

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.8478/Del./2019
Assessment Year 2014-2015

Shri Ramphal Hooda, A-102, Sheetal Vihar, Plot No.10, Sector-23, Dwarka, New Delhi – 110 077. PAN AAQPH4463A	vs.	The Income Tax Officer, Ward – 5, Aayakar Bhawan, Rohtak. Haryana.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, C.A. And Ms. Umung Luthra, C.A.
For Revenue :	Shri Sanjay Tripathi, Sr. DR
Date of Hearing :	02.03.2020
Date of Pronouncement :	02.03.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-28, New Delhi, Dated 06.09.2019, for the A.Y. 2014-2015, denying exemption under section 54/54F of the I.T. Act, 1961, by making

addition of Rs.1,42,23,431/- under the Head “*Long Term Capital Gains.*”

2. Briefly the facts are that the assessee has shown income from salary and other sources during the year. Besides this, the assessee has also shown long term capital gain on sale of two properties i.e. Flat No. 213, DPS Apartment, Dwarka for a consideration of Rs.56,79,195/- and another property at Plot No. 1470, Sector-15, Sonapat for Rs.85,44,236/- aggregating to Rs.1,42,23,431/- for both the properties. This long term gain amount has been invested in purchasing another property in Sheetal Vihar, Sector-23, Dwarka, New Delhi for Rs.1,57,63,283/- in the name of his wife Smt. Vedmati Hooda. It was claimed by assessee during the assessment proceedings that he has fulfilled/all the technical conditions for exemption of long term capital gains under sections 54/54F of I.T. Act, 1961 and in support of this claim, the assessee relied on several decisions of different Courts/ITATs. However, the AO did not accept the explanation of the assessee and relying on the judgment of Jurisdictional High Court i.e. Punjab and

Haryana High Court in the case of CIT, Faridabad vs Dinesh Verma in ITA No. 381 of 2014 dated 06.07.2015, wherein it was held that *“the assessee is not entitled to the benefit conferred under section 54B if the subsequent property is purchased by a person other than the assessee, including his close related even such as wife and children.”* The A.O. denied the exemption under sections 54/54F of I.T. Act, 1961, to the assessee and made addition of Rs.1,42,23,431/-.

3. The assessee challenged the addition before the Ld. CIT(A). The same submissions were reiterated before the Ld. CIT(A) and it was submitted that the case of the assessee is covered by the Judgment of the Hon'ble jurisdictional Delhi High Court in the case of CIT vs., Kamal Wahal 351 ITR4 in which on identical facts the issue have been decided in favour of the assessee. The assessee also relied upon several other decisions of Hon'ble Delhi High Court on the same proposition that since it is a beneficial provision, therefore, benefit should be allowed to the assessee. The detailed written submissions of the assessee

is reproduced in the appellate order. The Ld. CIT(A), however, noted that return has been filed with ITO, Rohtak and assessment is also framed at Rohtak, therefore, Judgment of Hon'ble Punjab & Haryana High Court is binding on the assessee and the A.O. Accordingly, appeal of assessee was dismissed.

4. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that the facts are not in dispute. The assessee has sold two properties and made investment in one property and claimed exemption of long term capital gains under section 54F of the Income Tax Act, 1961. The assessee invested the entire money in the property so purchased. However, the property was purchased in the name of wife of the assessee. The PAN of the assessee was transferred from Rohtak to Delhi because assessee was residing in Delhi. The case of the assessee has also been transferred to Delhi, therefore, jurisdictional High Court would be Delhi High Court. He has relied upon Judgment of the Hon'ble Delhi High Court in the case of CIT-X vs.,

AAR BEE Industries [2013] 357 ITI 542 (Del.) in which it was held as under :

“It is a well accepted principle that there can be only one Assessing Officer in respect of a case. At the point of time when the present appeals were filed, the Assessing Officer insofar as all the cases of the respondent were concerned, was the Assessing Officer at Delhi. The fact that the Amritsar Bench of the Tribunal had passed the impugned orders or the fact that the initial assessment orders were passed by the Assessing Officer at Jammu would not be relevant for the purposes of determining the jurisdiction of the court at the point of time at which an appeal under Section 260-A of the said Act is filed. It is the date on which the appeal is filed which would be the material point of time for considering as to in which court the appeal is to be filed. On the dates on which the present appeals were filed, the Assessing Officer of the respondent was the

Assessing Officer at New Delhi and, therefore, this court would have jurisdiction to entertain these appeals.”

4.1. He has submitted that the date on which appeal is filed would be material point of time for consideration of the issue regarding jurisdiction. He has submitted that the appeal of assessee has been decided by the Ld. CIT(A)-28, New Delhi and address of the assessee is also at Delhi, therefore, Hon'ble Delhi High Court is the jurisdictional High Court and its decisions are binding on the Ld. CIT(A). He has relied upon Judgment of the Hon'ble Delhi High Court in the case CIT-XII vs., Shri Kamal Wahal [2013] 351 ITR 4 (Del.) in which in paras 9 and 10, the Hon'ble Jurisdictional Delhi High Court held as under :

“9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that

it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue.

The appeal is accordingly dismissed with no order as to costs."

4.2. He has also relied upon the Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Ravinder Kumar Arora [2012] 342 ITR 38 (Del.) in which it was held as under :

“Whether the exemption under Section 54F is extendable to the assessee for the total consideration paid by him, for the purchase of the new asset (the residential property) in the joint name or the exemption would be entitled to the extent of the share of the assessee in the said purchased property. - Held that - When whole of the purchase consideration has been paid by the assessee and not even a single penny has been contributed by the wife in the purchase of the house, the assessee is entitled to full exemption. In CIT v. Podar Cement (P.) Ltd. (1997 (5) TMI 2 - SUPREME Court), the Supreme Court has also accepted the theory of constructive ownership. Moreover, Section 54F mandates that the house should be purchased by the assessee and it does

not stipulate that the house should be purchased in the name of the assessee only. - decided in favour of assessee.”

4.3. He has, therefore, submitted that the issue is covered in favour of assessee by the above decisions of Delhi High Court and assessee is entitled for exemption under section 54/54F of the Income Tax Act 1961.

5. On the other hand, the Ld. D.R. relied upon orders of the authorities below and submitted that jurisdiction lies with Punjab and Haryana High Court, therefore, appeal of assessee has been rightly dismissed.

6. We have considered the rival submissions. The above decisions of the Hon'ble Delhi High Court have squarely apply to the facts and circumstances of the case. In the case of the assessee, the jurisdiction and PAN of the assessee have been admittedly transferred to Delhi. The appeal of the assessee was decided by the Ld. CIT(A)-28, New Delhi. Therefore, Ld. CIT(A) is bound to follow the Judgments of the Hon'ble Delhi High Court. The jurisdiction

in the case of assessee since transferred to Delhi even at the first appellate stage, therefore, the jurisdiction lies with the Hon'ble Delhi High Court. The issue is squarely covered by the above decisions of the Hon'ble Delhi High Court relied upon by the Learned Counsel for the Assessee. since the entire sale amount of long term capital gain have been invested in purchase of other property in the name of wife of assessee, assessee would be entitled for exemption on account of long term capital gains. In this view of the matter, we set aside the Orders of the authorities below and delete the entire addition. The A.O. is directed to allow exemption of assessee.

7. In the result, appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 02nd March, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.