

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2754/DEL/2019 (A.Y 2010-11)

Bhagwan Swroop Pathak H. No. 651, 1 st Floor, Section 10A, Gurgaon, Haryana PAN: AAPPP6478A (APPELLANT)	Vs	ITO Ward-1(3) Gurgaon , Haryana PIN: 122006 (RESPONDENT)
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Appellant by	Sh. M. R. Sahu, CA
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	02.03.2020
Date of Pronouncement	05 .03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 23/01/2019 passed by CIT(A)-1, Gurgaon for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

"1 That the Ld. CIT(A)-I, Gurgaon erred in not considering the rule of purposive and beneficial construction and erred in interpreting the provisions of section 54, this section does not require that the new residential property shall be purchased in the name of the assessee only. It merely says that the assessee mould have purchased/constructed a residential house within the prescribed limit specified in this section.

2. That the Ld. CIT(A)-I, Gurgaon erred in concluding that for claiming relief

under section 54 the house property cannot be purchased in the name of youngest son out of love and affection, ignoring the fact that assessee in the present case has purchased the new house in the name of youngest son as under common law father and son who is a student are considered to be one and same even though they are independent and distinct under the I.T Act-1961.

3. That the Ld. CIT(A)-I, Gurgaon erred in not applying the theory of Constructive Ownership" pronounced by Hon'ble Supreme Court to hold that assessee father" is the real owner of the new house property even if the new property was registered in the name of youngest son who is a student out of love and affection.

4. That the Ld. CIT(A)-I, Gurgaon has further grossly erred in relying on the judgments totally inapplicable to the facts of the case of the assessee appellant and has further, placed reliance on the provisions not applicable on the facts of the assessee appellant.

5. That the Ld. CIT(A)-I, Gurgaon has further grossly erred in not considering the affidavit submitted by the " assessee father" and that of " son" clearly stating the fact that the investment in new house property was made by the " assessee father" out of sale proceeds of the old house property as "son" who is a student has no ostensible source of income and all payments to the builder are routed through banking channel, under such circumstances source of investment cannot be said to be unestablished.

6. Without prejudice point no.5 it is submitted that provision of section 54 does not contain any restriction that investments in the new house shall be made of sale proceeds of old house accordingly investment in new house within prescribed time out of loan amount is also eligible for section 54 relief.

7. That the assessee craves the right to amend, add, delete, replace, all or any of the grounds of appeal either during the course of hearing or at any time before hearing of this appeal.

PRAYER/RELIEF CLAIMED:

1. To allow relief under section 54 of Rs.23,27,402/- in the hands of the assessee father" on account of purchase of new house property in the name of "son" who is a student.
2. Any other relief as deemed fit in circumstances of the case."

3. The assessee is an individual and transferred a residential house property through transfer deed of lease hold rights signed between the assessee (transferor) and the purchaser Shri Dinesh Prakash Sharma (transferee) on 24th September, 2009 for an agreed consideration of Rs. 50,00,000/-. The assessee had not filed any return of income for Assessment Year 2010-11 within the due dates u/s 139(1) as well as u/s 139(4) of the Income Tax Act. The case was reopened u/s 147 and Assessing Officer passed order dated 15/12/2017 u/s 147/143(3) and assessed income of Rs. 35,34,360/- which includes long term capital gain of Rs. 33,74,013/- earned from the transfer of old house property. During the assessment proceedings, the assessee claimed relief u/s 54 relating to allotment of under construction new residential house property amounting to Rs. 27,26,526/-. Immediately after the old house was sold, the assessee booked under construction residential flat from builder M/s Bestech India Pvt. Ltd. in the name of his son Mr. Dipak Kumar. The said new house was allotted in favour of Mr. Dipak Kumar vide allotment letter dated 28th June, 2011. Total cost of new house as per the allotment letter dated 20/6/2011 was Rs. 24,55,875/-. Payments released to the builder up to 23rd September, 2012 i.e. within 3 years from the transfer of old house i.e. 24th September 2009 as per payment receipt statement collected from the builder was submitted to the Assessing Officer. Possession of the new house was given by the builder on 21st January, 2013, in favour of the son.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) and CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessee claimed Section 54 benefit for the amount equal to the amounts of investment made in the name of assessee's son towards purchase of new under construction house property within the period of 3 years from the date of transfer of the old residential house property out of long term capital gain earned from the transfer of old residential house property. The Ld. AR submitted that the said claim cannot be denied by the Assessing Officer even if return of income was filed belatedly in response to notice issued u/s 148. The Ld. AR submitted that Section 54 is a beneficial provision and is applicable to an assessee individual when the long term capital gain earned on transfer old residential house property and is invested in the construction purchase of new residential house property within the time period specified u/s 54. The Ld. AR further submitted that once an assessee falls within the ambit of beneficial provision then the said provision should be liberally interpreted. Section 54 does not mandate that the new house property should be purchased/constructed in the name of assessee alone. The Ld. AR submitted that investment in new residential house property in the name of assessee's son who is a family member cannot be debarred from granting claim u/s 54 of the Act. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Jagpal Singh Vs. ITO (186 Taxman 26), the Hon'ble Andhra Pradesh High Court in case of Meer Gulam Ali Khan Vs. CIT 1(165 ITR 228), the Hon'ble Punjab & Haryana High Court in case of CIT(A) Vs. Gurnam Singh 327, ITR 278). The Ld. AR also relied upon the decisions of the Hon'ble Delhi High Court in case of CIT Vs. R. L. Sood (254 ITR 727 & the Hon'ble Karnataka High Court in case of CIT Vs. Sambandam Uday Kumar 345 ITR389. The Ld. AR also relied upon the decision of the Hon'ble Delhi High Court in case of CIT(A) Vs. Kamal Vahal 351 ITR 4 wherein the assessee

claimed the benefit of Section 54 when the property purchased in the name of wife and the Hon'ble High Court allowed the said claim.

6. The Ld. DR submitted that the Assessing Officer rightly added the long term capital gain as the assessee failed to prove that the purchase of the property comes under the ambit of Section 54 of the Act. The property is not in the name of the assessee but was purchased in the name of son. Section 54 does not permit the same. Thus, the Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has demonstrated before the Assessing Officer as well as the CIT(A) that the purchase of property in the name of the son was acquired by the assessee himself through the consideration received from the sale deed of earlier old property. The bank statement and the cheque issued to the builder as well as the confirmation received from the builder demonstrated that the payment was made by the assessee for purchase of new property within the stipulated time as prescribed u/s 54. Though, the assessee is not filed any return and at that stage never claimed Section 54, once the reopening u/s 148 has been issued, the assessee cannot be denied his entitlement /claim for deduction or exemption under income tax statute on the sole ground that no return was filed. The benefit of income tax act and its provisions related to exemption and deduction has to be taken into account while computing the income of the assessee and it is the proper procedure on the part of the Assessing Officer to follow all the aspect of taxation within the corners of Income Tax Act. As regards the name under whom the property is purchased, it can be seen that the son of the assessee is a direct relation and as per the Hon'ble Delhi High Court decision in case of CIT(A) Vs. Kamal Vahal 351 ITR 4 where assessee purchased new house in

name of his wife, the claim under Section 54 is held valid. Thus, the exemption could not be denied if entire investment had come out of proceeds of old property. Thus, the order of the CIT(A) is not justified in light of the decision in case of Kamal Vahal (supra). Therefore, the appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 05th March, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 05/03/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.03.2020
Date on which the typed draft is placed before the dictating Member	03.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	05.03.2020
Date on which the final order is uploaded on the website of ITAT	05.03.2020
Date on which the file goes to the Bench Clerk	05.03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	