www.taxguru.in

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

T.C.(A).No.771 of 2009

M/s.Tilokchand & Sons,
Hiran Bros, 39-40,
Dhanappa Mudali Street,
Madurai. .. Appellant

..Vs..

The Income Tax Officer,
Ward II (4), Madurai. .. Respondent

Prayer : Tax Case (Appeal) is filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, dated 27.02.2009 passed in I.T.A.NO.1990/Mds/2007 for the Assessment Year 2005-06.

WEB COPY

For Appellant : Mr.T.N.Seetharaman

For Respondent : Ms.Premalatha
Assisted by Mr.M.Swaminathan
Senior Standing Counsel

http://www.judis.nic.in

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Assessee, M/s.Tilokchand & Sons, a Hindu Undivided Family (in short 'HUF'), a separate assessable entity under the Income Tax Act, has filed this Appeal under Section 260 A of the Income Tax Act (in short 'the Act'), aggrieved by the order passed by the Income Tax Appellate Tribunal on 27.02.2009, allowing the Revenue's Appeal and denying the benefit of deduction from capital tax as per Section 54 of the Act, as claimed by the Assessee for the A.Y.2005-2006.

2. This Appeal was admitted by a Co-ordinate Bench of this Court on 14.09.2009 on the following substantial Questions Of Law:

> *"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the appellant Hindu Undivided Family is entitled to exemption under Section 54 of the Income Tax Act, 1961 with respect to the investment out of long term capital gains made in one residential house only? 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in denying the exemption under Section 54 of the Act, when, unlike section 54F, there is no bar in acquiring more than one residential house to meet the needs of the appellant Hindu Undivided Family?*

WEB COPY
http://www.judis.nic.in

3.Whether on the facts and circumstances of the case and in law, the Appellate Tribunal's view that exemption under Section 54 is available in respect of one residential house only in accordance with the scope and ambit of Section 54 of the Act?

4.Whether on the facts and circumstances of the case and in law, the Appellate Tribunal's was right in law in denying exemption on the amount deposited in Capital Gains Account Scheme, which is eligible for exemption under Section 54 (2) of the Act?"

3.The facts in brief resulting in the present Appeal filed by the Assessee before us are as under:

(i) The Assessee, a HUF, comprising of 11 members, Karta, his wife, two major sons with their own families including minors, sold its residential house situated at East Avani Moola Street, Madurai to one Smt.M.Jeyalakshmi for a consideration of Rs.1,17,00,000/-, which resulted in Long Term Capital Gains to the extent of Rs.1,00,93,149/- . The Assessee claimed the said Capital Gains as exempt from the Income Tax, since the Assessee according to him had complied with the conditions of Section 54 of the Income Tax Act, 1961 by purchasing new properties which were in the form of two residential houses and one plot of land and deposit of the part of the capital gains in the prescribed investment securities. The details of the sale consideration received by the Assessee and the investment made for the purchase of the new property as given by the Assesee are reproduced hereunder for ready reference:

WEB COPY

FACT SHEET

A.Sale of Property ***(Residential House)*** *at No.****11, East Avani Moola Street,*** *Madurai*

Date of Sale : 16.09.2004

Sale Consideration : Rs.1,17,00,000/-

Long Term Capital Gain thereon: Rs.1,00,93,149/-

B.Purchase of Properties

*1.****Residential House at No.122, 3rd Cross Street, Anna Nagar, Madurai***

Name of Purchaser: ***Thiru Tilokchand (PAN AABHT 1598 R)****
Document No.3349 of 2004

Date of Purchase: 01.12.2004

Purchase Consideration: Rs.32,00,000/-

Stamp Duty and Registration Fee etc- Rs. 3,45,000/-

Total Rs.35,45,000/-

*2.****Residential House at No.24, Dhanappa Mudali Street, Madurai***

Name of Purchaser: ***Thiru.D.Tilokchand (PAN AABHT 1598 R)****
Document No.1323 of 2005

Date of Purchase: 24.02.2005

Purchase consideration: Rs.39,00,000/-

Stamp Duty and Registration Fee etc-Rs. 4,45,000/-

Total Rs.43,45,000/-

WEB COPY

http://www.judis.nic.in

*3.**Plot at K.K.Nagar Main Road, Madurai***

*Name of Purchaser:**Thiru.D.Tilokchand (PAN AABHT 1598 R)****
Document No.3430 of 2004

Date of Purchase : 08.12.2004

Purchase consideration :	*Rs.11,38,193/-*
Stamp Duty and Registration Fee etc-	*Rs. 1,72,807/-*
Total	*Rs.13,11,000/-*

**PAN number of Tilokchand & Sons (HUF)*

4.Deposit under Capital Gain Account Scheme. SB-CGS 137016 with Canara Bank, South Veli Street Branch,Madurai in the name of Tilokchand & Sons-HUF-Balance as on 31.07.2005-Rs.20,25,048/-"

4. The Assessing Authority however denied the benefit of deduction under Section 54 of the Act to the Assessee and partly allowed only in respect of the residential house purchased by the Assessee at the highest of three purchases at Rs.43,45,000/- viz., the property at No.24, Dhanappa Mudali Street, Madurai, and thus imposed the tax on the balance amount of capital gains which was assessed @ Rs.57,48,149/-, after deducting a sum of Rs.43,45,000/- from Long Term Capital Gains on sale declared by the Assessee at Rs.1,00,93,149/-.

5. The First Appeal filed by the Assessee came to be allowed by the CIT

WEB COPY
http://www.judis.nic.in

(Appeals) following the decision of the Tribunal in the case of ***D.Anand Basappa Vs. ITO*** (***91 ITD 53)*** The relevant portion of the order of the CIT (Appeals) is quoted hereunder for ready reference:-

> *"The appellant relied upon the recent decision of the Income-tax Appellate Tribunal B Bench in the case of ITO Vs.P.C.Ramakrishna, which was delivered on 28.07.2006. The facts of the case are more similar to the assessee's case. In the case of K.C.Kaushik there was a number of transactions and the question of law which was referred to the High Court was whether the assessee can enjoy the benefit under Section 54 when he did not reside in the property purchased owning to this transfer to any other place. Here the facts are different. The only point to be considered in interpreting the* ***expression 'a residential property' in the case of ITO Vs.P.C.Ramakrishna, HUF****, the Income -tax Appellate Tribunal vide para 20 of page 370 of its order has referred to the case of another ITAT Bangalore Bench decision in the case of D.Anand Basappa Vs. ITO 91 ITD 53. and the ratio of this decision was followed. In the case of Shri.Anand Basappa, the ITAT while interpreting the meaning of a 'residential house' has held that- It is also observed in Mrs.Gulshanbanoo R.Mukhi's case (supra) that the intention of legislature is clear to grant exemption for only one house. We are unable to find any such intention anywhere stated.* ***It cannot be presumed that if the legislature intended more than one residential unit, it could have used the words 'house or houses'*** *. It can equally also be held that if the*

http://www.judis.nic.in

intention of legislature is to restrict the deduction for only one house, ***then instead of using the words 'a residential house' the words 'one residential house' would have been used therein****. It may also be noted that under General Clauses Act, as per S.13 singular shall include plural vice versa. Reliance placed on the decision of Hon'ble Supreme Court in Vegetable Products Ltd. case to the extent that if the language of the statute is plain, the fact that the consequences of giving effect to it may lead to absurd result, is of no effect in interpreting the provisions. However, the same decision also holds that if there is ambiguity in interpretation of the provisions, the one which is in favour of the assessee, should be adopted. The varying decisions at extreme ends can definitely result into saying that there is an ambiguity in the provision. Thus the one in favour of assessee is to be adopted rather than applying a strict meaning by saying that there is no ambiguity.* ***Thus this issue is decided in favour of the assessee.***

9.This is the judgment of the jurisdictional Tribunal and it is the latest one. Therefore, it will have precedence over any other judgment and is also binding on the authorities below it. The main substance of this judgment is that ***the expression 'a residential house' can also mean more than one.*** *This is again drawn from* ***section 13 of the General Clauses Act*** *which clearly defines that singular shall include plural and vice versa. Therefore, the expression 'a residential house' appearing in section 54 connotes abstract plurality. Respectfully following the Judgment of the Income-tax Appellate Tribunal I hold that the appellant is entitled to*

WEB COPY
http://www.judis.nic.in

claim full exemption under Section 54 of the Income-tax Act in respect of all the three properties purchased which was absolutely necessary to accommodate all the 11 members of the HUF,and investment in CGAS. In other words, the appellant is entitled to exemption of the full amount of long term capital gain of Rs.1,00,93,149/-

The A.O. is directed to modify the assessment order accordingly.

10. As a result, the appeal is Allowed."

6. The Revenue filed Second Appeal before the Income Tax Appellate Tribunal, which allowed the Appeal filed by the Revenue by its impugned order dated 27.02.2009 and restored the order passed by the Assessing Officer. The operative portion of the order passed by the Tribunal is quoted below for ready reference:-

"*Therefore, in view of the facts, circumstances, relevant provisions of law and ratio of the above decision of the Hon'ble Bombay High Court in the case of K.C.Kaushik V. P.B.Rane, Fifth Income Tax Officer and others [supra], which is direct on the point, it is held that the* ***Assessing Officer is legally correct in restricting the claim of the assessee under Section 54 with respect to the investment out of LTCG made in one residential house only to the extent of Rs.43,45,000/-*** *as indicated in the assessment order, in the absence of assessee having given preference with regard to any other house, thereby*

WEB COPY
http://www.judis.nic.in

disallowing the claim with respect to other two properties as well as investment made in the CGAS and the ld. CIT(A)'s action in giving different interpretation to the provisions is found to be not legally and factually correct to allow the entire claim of the assessee, as such, while accepting the appeal of the Department, we reverse the impugned order and restore that of the Assessing Officer.

8.As a result, the appeal of the Revenue gets accepted."

7. The learned counsel for the Assessee Mr.T.N.Seetharaman submitted before us that Section 54 of the Act permits the Assessee to either purchase a residential house or construct a residential house, within a prescribed time period, and subject to said conditions being fulfilled, the Assessee is allowed deduction or exemption from the Capital Gains accrued to him on the sale of the Capital Asset. Section 54 deals with purchase and sale of the property, house or residence. When the sale of capital asset, which is not the residential house, and re-investment out of sale proceeds is made for the purchase/construction of residential house of the Assessee, the deduction is given as per Section 54F of the Act. Both these provisions were amended by Finance (No.2) Act 2014 with effect from **01.04.2015** viz., A.Y.2015-2016 and the words "a residential house" were substituted by "one residential house" in India. The learned counsel for the Assessee, therefore, contended that even though the Assessee-HUF purchased the new properties viz., two residential houses and one plot of land in the name of the Assessee-HUF in Madurai itself, the

WEB COPY

original capital asset, viz., the residential house was sold by the Assessee-HUF resulting in capital gains, therefore, the benefit of Section 54 of the Act ought to have been given in respect of purchase of all the three new assets acquired by the Assessee, viz., two residential houses within one year and one plot of land on which the third residential house was also constructed within the prescribed period of three years.

8. He urged that prior to amendment with effect from **01.04.2015** words "a residential house" included within its sweep more than one residential house also, because of the provisions of Section 13 of the General Clauses Act, 1897, which stipulates that '**words in the singular shall include the plural, and vice versa**'. He submitted that object of Section 54 is to extend the benefit of exemption of deduction in the hands of the Assessee, who invests the realisation on the sale of capital asset in the form of a residential house and which sale proceeds may be invested on one or more residential units depending upon the circumstances of the case like the one in hand, where the HUF comprising of father and two elder sons with their respective families considered it appropriate to buy three different units of residential houses at different addresses in Madurai itself viz., two existing residential houses and one plot of land over which the Assessee-HUF constructed a residential house within the prescribed time frame. He relied upon two decisions of

WEB COPY
http://www.judis.nic.in

the Karnataka High Court in the case of ***CIT Vs. Khoobchand M.Makhija ((2014) 43 taxmann.com 143 (Karn))*** and ***CIT Vs.D.Ananda Basappa ((2009) 309 ITR 329 (Karn)).***

9. The Division Bench of Karnataka High Court in ***Khoobchand M.Makhija*** (supra) dealt with the the meaning of word 'a' as employed by Section 54 of the Act and referring to Section 13 of the General Clauses Act,1897 also, the Division Bench of the Karnataka High Court categorically held that where the Assessee HUF sold a residential house and out of capital gains purchased one property at No.623 on 27.05.1996 and prior to that he also entered into an agreement of sale in respect of another property No.739 for consideration of Rs.75,00,000/- and paid a sum of Rs.44,00,606/- on the date of Agreement of Sale and paid the balance sale consideration on 28.09.1996, the Assessee was entitled to deduction under Section 54 (1) of the Act in respect of purchase of the two residential houses and a word 'a residential house' was intended to include plural residential houses, within the meaning of Section 54 of the Act. The relevant discussion of the Division Bench of the Karnataka High Court is quoted below for ready reference:-

> *"9. The word 'a' is not defined in the Act. When a word is not defined in the Act itself,* ***it is permissible to refer to dictionaries to find out the general sense*** *in which that word is understood in*

http://www.judis.nic.in

common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act ***must take their colour from the context in which they appear.*** *Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnishes a different denotation.* ***A statute cannot always be construed with the dictionary in one hand and the statute in the other****. Regard must also be had to the scheme, context and to the legislative history. Words and expressions at times have a 'technical' or a 'legal meaning' and in that case they are understood in that sense. Judicial decisions expounding the meaning of words in construing statutes in pari materia will have more weight than the meaning furnished by dictionaries. (Principles of Statutory Interpretation by Justice G.P.Singh - pages 279 and 280). It is in this background, it is necessary to understand the meaning of the word 'a' in the context in which it is used in the said Section.*

10. The words "a" or "an" and "the" are called Articles. They come before nouns. ***There are two Articles - a (or an) and the. "a" or "an" is called the Indefinite Article,*** *because it usually leaves indefinite the person or thing spoken of. "The" is called the Definite Article, because it normally points out some particular person or*

WEB COPY

thing. The indefinite article is used before singular countable nouns. The definite article is used before singular countable nouns, plural countable nouns and uncountable nouns. The indefinite Article is used in two contexts, firstly, in its original numerical sense of one. Secondly, in the vague sense of a certain. It is also used in the sense of any, to single out an individual as the representative of a class. It is also used to make a common noun of a proper noun.

*11. In the **Strouds Judicial Dictionary** of Words and Phrases dealing with this letter 'a', **it is said 'a' is sometimes read as 'the'. 'a' may sometimes be read as 'some'**. But, more frequently 'a' is the equivalent of 'any'. However, it is difficult to read 'a' as 'all'.*

*12. In the Concise Oxford Dictionary of Current English, dealing with the letter 'a' is stated that, '**a' sometimes** called indefinite article, used with **apparent plurals of number**. "*

10. The Karnataka High Court even prior to the aforesaid decision in the case of ***CIT Vs. Khoobchand M.Makhija ((2014) 43 taxmann.com 143 (Karn))***, dealt with similar controversy in the case of ***CIT Vs.D.Ananda Basappa ((2009) 309 ITR 329 (Karn))***. There also the Assessee was an HUF which earned capital gain on the sale of the residential house and purchased two flats situated side by side adjacent to each other by separate Sale Deeds, which were later on joined to be converted into one residential Apartment in the property developed by M/s.Ormonde

WEB COPY
http://www.judis.nic.in

Private Developers Ltd. The Court, in these circumstances, again held in favour of the Assessee-HUF that when HUF residential house is sold, the proposition that the Capital Gain should be invested for the purpose of only 'one' residential house is an incorrect proposition. After all, HUF is held by the members as joint tenants. When the members keeping in view the future needs in event of separation, purchase more than one residential building, it cannot be said that benefit of exemption is to be denied under Section 54 of the Act. The relevant portion of the said Judgment is also quoted below for ready reference.

> *"5.A plain reading of the provision of Section 54(1) of the Income-tax Act discloses that when an individual-assesses or Hindu undivided family-assesses sells a residential building or lands appurtenant thereto, he can invest capital gains for purchase of residential building to seek exemption of the capital gains tax.* ***Section 13 of the General Clauses Act*** *declares that whenever the singular is used for a word,* ***it is permissible to include the plural.***
>
> *6. The contention of the Revenue is that the phrase 'a' residential house would mean one residential house and it does not appear to the correct understanding. The expression 'a' residential house should be understood in a sense that building should be of residential in nature and '****a' should not be understood to indicate a singular number****.* ***The combined reading of Sections 54(1) and 54F*** *of the Income-tax Act discloses that, a*

http://www.judis.nic.in

non residential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to Section 54 of the Income-tax Act, lays down that if the assessee has already one residential building, he is not entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building.

7. When a Hindu undivided family's residential house is sold, the capital gain should be invested for the purchase of only one residential house is an incorrect proposition. After all, the Hindu undivided family property is held by the members as joint tenants. ***The members keeping in view the future needs in event of separation, purchase more than one residential building;, it*** *cannot be said that the benefit of exemption is to be denied under Section 54(1) of the Income-tax Act.*

8. On facts, it is shown by the assessee that the apartments are situated side by side. The builder has also stated that he has ***effected modification of the flats to make it as one unit by opening the door in between two apartments****. The fact that at the time when the inspector inspected the premises, the flats were occupied by two different tenants is not the ground to hold that the apartment is not a one residential unit. The fact that the assessee could have purchased both the flats in one single sale deed or could have narrated the purchase of two premises as one unit in the sale deed is not the ground to hold that the assessee had no intention to purchase the two flats as one unit.*

9. For the reasons and discussion made above, the substantial questions of law are answered in favour of the assessee. The appeal

WEB COPY
http://www.judis.nic.in

is dismissed."

11. The said Judgment was affirmed by the Hon'ble Supreme Court with the dimissal of the Revenue's Special Leave Petition in S.L.P.(C)No.20867 of 2009 in ***CIT Vs.D.Ananda Basappa*** reported in ***(2010) 320 ITR (ST) 19***.

12. The learned counsel for the Assessee, therefore, submitted that the learned Tribunal has erred in setting aside the order passed by the CIT (Appeals) and restoring the order passed by the Assessing Authority and only giving a partial relief under Section 54 (1) of the Act for the investment in one residential house only.

13. *Per contra*, Ms.Premalatha, learned counsel for the Revenue submitted that a word 'a' employed under Section 54 of the Act cannot be read to mean plural or multiple residential houses and, therefore, the Assessing Authority was justified in allowing the deduction under Section 54 (1) of the Act only to the extent of purchase of one of the residential houses which was purchased for the higher value of Rs.43,45,000/- out of three purchases. She submitted that the amendment by Finance (No.2) Act 2014 with effect from 01.04.2015 to substitute the words 'one' in place of 'a' in Section 54 and 54F is only clarificatory in nature and, therefore, it would apply to the present AY-2005-2006 also. She relied upon the decision of the

http://www.judis.nic.in

Punjab and Haryana High Court in the case of ***Pawan Arya Vs.Commissioner of Income Tax*** reported in ***[2011] 11 taxmann.com 312,*** wherein the Division Bench of Punjab and Haryana High Court, after referring the decision of the Karnataka High Court in the case of ***CIT vs. D.Anand Basappa*** (supra) held that while the Tribunal had not allowed the said benefit of Section 54 of the Act in respect of purchase of more than one residential house, no Substantial Questions of Law arose for consideration by the High Court. The Division Bench of Punjab and Haryana High Court sought to distinguish the Karnatanka High Court judgment and held that both the flats were and could be treated as one house, as both had been combined to make one residential house. The learned counsel for the Revenue submitted that in the present case, where the three purchases in question were admittedly purchased by the Assessee are at different addresses in the same City of Madurai, the benefit of Section 54 cannot be extended to the purchase value of all the three properties in question. She submitted that the Assessee's Appeal deserves to be dismissed and the Substantial Questions of Law shall be answered in favour of the Revenue.

WEB COPY

14. We have heard the learned counsel at length and perused the decisions relied by them at the bar.

http://www.judis.nic.in

15. Section 54 of the Act, to its relevant extent, is quoted below for ready reference:

> ***"Profit on sale of property used for residence.***
>
> ***54.*** *[(1)] Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date [**constructed, one residential house** in India, then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*
> *(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*
> *(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.*"

[Prior to amendment by Finance Act 2014 w.e.f. 01.04.2015 amendment, the aforesaid words in brackets read like this.' Contructed, a

http://www.judis.nic.in

residential house]

16. We are conscious of the fact that the questions posed for our consideration have to be answered in the context of an Assessee which is a HUF, which has a special character. It is only by deeming fiction of law that a HUF, is treated as a separate assessable entity by including the same in the definition of the word 'person' under Section 2 (31) of the Act. The definition of the word "Assessee" under Section 2(7) of the Act means a 'person' by whom any tax or sum of money is payable under the Act. Thus, the HUF is also a 'person' and a separate assessable entity under the Income Tax Act, 1961.

17. The purpose of Section 54 appears to allow a deduction to an Assessee, being an individual or HUF, to the extent of investment made in residential house as against the Capital Gains accruing on the sale of original residential house or sold capital asset. The word 'a' has been used in the said provisions of Section 54 (1) of the Act at more than one place and such word 'a' was not replaced by way of amendment by Finance (No.2) Act 2014 with effect from 01.04.2015 at all such places in the said provision. In the first part of Section (1) of the Act, the words 'being a Residential House' coupled with the words 'Buildings or Lands" (plural) appurtenant purchased thereto both clearly indicate the plural sense. The sale being

WEB COPY

of a residential house does not necessarily restrict the meaning of 'a' to one. If the capital gains arise out of sale of plural of Captial Assets also, including the residential house, it would give rise to taxable capital gains. There is no reason to restrict the benefit of deduction upon investment in residential houses even though such units of residential houses are plural, which is not always so. The word 'a' would normally mean one. But it can in some circumstances include within its ambit and scope plural number also. It may be two or three or even more. The very need to amend the later part of Section 54(1) seems to have been to restrict such plurality to be included in word 'a' by inserting word "one residential house" with effect from 01.04.2015.

18. It would be of interest to refer to the Explanatory notes along with the Finance Bill by which the said amendment was incorporated in Section 54, which is quoted below for ready reference:

> "***20.Capital gains exemption in case of investment in a residential house property***
>
> *20.1.The provisions contained in sub-section (1) of Section 54 of the Income Tax Act, before its amendment by the Act, inter alia, provided that where capital gain arises from the transfer of long-*

WEB COPY

term capital asset, being buildings or land appurtenant thereto, and being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house, then, the amount of capital gains to the extent invested in the new residential house is not chargeable to tax under section 45 of the Income-tax Act.

20.2. The provisions contained in sub-section(1) of section 54F of the Income-tax Act, before its amendment by Act, inter-alia, provided that where capital tains arises from transfer of a long-term capital asset, not being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house, then, the portion of capital gains in the ratio of cost of new asset to the net consideration received on transfer is not chargeable to tax.

WEB COPY

20.3.Certain courts had interpreted that the exemption is also available if investment is made in more than one

http://www.judis.nic.in

residential house. The benefit was intended for investment in one residential house within India*. Accordingly, sub-section (1) of Section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.*

20.4.Similarly, sub-section (1) of Section 54F of the Income-tax Act has been amended to provide that the exemption is available if the investment is made in one residential house situated in India.

*20.5.**Applicability:-These amendments take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.**"*

19. A closer and bare reading of the aforesaid Explanatory Notes to the provisions of the said Act, clearly shows that the said amendment was intended to be specifically applied only prospectively with effect from A.Y.2015-2016. It took note of the judicial precedents for the period prior to 01.04.2015, giving a different and contra interpretation. Therefore this amendment cannot be held to be mere

WEB COPY

clarificatory so as to be applied retrospectively for A.Y.2005-2006 in the present case.

20. We have discussed about the two decisions from the Karnataka High Court, which, in our opinion, dealt with similar controversy as is raised before us herein. The only difference which we find is that the purchase of the residential houses in the present case is at different address in the same city of Madurai. In ***D.Ananda Basappa*** case stated (supra), two flats in question were admitedly adjacent to each other and which were joined to become one residential house. In the case of ***Khoobchand M.Makhija*** (supra), two door nos are given viz., 623 and 729, but the complete addresses and even the name of the city is not clear in the facts narrated in the said Judgment. But in our considered opinion, the difference of location of the newly purchased residential house(s) will not alter the position for interpretation of the word 'a residential house' to the effect that it may include more than one or plural residential houses, as held by Karnataka High Court, with which we respectfully agree. The location of the newly purchased houses by the same assessee viz., HUF out of sale consideration received on the sale of original capital Asset or a residential house in the given circumstances of availability of such residential houses as per the requirement of the HUF will not alter the position of interpretation.

WEB COPY
http://www.judis.nic.in

21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the words 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y.2015-2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same Assessee should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee-HUF in the present case, in our opinion, complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the

WEB COPY
http://www.judis.nic.in

properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in ***CIT Vs.D.Ananda Basappa ((2009) 309 ITR 329 (Karn)) & Khoobchand M.Makhija*** (supra) cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case.

22.The decision of Punjab and Haryana High Court relied upon by the learned counsel for the Revenue, in which the Division Bench of the said Court finding a distinction with ***D.Ananda Basapaa's*** *case (*supra) on facts, without expressing contrary opinion in detail, held that no Substantial Questions of Law arose, renders little help to the arguments advanced by the learned counsel for the Revenue.

23. Therefore, we are of the considered opinion that the present Appeal filed by the Assessee deserves to be allowed and the same is accordingly allowed and the questions of law framed above are aswered in favour of the Assessee and as against the Revenue. No order as to costs.

WEB COPY

(V.K.,J.) (C.V.K.,J.)
14.03.2019

Index : Yes/No
Internet : Yes/No
arr

http://www.judis.nic.in

DR. JUSTICE VINEET KOTHARI,J
and
MR. JUSTICE C.V.KARTHIKEYAN,J

arr

To

1. The Assistant Registrar
   Income Tax Appellate Tribunal,
   Chennai 'B' Bench, Chennai.

2. Income Tax Officer
   Ward II(4),
   Madurai-2.

3.Commissioner of Income Tax (Appeals)-I,
  Madurai.

T.C.(A).No.771 of 2009

WEB COPY

14.03.2019

http://www.judis.nic.in

WEB COPY

http://www.judis.nic.in