

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1764/PUN/2019
निर्धारणवर्ष /Assessment Year: 2013-14

Dilip B. Mundada, 129, nana Peth, Near Ram Mandir, Pune – 411002. PAN: AAWPM 9135 E	Vs	The Dy.CIT, Circle-6, Pune.
Appellant/ Assessee		Respondent/ Revenue

Assessee by	Shri Pramod S Shingte – AR
Revenue by	Shri Arvind Desai – DR
Date of hearing	21/06/2022
Date of pronouncement	15/07/2022

आदेश/ ORDER

PER DR.DIPAK P.RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income-tax(Appeals)-8, Pune's, order dated 24.09.2019 for the Assessment Year 2013-14. The appellant Assessee has raised the following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law the Lower Authorities has erred not granting the exemption u/s 54F under Income Tax Act, 1961 for Rs.24,69,227/- without appreciating the fact that your appellant has purchased two adjacent flats which were used as a single unit and therefore appellant is entitled for exemption as claimed. We pray accordingly.*

The appellant craves for to leave, add, alter, modify, delete above ground of appeal before or at the time hearing, in the interest of natural justice."

2. Brief facts of the case are that during the year under consideration the assessee Dilip B.Mundada sold a property on 30.03.2013 for Rs.1,51,00,000/-. The assessee claimed to have purchased two flats as under :

Name of Person in whose name property purchased	Flat No.	Purchase Agreement date	Amount
Mrs. UMA Dilip Mundada	401	11/08/2011	46,22,890/-
	401	27/07/2012	Supplementary deed for 401
Dilip B.Mumdada	402	26/06/2012	70,57,701/-

3. The assessee had claimed deduction u/s 54F in the computation of Long Term capital gain. The Assessing Officer allowed the claim of the assessee only for Flat No.402.

3.1 Aggrieved by the order of the AO, the assessee filed the appeal before the Ld.Commissioner of Income Tax(Appeal). The Ld.CIT(A) has discussed the said issue in para 6.7 of the order which is reproduced here as under :

“6.7 The appellant contention has been considered in light of the above judgements and facts of the case. However, not only on many aspects the appellant case distinguish from the above cases, but also fails on merit too.Looking at the facts of the appellant’s case, Agreement for purchasing Flat no. 401 was executed on 11-08-2011 in the name of Mrs. Uma Mundada, wife of the appellant. As the original asset was sold on 28.03.2013, it is a fact that flat no. 401 was purchased 17 month prior to sale. The appellant’s wife Mrs. Uma Mundada has acquired a loan for purchase of the said flat form ICICI Bank. Mrs. Uma Mundada is also one of the directors in the firm and earn income, which was used to purchase the said flat no. 401. Mrs..UmaMundada files separate ROI not jointly with her husband. Her income proceeds was contributed to purchase the said flat no. 401. Apart from these facts it can be seen also that the sale proceeds was not source to purchase the said flat

*no. 401, as the same was already bought before the sale proceeds approx. 17 months prior to sale. Thus, the appellant's case does not have same facts as the case cited by him. The appellant's contention that the two flats are adjacent and have one kitchen, also cannot be accepted in light to eligibility for exemption u/s 54F of the Act. The appellant bought another flat no. 402 in his name after 10 month of buying flat no. 1, and then claimed to have join to make one residential unit. Since, the flat no. 401 was purchased prior to one year instead of what envisaged in section 54F of the act; it is out of purview of the provisions. The said flat 401 and 402 cannot be considered a single residential unit as held in CIT vs Devdas Naik (2014) by Hon'ble Bombay High court for the instant case, because flat no. 401, was purchased prior to one year of sale of original asset. Accordingly, in light of above discussion, Ground No. 1 is **DISMISSED.**"*

4. Aggrieved by the order of the ld.CIT(A) the assessee filed appeal before the Tribunal.

5. The Learned Authorized Representative(ld.AR) for the assessee submitted that the assessee had purchased the Flat No.401 in his wife's name for the security of his wife. Though, the Flat No.401 was purchased by registered agreement dated 11/08/2011 in the name of Mrs. Uma D Mundada but then there was a supplementary agreement on 27/07/2012 vide which the carpet area of the flat was increased from 777 sq.ft to 841 sq.ft by the builder due to revision in the building plan. The assessee had not paid any extra consideration for the said increase in the area. All the terms of the agreement remained same as per original agreement. The Ld.AR submitted that the Assessee purchased the Flat No.402 vide purchase agreement dated 26/06/2012. The assessee converted the said two flats into one

flat. Therefore the AR pleaded that the assessee is entitled for deduction u/s 54F.

6. Ld.Departmental representative (DR) relied on the orders of the lower authorities. Ld. DR specifically invited our attention to the fact that the Flat No.401 which was purchased in the name of Mrs.Uma Mundada on 11/08/2011, means more than one years before the sale of the impugned property at Hadapsar Pune. Hence anyway the assessee will not be eligible. The Ld.DR submitted that the two flats were purchased separately, by separate agreements. As per the building plan the Flat No's.401 and 402 are separate flats, hence assessee cannot make them one flat. If assessee has removed one wall between the two flats then it is an illegal act. The payments for Flat No.401 were made by Mrs. Mundata who is an independent assessee having her own PAN and source of income.

7. Heard both the parties, perused the records. It is a fact that the assessee had sold a property on 30.3.2013 for Rs.1,51,00,000/- and there was capital gain on said transaction. The assessee claimed 54F benefit.

7.1 The Section 54F as applicable for the relevant Assessment Year is reproduced here as under :

[Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be char under section 45 ;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

[**Provided** that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]

8. The Flat No.401 was admittedly purchased vide registered Purchase Agreement dated 11/08/2011 for total consideration of Rs.40,00,000/-. The stamp duty and registration charges had been paid by Mrs.UmaMundada on the total value of Rs.40,00,000/-. Thus the Flat No.401 has been registered in the records of Registrar of Properties in the name of Mrs.Uma Mundada on 11/08/2011.

8.1 Admittedly the Flat No.401 is registered in the name of Mrs.UmaMundada. Mrs.UmaMundada is an independent assessee having PAN: ABHPM7236J and in the Purchase Agreement her occupation is mentioned as Household and Business. Mrs. Uma Mundada is partner in a firm and has earned income from the firm. Thus it is an admitted fact that Mrs.UmaMundada is an independent person having business. She had a bank account in Mahesh Sahakari Bank, Nanapeth Branch. This bank account is in her own name and type of account is “individual”.

8.2. The section 54F have two important phrases, “*an assessee being an individual*” .. and “*the assessee has purchased*”. Thus the section starts with the word “an assessee being an individual” and then refers to the same assessee as “*the assessee has purchased*” means the assessee who has sold the asset has to purchase the new asset within the specified time period. The section 54F uses the word, “purchased a residential house”, here the word purchased is used, it does not mean invested. The purchase has to be a legal purchase. To have an effective purchase the name of the person must be mentioned in the document. In this case the purchase agreement is in the name of the wife of the assessee who is an independent assessee earning income independently. We find strength from the order of Hon’ble Rajasthan High Court.

8.3 Hon'ble Rajasthan High Court has held in the case of Kalya vs CIT [2012] 22 taxmann.com 67 (Raj.) as under :

Quote

“ 7. A bare reading of Section 54B of the Income Tax Act does not suggest that assessee would be entitled to get exemption for the land purchased by him in the name of his son and daughter-in-law. In the facts and circumstances of the case also aforesaid inference has not been drawn. Same is question of fact. No substantial question of law arises in appeal. Question whether purchase was by assessee or by son, is a question of fact.

8. Secondly, the word "assessee" used in the Income Tax Act needs to be given a 'legal interpretation' and not a 'liberal interpretation', as contended by the learned counsel for the appellant. If the word 'assessee' is given a liberal interpretation, it would be tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not permit.

9. The Income Tax Appellate Tribunal, having considered all the facts and circumstances of the case, is found to have rightly disallowed the exemption under Section 54B of the Act.” Unquote.

8.4. Hon'ble Delhi High Court has held in the case of Vipin malik vs CIT 183Taxmann 296 (Delhi) as under :

Quote ,

“9. Independent of the above discussion, an aspect which overrides the above issue, is that, the agricultural land which was sold was of Vipin Malik HUF and the flat purchased in the co-operative society was not in the name of the HUF. The flat was in the individual name of Vipin Malik along with his mother Smt. Chanan Devi Sachdeva. To claim the benefit of section 54F the residential house which is purchased or constructed has to be of the same assessee whose agricultural land is sold and which is therefore, not the case here. The following paragraph 12 of the order of the ITAT effectively and exhaustively sets out these facts and we reproduce the same below:—

"12. We have considered the rival submissions and also perused the relevant material on record. It is observed that the claim of the assessee for exemption under section 54F was disallowed by the authorities below on various grounds. First of all, it was held by the

Assessing Officer that the investment claimed to have been made by the assessee in the residential property/flat in Kanungo Co-operative Group Housing Society Ltd. was not in its name but the same was in the joint name of two individuals viz., Smt. Chanan Devi Sachdeva and Shri Vipin Malik. Before us, the learned DR has strongly supported and substantiated this ground given by the Assessing Officer for disallowing the claim of the assessee for deduction under section 54F by referring to the various certificates and receipts issued by the said society wherein the names of individuals were appearing without any indication of HUF. The learned counsel for the assessee, on the other hand, has relied on the possession certificate issued by the society on 30-4-2000 wherein both the individual names were appearing with Shri Vipin Malik being mentioned as Karta of M/s. Vipin Malik, HUF. He has also contended that Smt. Chanan Devi Sachdeva being the oldest member of the assessee-HUF, her name was given as member for the sake of convenience. After careful examination of all these documents as well as keeping in view all the facts and circumstances of the case, we find it difficult to agree with the stand taken on behalf of the assessee on this issue. In this regard, a reference can be made at the outset to the certificate issued by the society bearing No. 237/4135/92 dated 22-7-1992 (copy at page 17 of assessee's paper book) which certifies that as per the records of the society, the membership 237 stands in the joint name of Smt. Chanan Devi Sachdeva and Shri Vipin Malik, resident of S-370, Greater Kailash, Part-II, New Delhi. There is no mention whatsoever to suggest or indicate any involvement of HUF in the said membership or Vipin Malik holding the membership as Karta of the assessee-HUF. Page 11 of the paper book is a letter issued by the said society on 19-10-1995 giving details of amounts deposited by them aggregating to Rs. 6,41,014 up to 19-10-1995 which again was addressed to Smt. Chanan Devi Sachdeva and Shri Vipin Malik without there being any mention or indication of HUF. Pages 12, 14 and 15 are the Photostat copies of the receipts issued by the said society for payments made by the assessee on 31-10-1995, 12-6-1998 and 19-5-1999 which again are issued in the name of two individuals without there being any mention of HUF. Page 13 is the ledger account extract from the books of the society for the period 1-4-1996 to 31-3-1997 with a title of account being "Chanan Devi Sachdeva and Vipin 237" which again goes to show that the membership was stated to be held jointly by the said individuals without there being any indication of HUF. The only document which contains the name of HUF with reference to Shri Vipin Malik as Karta of HUF is a possession certificate issued by the society on 30-4-2000 and a perusal of the copy of the said certificate placed at page No. 16 of the assessee's paper book shows that the words "(Karta), M/s. Vipin Malik-HUF" are written in capital letters against the name of Shri Vipin Malik which appears in small letters. Even the manner in which the said words are written in the said certificate shows that the same are apparently added/inserted afterwards. Having regard to this patent anomaly apparent from the

said certificate as well as keeping in view the fact that all the letters, certificates and receipts issued by the said society earlier did not contain any reference to HUF, we find it difficult to accept the stand of the assessee that the membership in the said society was held by it in the capacity of HUF and the investment made in construction of the said property was in its own name. On the contrary, the documentary evidence placed on record clearly shows that the said membership was standing in the joint name of Smt. Chanan Devi Sachdeva and Shri Vipin Malik in their individual capacity and an attempt to show the same as held on behalf of the HUF on the basis of possession certificate was clearly made as an afterthought to claim deduction under section 54F from the capital gain arising from sale of property belonging to HUF."

10. Clearly, therefore, there was no question of applicability of section 54F in the aforesaid facts and circumstances." Unquote.

8.5. Hon'ble Bombay High Court in the case of Prakash vs ITO 312

ITR 40(BOM) has held as under :

Quote

" 17. In light of above, the reasoning given by the Tribunal by maintaining the order passed by the Assessing Officer, need no interference. The reasonings, as given, are as under:—

"8. . . . A plain reading of section 54F would show that it is the assessee who has to invest the capital gain in the new construction of a residential house in his name. The expression that the assessee has purchased or constructed a new asset in sub-section (1) would only mean that the new asset has to be in the name of the assessee. The proviso to sub-section (1) makes the position very clear inasmuch as it says that the assessee shall not own any residential house on the date of transfer or purchase a residential house within 1 year of the transfer or construct residential within a period of 3 years, other than the new asset. Thus, reading of sub-section (1) together with the proviso would show that the investment in the new asset by the assessee has to be in his own name and not in the name of any other person. The legal consequences of purchase of the new asset by assessee in the name of his son is to constitute his son as the beneficial owner of the new asset. The assessee has, therefore, not made the investment in this name. Therefore, he has rendered himself liable to pay tax on capital gains arising out of the transfer of a capital asset.

9.*****

10. In all the above case, it will be significant to note that the issue was never regarding purchase of the new asset in the name of other

person. Death during the period within which the new asset had to be acquired was an intervening event in some cases. The distinction between a legal heir and a heir apparent in law is very significant. A heir apparent succeeding to the estate of a prepositus is dependent on the fact of his surviving the prepositus. Death is a certain event but who will die first is not a certain event. This is the reason why law regards transfer by a heir apparent of his chance of succession as non-transferable under section 6 of the Transfer of Property Act.

11. In the present case, the assessee has not made any such claim. In the affidavit filed before the Assessing Officer he had admitted that his son is the beneficial owner of the property and the investment was made in his name in view of the fact that he is 86 years old and that he was counseled to do so. Thus, on facts and circumstances of this case, we are of the view that the decision of the Madras Tribunal is also distinguishable."

18. In view of the above reasons, we answer the substantial questions of law framed by this Court in the appeal as under:—

Question No. 1 YES:—

We hold that the appeal filed before the Income-tax Appellate Tribunal on 1-5-1988 is competent. It was arising out of the assessment year 1983-84. The Department had issued notice under section 139(2) of the Act calling upon the assessee (TimajiDhanjode) who had filed his return; who was alive at the relevant time. The Assessing Officer held that the investment by the deceased assessee in the name of his adopted son not calling for an exemption and, therefore, demanded capital tax. Against the order, the appeal filed by the deceased was allowed on 25-1-1989 and after remand, CIT(A) reversed the order of Assessing Officer on 11-2-1998, therefore, the department appeal dated 1-5-1998 against the same, even after the death of the assessee on 9-5-1991, against the appellant being the only legal heirs, is maintainable.

Question No. 2 ...NO:—

The appellant does not qualify for the exemption under section 54F of the Income-tax Act." Unquote.

8.5. Learned ITAT Pune in the case of Vandana Maruti Pathare vs ITO in ITA 2223 /Pune /2017 vide order dated 16/03/2022 has held as under :

Quote ,

“4. I have heard both the sides and gone through the relevant material on record. At the outset, it is necessary to mention that the ld. AR did not press any other ground, except the ground No. 2 through which the denial of exemption u/s 54B has been assailed. All other grounds are, therefore, dismissed as not pressed. Coming to the exemption u/s 54B, it is seen that the assessee sold her agricultural land and purchased new agricultural land in the name of her sons, Swapnil M. Pathare and Sonal M. Pathare. The only question is as to whether exemption u/s 54B can be allowed when the new property is purchased in the name of someone other than the assessee. The AO has relied on the judgment of Hon'ble jurisdictional High Court in the case of Prakash (supra), in which it has been held that when a new property is purchased in the name of son with clear intention to transfer the property to him and the son becomes the full owner of property for all the purposes, the assessee cannot claim the benefit of exemption u/s 54B.

5. It is seen that the Hon'ble Delhi High Court in CIT v. Kamal Wahal [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 and the Hon'ble Punjab & Haryana High Court in CIT v. Gurnam Singh [2008] 170 Taxman 160/[2010] 327 ITR 278 have decided similar issue in favour of the assessee by allowing exemption u/s 54B observing that the assessee having invested sale proceeds of his agricultural land in purchasing another agricultural land, though in a joint name with his son, was eligible for exemption. Identical view in favour of the assessee has been canvassed by certain other Hon'ble High Courts also.

6. On the contrary, the Hon'ble jurisdictional High Court in Prakash (supra) has disentitled the assessee to the claim of exemption when a new property is not purchased in the name of assessee, who transferred the original property. The Hon'ble Punjab & Haryana High Court in a later decision in the case of CIT v. Dinesh Verma [2015] 60 taxmann.com 461/233 Taxman 409 considered a case in which the new property was not purchased in the name of the assessee who transferred the original property. The Hon'ble High Court did not grant the benefit of exemption u/s 54B to that extent.

7. Ergo, it is overt that the decisions have been rendered at variance by the two sets of the Hon'ble High Courts - one in favour of the assessee and other in favour of the Revenue. It goes without saying that the decision of a High Court is binding on the all subordinate Courts and authorities or Tribunal under its superintendence throughout the territories in relation to which it exercises jurisdiction. When discordant views are rendered by different High Courts, an inferior authority under one of such High Courts, is bound to follow its jurisdictional High Court

notwithstanding that other view of the non-jurisdictional High Court may sound more appealing on individual level vis-a-vis the view of the jurisdictional High Court. The principle of following a view in favour of the assessee when contrary views are available, applies to the authorities acting under a neutral High Court, namely, which has not expressed any opinion - for or against - on that point. Once the jurisdictional High Court decides a particular issue in a particular manner, that manner has to be mandatorily followed by all the authorities acting under it so long as it holds the field and is not deactivated by the Hon'ble Supreme Court. In that view of the matter, I am bound to follow the view taken by the Hon'ble jurisdictional High Court. The ld. AR failed to draw my attention towards any other subsequent decision rendered by the Hon'ble Bombay High Court in favour of the assessee on this issue. I, therefore, hold that the authorities below were justified in making the assessee not eligible to exemption u/s 54B of the Act. ”
Unquote.

8.6. Thus, the jurisdictional High Court and other Hon'ble High Courts and ITAT Pune have held that for availing the benefit of deduction u/s 54F the new asset shall be purchased in the name of the assessee. Applying the said proposition of law to the present case, we hold that the Flat No. 401 is not in the name of the assessee, hence it is not eligible for exemption u/s 54F of the Act.

9. The assessee claimed that the amount for Flat No. 401 was invested by him. However, it is factually incorrect. It is observed from the documents filed in the paper book that the payments for Flat No.401 were made by Mrs.UmaMundada. The details of payments are as under :

- Rs. 1,25,000/- own fund of Mrs.UmaMundada,initial payment to builder.
- Rs.3,75,000/- borrowed from partnership firm Ridkaran Bansilal MundatabyMrs.Uma to pay to builder for flat no.401

- Rs. 5,00,000/- loan taken from Sangita by Mrs Uma for the flat.
- Rs.2,00,000/- loan taken by Mrs.Uma from the partnership firm .
- Loan of Rs.5,00,000/- from lunkad reality by Mrs.Uma
- Remaining Home Loan from ICICI Bank in joint name of Dilip Mundada and Mrs.UmaMundada.
- The Home loan is in join name because the bank normally ask for joint name to secure the repayment. Therefore, though the Flat No. 402 which is in the name of Dilip Mundada also have home loan in joint name with Mrs.UmaMundada.

Thus the payments were also made by Mrs.UmaMundada.

9.1. However, as discussed in the earlier paras the new house should have been purchased by the assessee. The section 54F does not say that the assessee shall invest in the new house but it says the assessee shall purchase new house. Therefore, even on this ground the rejection of claim of section 54F for the Flat No. 401 is justified. Therefore, we hold that the Assessing officer has rightly restricted assessee's claim for deduction u/s 54F for Flat No.402 only. Accordingly, grounds of appeal raised by the assessee is dismissed.

10. In the result the Appeal of the Assessee is dismissed.

Order pronounced in the open Court on 15th July, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.