disallowing assessee's claim has observed that mere letters issued by the real estate development company allotting flats to the assessee does not confer ownership rights, hence, assessee cannot be considered to be the owner of the flat to claim deduction. However, in our considered opinion, once the assessee makes investment in purchase of flats and flats are allotted in its name, the conditions of section 54 of the Act are satisfied. The judicial precedents and the CBDT circulars referred to by the learned Commissioner (Appeals) clearly support this view. In any case of the matter, the materials placed on record clearly prove that not only the flats were allotted to the assessee in the impugned assessment year but the sale deeds relating to the flats purchased were executed and

registered in favour of the assessee before the end of the financial year relevant to the assessment year under dispute. That being the case, the investments made by the assessee in purchase of flats is within the period prescribed under section 54(1) of the Act. Therefore, the assessee is eligible to claim deduction under section 54 of the Act in respect of the investment made in purchase of new flats. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals). Grounds raised are dismissed.

10. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 28.02.2019

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 28.02.2019**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Asstt. Registrar/Sr.P.S)  
ITAT, Mumbai