THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.01.2013

+ ITA 4/2013

COMMISSIONER OF INCOME TAX-XII **.....** Petitioner

versus

SHRI KAMAL WAHAL ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. N.P.Sahni, St.Counsel with Mr. Ruchesh Sinha, Adv.

For the Respondent :

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

JUDGMENT

R.V.EASWAR, J (ORAL)

1. This is an appeal filed by the Commissioner of Income Tax-XII, New Delhi under Section 260A of the Income Tax Act, 1961 and it is directed against the order of the Income Tax Appellate Tribunal dated 20.07.2012 in ITA No.5064/Del/2011, for the assessment year 2008-2009.

2. The appeal is admitted and the following substantial question of law is framed:-

> "Whether on the facts and in the circumstances of the case and on a proper interpretation of Section 54F of the Income Tax Act 1961, the Tribunal was right in law in allowing the deduction of ₹51,25,100/- claimed by the assessee under that Section?"

3. The assessee is an individual. He retired from IOCL. His income consists of income by way of salary, from house property and other sources. He inherited 50% share in a residential house in E-2/13, Vasant Vihar, Delhi in 2003 from his father. This was in July 1968. The other half share was inherited by his brother. In the year which ended on 31.03.2008, both the brothers jointly sold the property which gave rise to proportionate capital gains in the assessee's hands. In computing the capital gains, the assessee claimed deduction under Section 54F on the ground that the sale proceeds were invested in the acquisition of a vacant plot for ₹31,25,100/- and the purchase of a residential house for ₹34,35,700/- in the name of his wife.

4. The assessing officer while completing the assessment, took the view that under Section 54F, the investment in the residential house should be made in the assessee's name and in as much as the residential house was purchased by the assessee in the name of his wife, the deduction was not allowable. He reduced the deduction and computed the capital gains accordingly.

5. On appeal, the CIT (Appeal) accepted the assessee's contention based on the judgment of the Madras High Court in ***Commissioner of Income Tax Vs. V. Natarajan*** **: (2006) 287 ITR 271** and that of the Andhra Pradesh High Court in ***Late Gulam Ali Khan Vs. Commissioner of Income Tax*** **: (1987) 165 ITR 228**.

6. The revenue preferred an appeal before the Tribunal questioning the decision of the CIT(Appeals). The Tribunal, however, by the impugned order, agreed with the decision of the CIT (Appeals) and in doing so followed the judgment of the Madras and Andhra Pradesh High Courts cited supra and also another judgment of the Karnataka High Court in ***Director of Income-tax, International Taxation, Bangalore*** **: (2011) 203 Taxman 208**. It also noted the judgment of the Bombay High Court in ***Prakash Vs. ITO*** **: (2008) 173 Taxman 311** in which a contrary view was taken but preferred the view taken by the Madras and Karnataka High Courts adopting the rule laid down by the Supreme Court in ***CIT Vs. Vegetable Products Ltd*** **: 88 ITR 192** which says that if a statutory provision is capable of more than one view, then the view which favours the tax payer should be preferred. The Tribunal also observed that Section 54F being a beneficial provision enacted for

encouraging investment in residential houses should be liberally interpreted.

7. We have no hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgments of the Madras and Karnataka High Courts (supra) are in favour of the assessee, the revenue fairly brought to our notice a similar view of this Court in ***CIT Vs. Ravinder Kumar Arora*** **: (2012) 342 ITR 38 (Del.)**. That was also a case which arose under Section 54F of the Act. The new residential property was acquired in the joint names of the assessee and his wife. The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee's wife. This view was disapproved by this Court. It noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not require that the

new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed "a residential house".

8. This Court in the decision cited alone also noticed the judgment of the Madras High Court (supra) and agreed with the same, observing that though the Madras case was decided in relation to Section 54 of the Act, that Section was *in pari materia* with Section 54F. The judgment of the Punjab and Haryana High Court in the case of ***CIT Vs. Gurnam Singh* : (2014) 327 ITR 278** in which the same view was taken with reference to Section 54F was also noticed by this Court.

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 constribution 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.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 11, 2013
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