THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.02.2013

\+ **ITA 1237/2011**

COMMISSIONER OF INCOME TAX ..... Appellant

versus

GITA DUGGAL ..... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Kamal Sawhney, sr. standing counsel
For the Respondent : Mr P C Yadav, Adv.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

R.V.EASWAR, J

The revenue has filed the appeal under Section 260A of the Income Tax Act, 1961 against the order dated 07.06.2001 passed by the Income Tax Appellate Tribunal in ITA 3613/Del./2010 for the assessment year 2007-08.

2. The assessee which is the respondent in the appeal is an individual. In the computation of income filed along with the return of income, she declared long term capital gains of ₹2,68,25,750/- in the following manner :-

*"**Income from Capital Gain***

Long Term		
A 22 WESTEND COLONY		
Consideration as per Collaboration Agreement	*40,000,000.00*	
Less Index cost for pur. of ₹1575000		
(Fair Value as on 1-04-81)	*8,174,250.00*	*31,825,750.00*
Less : Exemption under section 54EC (REC Bonds)		*5,000,000.00*
		26,825,750.00"

While completing the assessment the assessing officer took the view that on the terms of the agreement entered into with M/s Thapar Homes Ltd. on 08.05.2006, the cost of construction of the building incurred by the aforesaid company which was the developer of the property would also be included in the total sale consideration. The assessee responded by submitting that the entire cost of construction was incurred by the builder and even if it is considered as part of the sale consideration, since it has been fully invested in the residential house itself, the same would be exempt under Section 54 of the Act. The assessing officer did not accept the assessee's submission. He therefore, added an amount of ₹3,43,72,529/- which was the cost of construction incurred by the developer to the sale consideration of ₹ four crores received by the assessee and computed the total sale consideration at ₹7,43,72,529/-.

3. Dealing with the assessee's contention that in any case the sale consideration should be taken as having been invested in the new residential house and thus exempt under Section 54, which was supported

by a judgment of the Karnataka High Court in ***CIT Vs. B. Ananda Basappa* : (2009) 309 ITR 329**, the assessing officer held that the two floors which were given to the assessee by the developer and on which the developer had incurred construction cost were independent of each other and self-contained and therefore they cannot be considered as one unit of residence. Accordingly, he held that the assessee was not eligible for the exemption under Section 54. Dealing with the claim for relief under Section 54F, the assessing officer held that the exemption would be available only in respect of one unit, since the two residential units were independent of each other and the assessee cannot therefore claim exemption on the footing that both constituted a single residence. In this view of the matter he recomputed the capital gains by making an addition of ₹98,20,722/-.

4. On appeal, the CIT(Appeals) agreed with the assessee's contention and following the judgment of the Karnataka High Court cited above, held that the assessee was eligible for the deduction under Section 54 in respect of the basement, ground floor, first floor and the second floor. He accordingly, allowed the appeal.

5. The revenue carried the matter in appeal before the Tribunal and raised the following ground :-

> *"On the facts and on the circumstances of the case Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of ₹98,20,722/- u/s. 54F of the IT Act, 1961 which the Assessing Officer had allowed in respect of only one unit by treating the units as two separate residential properties."*

The Tribunal confirmed the decision of the CIT (Appeals) by observing as under: -

> *"6. We have heard the rival contentions in light of the material produced and precedent relied upon. We find that ld. counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of CIT & Anr. Vs. Smt. K.G.Rukminiamma in ITA No.783 of 2008 vide order dated 27.8.2010 wherein it was held as under :-*
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> > *" The context in which the expression 'a residential house' is used in Section 54 makes it clear that, it was not the intention of the legislation to convey the meaning that: it refers to a single residential house, if, that was the intention, they would have used the word "one." As in the earlier part, the words used are buildings or lands which are plural in number and that: is referred to as "a residential house", the original asset. An asset newly acquired after the sale of the original asset also can be buildings or lands appurtenant thereto, which also should be "a residential house." Therefore the letter 'a' in the context it is used should not be construed as meaning "singular." But, being an indefinite article, the said expression should be read in consonance with the*

other words 'buildings' and 'lands' and, therefore, the singular 'a residential house' also permits use of plural by virtue of Section 13(2) of the General Clauses Act. – CIT V. D. Ananda Bassappa (2009) 223 (kar) 186 : (2009) 20 DTR (Kar) 266 followed."

7. Upon careful consideration, we find that the contentions of the assessee that the issue is covered in favour of the assessee are correct.

7.1 Ld. Departmental Representative could not controvert the above and no contrary decision was cited before us.

8. Accordingly, we do not find any infirmity or illegality in the order of the Ld. Commissioner of Income Tax (Appeals) and hence, uphold the same."

6. In the present appeal before us, the revenue has proposed the following questions as substantial questions of law which in its opinion arise out of the order of the Tribunal.

"A) Whether the Hon'ble ITAT has erred in deleting the addition of ₹98,20,772/- under section 54F of the Income Tax Act, 1961 as made by the Assessing Officer?

B) Whether the Hon'ble ITAT has erred in law and facts in holding that the assessee should be given deduction under section 54 of the Income Tax Act, 1961?"

7. We have considered the facts and taken note of the rival submissions. To complete the narration of facts, it needs to be noticed that the assessee was the owner of property at A/22, Westend Colony, New Delhi comprising of the basement, ground floor, first floor and

second floor. She was deriving rental income from the property. On 08.05.2006 she entered into a collaboration agreement with M/s Thapar Homes Ltd. for developing the property. According to its terms, the assessee being desirous of getting the property redeveloped/reconstructed and not being possessed of sufficient finance and lacking in experience in construction, approached the builder to develop the property for and on behalf of the owner at the cost of the builder. The builder was to demolish the existing structure on the plot of land and develop, construct, and/or put up a building consisting of basement, ground floor, first floor, second floor and third floor with terrace at its own costs and expenses. In addition to the cost of construction incurred by the builder on development of the property, a further payment of ₹four crores was payable to the assessee as consideration against the rights of the assessee. The builder was to get the third floor. The assessee accordingly handed over vacant physical possession of the entire property along with 22.5% undivided interest over the land. The handing over of possession of the entire property was however only for the limited purpose of development; the undivided interest in the land stood transferred to the developer/builder only to the extent of 22.5% for his exclusive

enjoyment. It was on these facts that the assessing officer first took the view that the sale consideration for the transfer of the capital asset should be taken not merely at ₹four crores which was the cash amount received by the assessee, but the cost of construction incurred by the developer on the development of the property amounting to ₹3,43,72,529/- should also be added to the sale consideration. The assessee thereupon claimed that if the cost of construction incurred by the builder is to be added to the sale price, then the same should also be correspondingly taken to have been invested in the residential house namely the two floors which the assessee was to get in addition to the cash amount under the agreement with the builder, and the amount so spent on the construction should be allowed as deduction under Section 54 of the Act. It was at this stage that the assessing officer rejected the claim for deduction under Section 54 on the footing that the two floors obtained by the assessee contained two separate residential units having separate entrances and cannot qualify as a single residential unit. He agreed that the assessee was eligible for the relief under Section 54F in respect of the cost of construction incurred on one unit. He noted that the assessee has retained the ground floor and the basement. He therefore, apportioned the construction cost of

₹3,43,72,529/- to have been incurred on the basement, ground floor, first floor and second floor in the ratio of 1:1:1:0.5 for second floor, first floor, ground floor, basement respectively. Since he was allowing the relief under Section 54F of the Act only in respect of one unit, he added ₹98,20,722/- which is the figure arrived at by dividing the total cost of construction of ₹3,43,72,529/- by 3.5. This is how the assessment was made. What in effect the assessing officer had done was to reject the assessee's claim for deduction under Section 54/54F of the Act in respect of the house/units in the first and second floors holding that they were separate and independent residential units having separate entrances and cannot be considered as one unit to enable the assessee to claim the deduction. This was disapproved by the CIT(Appeals) on the basis of the judgment of the Karnataka High Court (supra) and his decision was approved by the Tribunal. The Tribunal expressed the view that the words "a residential house" appearing in Section 54/54F of the Act cannot be construed to mean a single residential house since under Section 13(2) of the General Clauses Act, a singular includes plural.

8. It is the correctness of the above view that is questioned by the revenue and it is contended that the interpretation placed by the Tribunal

gives rise to a substantial question of law. The assessee strongly relies upon the judgment of the Karnataka High Court (supra) which, it is stated, has become final, the special leave petition filed by the revenue against the said decision having been dismissed by the Supreme Court as reported in the annual digest of Taxman publication. The judgment of the Karnataka High Court supports the contention of the assessee. An identical contention raised by the revenue before that Court was rejected in the following terms :

> *"A plain reading of the provision of section 54(1) of the Income-tax Act discloses that when an individual-assessee or Hindu undivided family- assessee 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.*
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> *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 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."

This judgment was followed by the same High Court in the decision in ***CIT Vs. Smt. K G Rukminiamma*** in ITA No.783/2008 dated 27.08.2010.

8. There could also be another angle. Section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according

to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent

units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary implication prohibited.

For the above reasons we are of the view that the Tribunal took the correct view. No substantial question of law arises for our consideration. The appeal is accordingly dismissed with no order as to costs.

R.V.EASWAR, J

BADAR DURREZ AHMED, J

21st February, 2013
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