

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA No.1424/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Ayushi Patni,
S.No.1A, Irani Market Compound,
Yerawada, Pune – 411 006.

..... अपीलार्थी /
Appellant

PAN : AQIPP9753D.

बनाम v/s

The Dy. Commissioner of Income Tax,
Circle – 7, Pune.

..... प्रत्यर्थी /
Respondent

आयकर अपील सं / ITA No.1707/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Dy. Commissioner of Income Tax,
Circle – 7, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Ayushi Patni,
S.No.1A, Irani Market Compound,
Yerawada, Pune – 411 006.

..... प्रत्यर्थी /
Respondent

PAN : AQIPP9753D.

Assessee by : Shri C.H. Naniwadekar.

Revenue by : Shri Pankaj Garg.

सुनवाई की तारीख / Date of Hearing : 19.11.2018	घोषणा की तारीख / Date of Pronouncement: 17.01.2019.
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आदेश / ORDER

PER VIKAS AWASTHY, JM :

The assessee in ITA No.1424/PUN/2016 has assailed the order
of Commissioner of Income Tax (Appeals) – 5, Pune, dated 29.04.2016

for assessment year 2012-13, in not allowing full exemption u/s 54F of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). The Revenue in ITA No.1707/PUN/2016 has filed cross appeal assailing the aforesaid order of CIT(A) against allowing part exemption u/s 54F of the Act to the assessee.

2. Since the issue raised by both sides in their respective appeals is arising from same set of facts, the appeals are taken up together for adjudication.

3. Shri C.H. Naniwadekar appearing on behalf of assessee submitted that the assessee had transferred capital asset on 11.05.2011. The assessee entered into agreement for purchase of flat on 16.06.2009. The actual possession of the flat was received by the assessee on 17.09.2010. The assessee claimed benefit of exemption u/s 54F of the Act in respect of long term capital gain arising from sale of shares invested in purchase of residential flat. The ld.A.R. submitted that the AO disallowed assessee’s claim of exemption u/s 54F on the pretext that the flat was purchased by the assessee more than one year prior to the date of transfer of capital asset. The ld.A.R. pointed out that on the date of signing of agreement for purchase of flat, the residential house/flat was not even in existence. Therefore, date of signing of the agreement cannot be said to be the date of purchase of residential house. The assessee took possession of residential house/flat on 17.09.2010. The Occupation Certificate of flat was issued by the Municipal Corporation of Greater Mumbai on 17.02.2011, therefore, it is the

actual date of possession which is relevant to determine the assessee's eligibility for claiming exemption u/s 54F of the Act. The ld.A.R. further referred to clause (12) of the Deed of Agreement dated 16.06.2009. The ld.A.R. pointed that a perusal of said clause would make abundantly clear that the title of property was conferred on assessee only after making full payment of consideration. The assessee had no right whatsoever on the property on mere execution of agreement. The ld.A.R. submitted that the CIT(A) after placing reliance on the decision of Mumbai Bench of the Tribunal in the case of V.M. Dujodwala Vs. ITO reported as 36 ITD 130 granted relief to the assessee to the extent of payments made by assessee to purchase the flat within a period of one year prior to the date of transfer of capital asset. The installments paid by assessee beyond the period of one year before the date of transfer of capital gains were held to be not eligible for exemption u/s 54F of the Act.

4. The ld.A.R. submitted that the date of purchase of residential house/flat has to be reckoned from the date when entire consideration is paid and title of the property is transferred and possession of flat is handed over. In support of his submissions, the ld.A.R. placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Smt. Beena K. Jain reported as 217 ITR 363 and the decision of Mumbai Bench of the Tribunal in the case of Bastimal K. Jain Vs. ITO in ITA No.2896/Mum/2014 for A.Y. 2010-11 decided on 08.06.2016. The ld.A.R. submitted that the Department in its appeal has assailed the order of CIT(A) in granting part relief to assessee u/s 54F of the Act.

5. On the other hand, Shri Pankaj Garg representing the Department vehemently defended the assessment order in rejecting assessee's claim of exemption u/s 54F of the Act in respect of long term capital gains arising on transfer of shares. The ld.D.R. submitted that as per the provisions of Sec.54F, the assessee can claim exemption only in respect of purchase of residential house within a period of one year before or two years after the date on which the capital asset is transferred. In the present case, undisputedly, the assessee had transferred capital asset on 11.05.2011 and entered into an agreement for purchase of residential flat on 16.06.2009. As is evident from the records, date of execution of agreement is beyond the period of one year from the date of transfer of capital asset. Hence, assessee is not eligible for claiming exemption u/s 54F. The ld.D.R. submitted that the CIT(A) has erred in granting part relief to the extent of installments deposited within a period of one year prior to the date of transfer of capital asset. The assessee does not qualify the conditions set out in Sec.54F for claiming exemption.

6. We have heard the submissions made by rival sides and have perused the orders of authorities below. We have also perused the decisions on which the ld.A.R. has placed reliance. The solitary issue raised in the present appeals by the assessee and Revenue is :

Whether the assessee is eligible for claiming exemption u/s 54F in respect of residential flat / house for which the assessee has entered into an agreement for purchase more than one year before the date of transfer of capital asset ?

The dates qua, transfer of capital asset, execution of agreement for purchase of residential flat and possession of the flat are not in dispute.

7. The contention of the assessee is that since final consideration was paid and the possession of flat was received within a period of one year prior to the date of transfer of capital asset, the same should be considered as the date of purchase. Whereas, the stand of Department is that the date of execution of agreement for purchase of flat should be considered as the date of purchase.

8. The Id.A.R. has drawn our attention to Clause (12) of the deed of agreement between the assessee and the builder for purchase of flat. The said clause is reproduced herein below :

“12. Nothing contained in this Agreement shall be construed to as to confer upon the Purchaser any right whatsoever into or over the said property or the said new building or any part thereof including the said premises on execution of this agreement. It is agreed by and between the parties that conferment of title in respect of the said premises shall take place in favour of the Purchasers only on the Purchaser’s making full payment of consideration to the Developers and complying with the terms and conditions of this Agreement and on the Purchaser being admitted as a member of the said society as herein provided.”

The aforesaid clause makes it unambiguously evident that the assessee has no right whatsoever in the property on mere execution of agreement. The assessee shall be conferred title of property only on making full payment of consideration to the builder. In the instant case, full consideration has been paid by the assessee for purchase of residential flat within a period of one year before the date

of transfer of capital asset. Thereafter, actual possession of the flat was delivered to assessee on 17.09.2010 i.e., within a period of one year prior to the date of transfer of capital asset. It is an un-rebutted fact that at the time of execution of agreement, the residential property was not in existence. Therefore, taking into consideration facts of the case, the date of possession of flat is the date of actual purchase for the purpose of claiming exemption u/s 54F of the Act.

9. We find that similar issue had come up before the Hon'ble Bombay High Court in the case of CIT Vs. Smt. Beena K. Jain (supra). The Hon'ble High Court in the appeal by Department, upholding the order of Tribunal and allowed the benefit of exemption u/s 54F to the assessee. The substantial question for consideration before the Hon'ble High Court was :

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing exemption of Rs.11,04,423/- under section 54F of the Income Tax Act, 1961, considering the date of possession of the new residential premises instead of the date of sale agreement and the date of registration ?”

The Hon'ble High Court decided the issue in favour of the assessee by answering the question as under :

“2. Under [section 54F](#) of the Income-tax Act, in the case of an assessee if any capital gain arises from the transfer of any long-term capital asset, not being a residential house, and the assessee has, within a period of one year before or two years after the date on which the transfer took place, purchased a residential house, the capital gain shall be dealt with as provided in that section. As per the section certain exemption has to be allowed in respect of the capital gains to be calculated as set out therein. The Department contends that the assessee did not purchase the residential house either one year prior to or two years after the sale of the capital asset which resulted in the long-term capital gains. According to the Department, the agreement for purchase of the new flat was entered into more than one year prior to the sale. Hence, the

petitioner is not entitled to the benefit under [section 54F](#). In our view, the Tribunal has rightly negated this contention and has held that the new residential house had been purchased by the assessee within two years after the sale of the capital asset which resulted in long-term capital gains. The Tribunal has held that the relevant date in this connection is July 29, 1988, when the petitioner paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat. This has been taken by the Tribunal as the date of purchase. The Tribunal has looked at the substance of the transaction and come to the conclusion that the purchase was substantially effected when the agreement of purchase was carried out or completed by payment of full consideration on July 29, 1988, and handing over of possession of the flat on the next day.”

10. The Mumbai Bench of the Tribunal in the case of Bastimal K. Jain Vs. ITO (supra) under similar set of facts had allowed the benefit of exemption u/s 54 to the assessee by following the ratio laid down in the case of CIT Vs. Smt. Beena K. Jain (supra).

11. Thus, in view of undisputed facts of the case and the decision rendered in the case of CIT Vs. Smt. Beena K. Jain (supra), we hold that the assessee is eligible for claiming exemption u/s 54F on the entire amount of capital gain utilized for purchase of residential property. Consequently, the appeal of the assessee is allowed and the appeal of Revenue is dismissed.

11. In the result, the appeal of assessee is allowed and appeal of Revenue is dismissed.

Order pronounced on Thursday, the 17th day of January, 2019.

Sd/-
(R.S. SYAL)
VICE PRESIDENT

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 17th January, 2019.
Yamini

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-5, Pune.
4. Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.