

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.2253/DEL/2010
Assessment Year: 2006-07

DCIT, Circle-13(1), New Delhi.	v.	Niranjan Koirala, 27, Akbar Road, New Delhi.
TAN/PAN: AAUPK 0483B		
(Appellant)		(Respondent)

Appellant by:	Smt. Deepali Chandra, CIT-DR		
Respondent by:	Shri Ashwani Taneja & Shri Shantanu Jain, Sr.D.R.		
Date of hearing:	24	04	2018
Date of pronouncement:	20	07	2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 18.02.2010, passed by Ld. CIT(Appeals)-XXX, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2006-07. In the grounds of appeal, the Revenue has raised the following grounds:-

A. *"The Ld. CIT(A) has ignored that by virtue of assessee holding shares of M/s Edward Keventer (Successor) Pvt. Ltd.(EKPL), the capital asset transferred was in fact the property for which the sale consideration of Rs. 26,90,82,126/- was received.*

B. *The Ld. CIT(A) has also ignored that the assessee was the 51%*

shareholder of the company of M/s. Edward Keventer (Successor) Pvt. Ltd.(EKPL) and in such capacity, the assessee was owner of proportionate share of the said property.

c. The Ld. CIT(A) has erred in allowing appeal of assessee ignoring the facts of the case according to which the assessee does not fulfill the requisite conditions of Sec.54F of the Income Tax Act, 1961.”

2. The facts in brief *qua* the issue raised by the Revenue are that, the assessee is an individual who had sold 60,168 unquoted equity shares of M/s. Edward Keventer (Successors) Pvt. Ltd. (hereinafter referred to as 'EKWL') in May, 2015. These shares were acquired on death of his wife on 12.09.2003. The shares were sold to M/s. DLF Universal Ltd. through Escrow agreement dated 7.5.2005 for a net consideration of Rs.26,81,67,501/-. After adjusting the indexation cost of equity shares amounting to Rs.12,25,553/- assessee declared Long Term Capital Gain of Rs.26,69,41,948/- in the return of income. Out of the said capital gain, assessee made following investments for claiming exemption/deduction u/s.54EC and 54F:-

i. In prescribed Bonds u/s 54EC for an aggregate amount of Rs. 14,00,00,000 -- comprising of Rs.7,30,00,000 with National Housing Bank and Rs.6,70,00,000 with NAB ARE) for claiming deduction u/s 54EC.

ii. Purchase of residential house property measuring 2715 sq. yds, at Block No.48. Keventer Lane. Sardar Patel Marg, Chanakyapuri, New Delhi for Rs.10,51,01,820 from M/s. Edward Keventer (Successors) Pvt. Ltd. vide 'Agreement for Sale' dated 27th May, 2005 (photocopy attached - marked pages 28 to 58) and claimed deduction u/s.54F for Rs.10,51,01,820/-.

Thus, balance amount of Rs.2,18,40,128/- was shown as income chargeable under the head 'Long Term Capital Gain'. In so far as deduction allowable u/s.54EC equivalent to 100% of the investment amounting to Rs.14 crores is concerned, the same has been accepted by the Assessing Officer. However, with regard to the claim of deduction u/s.54F, the learned Assessing Officer on the perusal of the facts and material on record had noted the following facts, which has been highlighted by him in the impugned assessment order:-

i.) The exemption/deduction has been claimed in respect of an old house at Keventer Lane, Sardar Patel Marg, New Delhi,

ii.) The property in question on which capital gains have been shown is a plot measuring 22.95 acre (owned by M/s Edward Keventer (Successors) Pvt. Ltd., as perpetual lease holder) and the old house in respect of which 54F has been claimed is located on this very property.

iii.) As per the Will of wife of assessee, Mrs. Ila Dalmia Koirala dated 7.11.2001, the assessee has become 51% share holder in respect of the stake of his wife in M/s Edward Keventer (Successors) Pvt. Ltd. Therefore, in his capacity as share holder in M/s Edward Keventer (Successors) Pvt. Ltd., the assessee was the owner of proportionate share in the above property of 22.95 acres at Keventer Lane, Sardar Patel Marg, New Delhi, which was sold to M/s DLF Universal Ltd..

iv.) Considering the assessee's share holding of 60,168 shares out of 9,61,500 shares of M/s M/s Edward Keventer (Successors) Pvt. Ltd, the proportionate ownership of the assessee in the property comes to 1.4361 Acres (Approx. 7180 sq. mtrs.)

v.) As per the agreement for sale of 2715 sq. yards house alongwith the construction on this plot, dated 27.5.2005 (the house fo claim has

been made) the assessee has been stated as – ie Bungalow lying towards the North corner of the property (22.95 is) situated at Block No. 48, Sardar Patel Marg, Chanakaya Puri, / Delhi (first para on page 2 of the agreement). Further, it has been stated that an area of approximately 271.5 sq. Yards alongwith a residential bungalow and out-house built thereon has been in uninterrupted occupation and possession of assessee's wife Mrs. Ila Dalmia Koirala and after her death it has been in continuous possession of assessee.”

4. Learned Assessing Officer held that here the original asset was a residential house only, because the shares which was sold were nothing but residential property owned by the said company. He disallowed the claim of the assessee for deduction u/s.54F in respect of purchase of house property situated at Block No.48, Sardar Patel Marg, Chanakyapuri, Delhi is not a valid claim, because he does not fulfill the condition laid down u/s.54F; and accordingly, he added the amount of entire claim at Rs.10,51,01,820/- with the income of the assessee chargeable under the head 'Long Term Capital Gain'.

5. The Id. CIT (A) has captured the observation and the conclusion of the Assessing Officer and the facts incorporated by him in the following manner:-

a) *“The LTCG has arisen to the appellant on the sale of 60168 unquoted equity shares of EKW - which company is the Perpetual Lease hold owner of a plot measuring 22.95 acres situated at Block Up.48, Sardar Patel Marg, Chanakvapuri, Delhi. Therefore in his capacity as share holder in M/s. Edward keventer (Successors) Pvt. Ltd., the assessee was the owner of proportionate*

share in the above property of 22.95 acres at Keventer Lane, Sardar Patel Marg, New Delhi, which was sold to M/s. DLF Universal Ltd..

- b) Considering the assessee's share holding of 60,168 shares out of 9,61,500 shares of M/s. Edward Keventer (Successors) Pvt. Ltd. the proportionate ownership of the assessee in the property comes to 1.4361 Acres (Approx. 7180 Sq. mts.)
- c) As per the agreement for sale of 2715 sq. yds house along with the old construction on this plot, dated 27.5.2005 (the house for which 54F claim has been made) the assessee has been stated as resident of the Bungalow lying towards the North corner of the property (22.95 acres) situated at Block No.48, Sardar Patel Marg, Chanakya Puri, New Delhi (first para on page 2 of the agreement). Further, it has also been stated that an area of approximately 2715 sq.yds along with a residential bungalow and out-house built thereon has been in uninterrupted occupation and possession of assessee's wife Mrs. Ila Dalmia Koirala and after her death it has been in continuous possession of assessee.
- d) The exemption / deduction has been claimed in respect of an old house in Keventer Lane, Sardar Patel Marg, New Delhi.
- e) The property in question on which capital gains have been shown is a plot measuring 22.95 acre (owned by M/s. Edward Keventer (Successors) Pvt. Ltd. as perpetual lease holder) and the old house in respect of which 54F has been claimed is located on this very property.
- f) As per the Escrow Agreement dated 7.5.2005 between M/s. Universal Ltd. Ms/ EKPL and other parties, the main transaction involved in the sale is in fact the sale of 22.95 acres of land at Block no.48, Sardar Patel Marg, Chanakya Puri, New Delhi. In fact there is no other asset in the name of M/s.EKPL. Para 2.1(a), 2.1(b) make it very clear that the amount of Rs.430 Crores paid by M/s DLF Universal Ltd. to the share holders of M/s.EKPL is in fact the payment

for the real estate value of the plot of 22.95 acres located at the address mentioned above. Schedule-III, para 1 to 6 further make it clear. The value however is nowhere close to the actual market value on date in view of the fact that the property is under lot of litigation.

g) As per the bank account statement of HSBC Bank, the so called consideration of Rs.10,50,01,820, for purchase of new house (for which section 54F claim has been made) has been paid on 30.5.2005, which is the same date on which the 'assessee has received the consideration (for his share in the plot of 22.93 acre) from M/s. DLF Universal Ltd. amounting to Rs.26,90,82,126.

h) Benefits of section 54F are available on the long term capital gains arising on the sale of original asset which should not be a residential house.

i) Since the assessee was residing in an old house on a part of the plot of 22.95 acres, the sale of this asset is in fact the sale of a residential property.

j) From the above facts, it is obvious that the assessee has sold an old residential property cum plot (in which he was a part 'owner) and at the time of sale of the original asset, the assessee has contrived the facts in such a way that he has entered into another agreement for re-purchase of a part of the old residential property. This fact is also clear from the agreement for sale dated 27.5.2005 wherein the assessee has entered into an agreement with M/s. EKPL through its Managing Director Sh. Gunnidhi Dalmia. Had it been a genuine purchase of house property (eligible for deduction claimed u/s 54F), the assessee should have entered into an agreement with M/s. DLF Universal Ltd., who had taken over all the ownership rights of the property through ESCROW agreement dated 7.5.2005. The fact that the assessee did not enter into purchase agreement with M/s. DLF Universal Ltd. clearly shows that this is a contrived transaction.

6. Before the ld. CIT (A), the assessee has strongly

contended that the learned Assessing Officer had not only misunderstood the facts and also the law, because the assessee had only sold equity shares of EKWL and not any residential property. The property was owned by the company whose shares were held by the assessee and it does not mean that the assessee held the property indirectly. In support, strong reliance was placed upon the judgment of Hon'ble Supreme Court in the case of ***Mrs. Bacha F. Guzdar vs. CIT*** as reported in ***(1955) 27 ITR 1***. It was further explained that the residential house property purchased by the assessee from EKWL in May, 2005 for Rs.10,5101,820/- for claiming deduction u/s.54F was earlier being utilized by EKWL for its normal official work. It has also been explained that Mrs. Ila Dalmia Koirala (wife of the assessee), resident of 27 Akbar Road, New Delhi was looking after the said premises as a caretaker on behalf of EKWL. On account of these facts, the said premises were in occupation and possession of the assessee and his wife but this was in the capacity of a caretaker for and on behalf of EKWL, which company continued to remain the owner of the subject premises till it was sold to the assessee by EKWL for Rs.10,51,01,820/- as per 'Agreement for Sale' dated 27th May, 2005. The learned JCIT has erroneously misinterpreted these facts of the case and considered that the assessee was the owner of the property even when the same was occupied by the caretaker for and on behalf of EKWL.

7. Ld. CIT (A) agreed with the contention of the assessee and held that Assessing Officer is not legally correct in saying that by virtue of some equity share of the company EKWL, the assessee owned the proportionate part of the company's asset. The company being a distinct juristic entity and the shareholders do not own any part of the company's asset except at the time of liquidation, which is not the case here; and moreover the Assessing Officer has not brought any material to establish that transaction was not genuine. Accordingly, he allowed the claim of deduction u/s.54F.

8. Before us, ld. CIT-DR submitted that company M/s. EKWL was part owner of the property and share of EKWL which has been sold by the assessee, devolved upon him after the death of his wife is nothing but the sale of residential property only and therefore, the claim of deduction u/s.54F has rightly been denied. Thus, she strongly relied upon the order of the Assessing Officer.

9. On the other hand, ld. counsel for the assessee, Shri Ashwani Taneja after narrating the entire facts and background of the case submitted that it is not in dispute that assessee has earned Long Term Capital Gain on sale of equity shares in the company M/s. EKWL to DLF Universal Ltd. for a consideration of Rs.26,81,67,501/-. It is also not disputed that part of the sale consideration, i.e., Rs.10,51,01,820/- has been utilized for the purchase of the house from the EKWL on which claim of exemption u/s.54F

has been made. The Assessing Officer has misconceived himself by holding that since the original asset was residential house owned by M/s. EKWL hence, the sale of shares amounts to sale of residential house. Such a conclusion is untenable in law in view of categorical pronouncement of law by the Hon'ble Supreme Court in the case of **M/s. Bacha F. Guzdar Vs. CIT (supra)** which has been reiterated by the Hon'ble Supreme Court in the case of **Bharat Hari Singhania & Ors. vs. CWT & Ors.**, as reported in **(1994) 207 ITR 1**. Besides this, he also relied upon the decision of ITAT Chennai in the case of **Dy.CIT vs. Maya Appliances P. Ltd.**, as reported in **(2017) 165 ITD 340 (Chennai)**. Thus, he submitted that the order of the Id. CIT (A) is legally correct on facts.

10. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as mater referred to before us. In so far as acquisition of assets in the form of shares in EKWL is concerned and also the sale of shares to M/s. DLF, the company EKWL was the owner of a plot admeasuring 22.95 acres situated at Block No.48, Sardar Patel Marg, Chanakyapuri. The said shares were sold for sum of Rs.26,81,67,501/- and out of the said sale proceed, the part of the amount was invested in purchase of house which was lying towards the north corner of the property owned by the EKWL. The said property was a residential bungalow and outhouse building which was in possession of assessee's wife, Mrs. Ila Dalmia Koirala. Learned Assessing Officer has

disallowed the benefit of claim of Section 54F to the assessee holding that, *firstly*, benefit of Section 54F is available on Long Term Capital Gain arising on sale of original asset which should not be a residential house; and *secondly*, since the assessee was residing in an outhouse bungalow which was on the part of the plot of 22.95 acres, the sale of this asset is nothing but sale of residential property. Thus, Assessing Officer held that by virtue of holding equity shares of the company the assessee has owned the proportionate part of the company asset. It is a trite law that shareholder investing money in purchase of shares of a company does not get entitled to the assets of the company, because he has no interest in the property of the company though he has a right to participate in the profits when company decides to divide/distribute them. The interest of the shareholders does not exceed more than to participate in the profits of the company and the company being a juristic entity which is distinct from the shareholders. It is the company which owns the property and not the shareholders. This proposition has been well settled by the Hon'ble Supreme Court in the case of **Mrs. Bacha F. Guzdar (supra)** which has been again reiterated by the Hon'ble Three Judges' Bench of Hon'ble Apex Court in the case of **Bharat Hari Singhania & Ors. (supra)** wherein the Hon'ble Apex Court has observed and holding as under:-

“The company may own agricultural assets and if company were to be liable to wealth tax the said assets may be excludible in its hands. But that has no relevance to the case of a shareholder. The

shareholder does not own and cannot claim any portion of the property held by the company of which he is a shareholder. The company is an independent juristic entity. This aspect has been put beyond any doubt by the decision of this Court in Bacha F. Guzdar vs. CIT (1955) 27 ITR 1 (SC) : 1955 (1) SCR 876. It is held therein that even though a tea company growing and manufacturing tea gets an Exemption of 60% of the profits as agricultural income in accordance with r. 24 framed under s. 59 of the Indian IT Act, 1922 the dividend income received by the shareholder of such company is not "agricultural income" within the meaning of s. 1 of the said Act, nor is it exempt from income-tax under s. 4(3)(viii) of the Act. It was held further that the dividend of shareholder is the outcome of his right to participate in the profits of the company arising out of the contractual relation between the company and the shareholder and that the shareholder does not acquire any interest in the assets of the company till after the company is wound up. The position of a shareholder of a company, it was explained, is altogether different from that of a partner of a firm. In our opinion, the said decision of the constitution Bench fully answers the said question."

11. Thus, the learned Assessing Officer was legally not justified in denying the claim of the benefit of Section 54F on the ground that the sale of equity shares of the company owning the residential property/plot was sale of residential house. Accordingly, the decision of the ld. CIT (A) is in accordance with law and hence the same is affirmed.

12. In the result, the appeal the Revenue is dismissed.

Order pronounced in the open Court on 20th July, 2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 20th July, 2018

PKK: