

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 4684/Del/2016
Assessment Year: 2013-14

Mr. Deepak Bhardwaj
202, T-7, Parshwanath
Panorma,
Near P3 Golchakkar Secto
Sawarn Nagri, Greater Noida,
U.P.201306
PAN:AHXPB 5310Q

Vs.

Income Tax Officer,
Ward-1(3), Noida.

(Applicant)

(Respondent)

Appellant by: Sh. Ashwani Mittal, CA
Respondent by: Sh. Jagdish Singh, Sr. DR

Date of hearing: 16/3/2020
Date of order : 20/3/2020

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 29/7/2016 in appeal No. 254/2015-16/Noida by the learned Commissioner of Income Tax (Appeals)-1, Noida ("Ld. CIT(A)"), for the assessment year 2013-14, Mr Deepak Bharadwaj ("the assessee") filed this appeal.

2. Brief facts of the case are that the assessee is an individual engaged in the business of running of tractor on hire basis and also receiving rental income from ancestral properties. On 3/5/2012 assessee sold 1 residential property for a consideration of Rs. 1.40 crores and derived the Long Term Capital Gain (LTCG) to the tune of Rs.99,77,362/-. Under sale deed dated 13/7/2012 assessee purchased a residential plot for a consideration of Rs.1,00,81, 000/- construction of a residential house. Assessee filed the return of income for the assessment year 2013-14 on 31/7/2013 declaring an income of Rs.2,25,100/-after claiming the Long Term Capital Gain (LTCG) as exemption under section 54 of the Income Tax Act, 1961 (for short "the Act"). Assessee could not construct the residential house till the expiry of the period of 3 years from the date of transfer of the old property in respect of which the exemption under section 54 of the Act was claimed and such period expired by 2/5/2015. Assessee, therefore, offered the long term capital gains of Rs.99,77,362/-to taxation in the Assessment Year: 2016-17 since the period from the date of transfer of old property expired in the previous year 2015-16.

3. Learned Assessing Officer, however, while passing the order dated 30/1/2016 under section 143(3) of the Act in respect of the assessment year 2013-14 disallowed the exemption claimed under section 54 of the Act on the ground that the assessee had not constricted the house property within the period of 3 years.

Aggrieved by such an order of the learned Assessing Officer, assessee preferred appeal before the Ld. CIT(A), but vide order dated 29/7/2016 the Ld. CIT(A) upheld the order passed by the learned Assessing Officer disallowing the exemption claimed under section 54 of the Act.

4. Aggrieved by the impugned order, assessee preferred this appeal before us stating that by purchasing a residential plot of land on 13/7/2012 for a consideration of Rs.1, 00, 81, 000/-which is more than the capital gains claimed as exemption by the assessee, the assessee became eligible to claim exemption under section 54 of the Act in the assessment year 2013-14 vide CBDT circular No. 667 dated 18/10/1993 in terms of which the cost of land is also eligible for deduction under section 54 of the Act. According to the Ld. AR, even if the assessee could not complied the requirement of completion of construction within the period of 3 years from the date of transfer, the capital gains would be taxable as income only in the assessment year 2016-17, i.e. the year in which the period of 3 years from the date of transfer of old asset expires and the exemption claimed under section 54 of the Act in that year cannot be denied. She placed reliance on the decisions of the Tribunal in the case of *Sri Prasad Nimmagadda vs. DCIT (2013) 32 taxman.com 5 (Hyderabad-trib)* and *Vegesina Kamala vs. ITO (2016) 66 taxmann.com 280 (Visakhapatnam-Trib)*.

5. Per contra, submission of the Ld. DR is that if we accept the contention of the assessee, it would be to the benefit of the assessee since the interest cost of the taxable capital gains would escape tax for 3 years. He further submitted that the proviso to subsection 2 of section 54 is available to only that part of unutilised capital gains which is over and above the cost of constructing a new residential house and is deposited in a designated bank account prior to the due date under section 139 of the Act and is utilised in accordance with any scheme which the Central government may by notification in the official Gazette frame in this regard and proof of such deposit was enclosed with the return of income.

6. We have gone through the record in the light of the submissions made on either side. There is no dispute as to the facts involved in this matter. Only question that arises for our consideration is whether the unutilised portion of capital gains is liable for tax either in the year in which such long term capital gains arose or in the year in which the period of 3 years for such utilisation expires. Under identical facts circumstances, where the assessee had invested the long term capital gains in purchase of land towards construction of house but could not complete the construction before the expiry of 3 years as to pretend under law, the Hyderabad Bench of Tribunal in the case of Sri Prasad Nimmagadda (supra) held that on examination of section 54 and 54F of the Act, it is found that the provisions contained in section 54

including the proviso are *pari materia* with section 54F of the Act and the proviso to section 54 lays down that if the amount of capital gain is not utilised towards construction of residential house within a period of 3 years from the date of transfer of original asset, then, it will be charged to capital gain under section 54 of the Act in the year in which the period of 3 years from the date of transfer of the original asset expires.

7. In that case also the assessee invested the long term capital gains on purchase of land towards construction of the house, which could not be constructed within the stipulated period of 3 years as the possession of the land could not be delivered by the developer and in such circumstances the assessee claimed exemption under section 54 of the Act could not be denied levy of proviso to section 54 of the Act. In such circumstances, the Tribunal held that the exemption claimed by the assessee under section 54 of the Act has to be allowed and for the purpose of verification of the fact whether the assessee offered the long term capital gains to tax in the year in which the period of 3 years to pleaded under law expired, the matter was remanded to the file of the learned Assessing Officer.

8. In the case of *Vegesina Kamala* (supra), the contention of the Commissioner of Income Tax that as per section 54F of the Act only unutilised portion of sale consideration is taxable in the previous year in which the period of 3 years expires from the date of sale of

original asset, but the investment made in the vacant site has to be taxed in the year in which capital gain arose has expressly been rejected by the Tribunal and the Tribunal held that a since the assessee had offered to capital gain the long term capital gains after completion of 3 years from the date of sale of original asset, it was in accordance with law.

9. No contrary decision is either pleaded or brought to our notice by the Revenue and as on the date these 2 decisions of the Tribunal hold the field. In view of the identity of facts and circumstances involved in the cases have already been decided with the facts of the case on hand, in the absence of any change of circumstances or decisions to the contrary, we find it difficult to deviate the consistent view already taken by the Tribunal. We therefore, while respectfully following the decisions referred to above find it difficult to uphold the addition and direct the assessing officer to the addition if the assessee offered the long term capital gains to tax in the assessment year 2016-17. Subject to these observations, for the limited purpose of verification, we set aside the issue to the file of the learned Assessing Officer to grant exemption for the Assessment Year: 2013-14 if the assessee offered the long term capital gains to tax in the Assessment Year: 2016-17.

10. In the result, appeal of the assessee is allowed.

Pronounced in open court on this the 20th March, 2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Dated: 20/3/2020

'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI