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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **INCOME TAX APPEAL NO. 567/2013**

Date of decision: 18th December, 2013

COMMISSIONER OF INCOME TAX - XV
..... Appellant

Through Mr. Kamal Sawhney, Sr. Standing Counsel.

versus

BHARTI MISHRA
..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

Learned counsel for the appellant-Revenue submits that he does not rely and has not been able to locate any judgment in favour of the Revenue.

2. The respondent-assessee, an individual, had sold shares and thereafter the sale proceeds of Rs.54,86,965/- were invested in construction of house property. Exemption was claimed under Section 54F of the Income Tax Act, 1961 (Act, for short) in the return of income filed for Assessment Year 2009-10. Amount of Rs.37,99,000/-

was utilised in the construction before date of filing of return and Rs.16,87,965/- was deposited in a capital gains account in the prescribed bank on 24th July, 2009 i.e., before the due date of filing of the return.

3. The Assessing Officer rejected the claim for benefit under Section 54F of the Act on two grounds. Firstly, he held that the construction of the house had commenced before the date of sale of shares and secondly, the construction was not completed within three years after the date of said sale.

4. On the second aspect, Commissioner of Income Tax (Appeals) has recorded a contrary factual finding that the construction of the house was completed within a period of three years from the date of sale of shares. The shares were sold on 17th September, 2008 and the construction was completed in June, 2011. The aforesaid factual findings were not challenged and questioned by the Revenue before the Tribunal and also in the present appeal.

5. Thus, the only issue, which is raised and has to be examined, is whether the respondent-assessee can be denied benefit of Section 54F because construction of the house had commenced before the sale of the shares i.e., on 17th September, 2008.

6. Commissioner (Appeals) and the tribunal have relied upon decisions of Allahabad High Court and Karnataka High Court in

Comissioner of Income Tax versus H.K. Kapoor (Decd.), (1998) 234 ITR 753 (All.) and ***Commissioner of Income Tax versus J.R. Subramanya Bhat***, (1987) 165 ITR 571 (Kar). These two cases deal with interpretation of Section 54 of the Act. The said Section is pari materia to Section 54F. The only distinction being that Section 54 applies to investment in a new house where the original asset sold was/is residential property and provisions of Section 54F were/are applicable to all other assets, not being a residential house. In ***J.R. Subramanya Bhat*** (supra), Karnataka High Court noticed language of Section 54 which stipulated that the assessee should within one year from the date of transfer purchase, or within a period of two years thereafter, construct a residential house to avail of concession under the said Section. The contention of the Revenue that construction of the new building had commenced earlier to the sale of the original asset, it was observed, cannot bar or prevent the assessee from taking benefit of Section 54. It was immaterial when the construction commenced, the sole and important consideration as per the Section was that the construction should be completed within the specified period. It was accordingly held as under:-

> "So too was the next conclusion reached by the Tribunal. The date of the sale of the old building was February 9, 1977. The completion of the construction of the new building was in March, 1977, although the commencement of

> the construction started in 1976. It is immaterial, as the Tribunal, in our opinion, has rightly observed, about the date of commencement of the construction of the new building. Since the assessee has constructed the building within two years from the date of sale of the old building, he was entitled to relief under section 54 of the Act."

7. The aforesaid judgment was pronounced on 9th June, 1986 and was followed by Allahabad High Court in ***H.K. Kapoor (Decd.)*** (supra) and it has been held as under:-

> "The question for consideration is whether exemption on capital gains could be refused to the assessee simply on the ground that the construc-tion of the Surya Nagar, Agra house, had begun before the sale of the Link house. Similar question came up for consideration before the Karnataka High Court in the case of CIT v. J. R. Subramanya Bhat [1987] 165 ITR 571. In the case before the Karnataka High Court, the date of the sale of the old building was February 9, 1977. The completion of the con-struction of the new building was in March, 1977, although the com-mencement of construction started in 1976. On these facts, the Karnataka High Court held that it was immaterial that the construction of the new building was started before the sale of the old building. We fully agree with the view taken by the Karnataka High Court. The Appellate Tribu-nal was right in holding that capital gains arising from the sale of the Golf Link house to the extent it got invested in the construction of the Surya Nagar house, will be exempted under section 54 of the Act."

8. Commissioner (Appeals) in his order while accepting the plea of the assessee has referred to several judgments of the Tribunal thereafter in which the aforesaid reasoning and interpretation of Section 54/54F has been followed. Reference has been made to the judgment of Madras High Court in ***Commissioner of Income Tax***

versus Sardarmal Kothari and Another, (2008) 302 ITR 286 in which it has been held as under:-

> "3. There is no dispute about the fact that the assessees have invested the entire net consideration of sale of capital asset in the land itself and subsequently the assessees have invested large sums of money in the construction of the house. The cost of investment in land and the cost of expenditure towards the construction of the houses is not in dispute. The one and only ground on which the Assessing Officer has non-suited the assessees for the claim of exemption was that the houses have not been completed. There remains some more construction to be made.
>
> 4. The requirement of the provision is that the assessee, within a period of three years after the date of transfer, has to construct a residential house in order to become eligible for exemption. In the cases on hand, it is not in dispute that the assessees have purchased the lands by investing the capital gain and they have also constructed residential houses. In order to establish the same, the assessees submitted before the Commissioner of Income-tax(Appeals) several material evidence, viz., invitation card printed for the house-warming ceremony to be held on July 12, 2003. The assessees have also produced the completion certificates from the municipal authority on January 30, 2004. On the basis of the above documents, the Commissioner of Income-tax(Appeals) concluded that the requirement of the statutory provision has been complied with by the assessees and that was reconfirmed by the Tribunal in the orders impugned."

9. The aforesaid ratio is being followed and accepted since 1986.

It will not be fair and in the interest of justice to interfere/alter the said interpretation and interpret beneficial provision differently after almost two decades.

10. The Supreme Court recently in Civil Appeal No. 11003/2013, ***Arasmeta Captive Power Company Private Limited and another versus Lafarge India Private Limited***, decided on 12th December, 2013 has observed as under:

> "2. In Government of Andhra Pradesh and others v. A.P Jaiswal and others, a three-judge bench has observed thus:
> "Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis, etc. These rules and principle are based on public policy…"
> 3. We have commenced our opinion with the aforesaid exposition of law as arguments have been canvassed by Mr. Ranjit Kumar, learned senior counsel for the appellants, with innovative intellectual animation of how a three- Judge Bench in *Chloro Controls India Private Limited v. Seven Trent Water Purification Inc. and others* (2013) 1 SCC 641 has inappositely and incorrectly understood the principles stated in the major part of the decision rendered by a larger bench in *SBP & Company v. Patel Engineering Ltd and another* (2005) 8 SCC 618 and, in resistance, Mr. Harish Salve amd Dr. A.M. Singhvi, learned senior counsel for the respondent, while defending the view expressed later by the three- Judge Bench, have laid immense emphasis on consistency and certainty of law that garner public confidence, especially in the field of arbitration, regard being had to the globalization of economy and stability of the jurisprudential concepts and pragmatic process of arbitration that sparkles the soul of commercial

> progress. We make it clear that we are not writing the grammar of arbitration but indubitably we intend, and we shall, in course of our delineation, endeavour to clear the maze, so that certainty remains "A Definite" and finality is 'Final'."

The aforesaid observations are equally, if not more important and relevant to tax matters.

11. Even otherwise, we find that Section 54F(4) is misread and misunderstood by the Revenue. Section 54-F reads as under:-

> "**54-F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house**.—(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 assets not 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 (hereinafter 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 charged 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'.]

Explanation.—For the purposes of this section,—

(*i*) [*Omitted*]

(*ii*) "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under Section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under Section 45 on the basis of the cost of such new asset as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of Section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount by which—

(*a*) the amount of capital gain arising from the transfer of the original asset not charged under Section 45 on the basis of the cost of the new asset as provided in clause (*a*) or, as the case may be, clause (*b*) of sub-section (1),

exceeds,

(*b*) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under Section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid."

12. Section 54F(1) if read carefully states that the assesseee being an individual or Hindu Undivided Family, who had earned capital gains from transfer of any long-term capital not being a residential house could claim benefit under the said Section provided, any one of the following three conditions were satisfied; (i) the assessee had within a period of one year before the sale, purchased a residential house; (ii) within two years after the date of transfer of the original capital asset, purchased a residential house and (iii) within a period of three years after the date of sale of the original asset, constructed a residential house.

13. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that the construction must begin after the date

of sale of the original/old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original/capital asset would not be utilised in the construction of the new capital asset, i.e., residential house, is ill-founded and misconceived. The requirement of sub-section (4) is that if consideration was not appropriated towards the purchase of the new asset one year before date of transfer of the original asset or it was not utilised for purchase or construction of the new asset before the date of filing of return under Section 139 of the Act, the balance amount shall be deposited in an authorized bank account under a scheme notified by the Central Government. Further, only the amount which was utilised in construction or purchase of the new asset within the specified time frame stand exempt and not the entire consideration received.

14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. The Supreme Court in ***CCE versus Favourite Industries***, (2012) 7 SCC 153 has succinctly observed:-

"**21.** Furthermore, this Court in *Associated Cement Companies Ltd.* v. *State of Bihar* [(2004) 7 SCC 642] , while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC p. 648, para 12)

"*12.* Literally 'exemption' is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See*Union of India* v. *Wood Papers Ltd.* [(1990) 4 SCC 256 : 1990 SCC (Tax) 422] and *Mangalore Chemicals and Fertilisers Ltd.* v. *CCT* [1992 Supp (1) SCC 21] to which reference has been made earlier.)"

22. In *G.P. Ceramics (P) Ltd.* v. *CTT* [(2009) 2 SCC 90] , this Court has held: (SCC pp. 101-02, para 29)

"*29.* It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See *CTT* v. *DSM Group of Industries*[(2005) 1 SCC 657] (SCC para 26); *TISCO Ltd.* v. *State of Jharkhand* [(2005) 4 SCC 272] (SCC paras 42-45); *State Level Committee* v. *Morgardshammar India Ltd.* [(1996) 1 SCC 108] ; *Novopan India Ltd.* v. *CCE & Customs* [1994 Supp (3) SCC 606] ; *A.P. Steel Re-Rolling Mill Ltd.* v. *State of Kerala*[(2007) 2 SCC 725] and *Reiz Electrocontrols (P) Ltd.* v. *CCE.* [(2006) 6 SCC 213] "

15. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

DECEMBER 18, 2013
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