

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 12979 of 2015

Reserved On : August 23, 2016

Pronounced On : September 28, 2016

Shivinder Singh Brar, Karta HUF Petitioner

vs.

Central Board of Direct Taxes and others Respondents

CORAM : HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE.
HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Alok Mittal, Advocate
for the petitioner.

Ms. Urvashi Dugga, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of order dated 03.03.2015 (Annexure P-12), through which, application of the petitioner to condone the delay and for the grant of extension of time to comply with the requirements of Section 54-F of the Income Tax Act, 1961 (for short – the Act) for claiming a deduction thereunder, was rejected by the Central Board of Direct Taxes (for short – the Board), on the ground that the petitioner had failed to demonstrate compliance of Section 119 (2)(c)(ii) of the Act.

The relevant facts, which need to be noticed for adjudicating

upon the present petition are that on 28.06.2011, the petitioner sold 04 kanals of land in Village Kansal, U.T., Chandigarh for ₹ 2.25 crores and since this amount constituted capital gains, on 28.07.2012, such amount was deposited under the Capital Gains Tax Scheme, 1988 by way of a Fixed Deposit in the State Bank of Patiala. It is the case of the petitioner that even after the aforesaid 04 kanals of land had been sold, 27 kanals 16 marlas continued to be in its ownership and possession, on which a residential house was intended to be constructed, but the same could not be done in view of the interim orders granted by this Court, as also the Apex Court, prohibiting construction in the area in which the afore-referred 27 kanals 16 marlas of land was situated. According to the petitioner, the interim order still continues. Since the petitioner was precluded from constructing the residential house, within the period of three years, as stipulated under Section 54-F of the Act, fearing that the afore-referred amount of ₹ 2.25 crores, being capital gain from sale of a long term capital asset, would be taxed, an application was moved on its behalf for seeking condonation of delay and simultaneous grant of extension of time beyond the stipulated three years to raise the construction. No heed, having been paid to the application, the petitioner moved another representation and when that too went un-responded to, a petition was filed before this Court being **C. W. P. No. 11752 of 2014 – Shivinder Singh Brar vs. Commissioner of Income Tax, Chandigarh**, which was disposed of through order dated 31.10.2014 with a direction to the Board to decide the petitioner's application within

three months from the date of receipt of a certified copy of that order. In compliance, through order dated 03.03.2015, a decision by way of rejection of the petitioner's application was taken by the Board. According to the Board, the petitioner had failed to demonstrate compliance with the condition stipulated in Section 119 (2)(c)(ii) of the Act. It is this order, which is impugned through the present petition.

Mr. Alok Mittal – learned counsel appearing on behalf of the petitioner assailed the order impugned in the present petition on several grounds. He urged that the petitioner, in order to claim the deduction under Section 54-F of the Act, had all good intentions to utilize the amount of ₹ 2.25 crores received by it as capital gain from the sale of 04 kanals of land for constructing a house on the 27 kanals 16 marlas of land, which remained in the ownership and possession of the petitioner, but was precluded from doing so on account of the interim prohibitory orders passed by this Court and the Apex Court. It was thus submitted that to claim the afore-deduction, the petitioner could not utilize the said amount of capital gains to construct a residential house within the stipulated time of three years, for reasons beyond its control. It was submitted that the hardship on the part of the petitioner was genuine, and therefore, the Board had erred in rejecting the application of the petitioner seeking extension of time to raise the construction after the vacation of the interim prohibitory orders enabling it to claim deduction under Section 54-F of the Act.

Learned counsel for the petitioner further submitted that the

petitioner's application was rejected for non-compliance of the conditions stipulated in Section 119 (2)(c)(ii) of the Act. According to him, Section 119 (2)(c)(ii) of the Act would not apply to the petitioner's case as the same would apply only at the stage when deductions under either Chapters IV or VI-A were being claimed and that as on today, the petitioner was not claiming any deduction. It was in fact seeking extension of time to claim such deduction beyond the prescribed period of three years.

Ms. Urvashi Dugga, learned counsel appearing on behalf of the Revenue, opposed the petition on several grounds. It was submitted that the present petition had been filed by Shivinder Singh Brar, Karta HUF, whereas the revenue record appended with the petition clearly depicted the owner of the land in question to be Shivinder Singh Brar in his individual capacity. It was further submitted that Shivinder Singh Brar had been named as one of the beneficiaries of the systematic land grabbing and illegal acquisition of *shamlat* land by a Tribunal constituted by this Court under the Chairmanship of Justice Kuldeep Singh, former Judge of Supreme Court of India. Shivinder Singh Brar being a senior bureaucrat in the State of Punjab, at the time of purchase and sale of the aforesaid land, was presumed to be aware of the fact that the same was forest land and lying in the catchment area of Sukhna Lake, on which construction was not possible. It was further submitted that Shivinder Singh Brar was owner of two residential properties.

Without prejudice to the afore submissions, it was urged on

behalf of the Revenue that the impugned order was rightly passed as the petitioner had failed to comply with the provisions of Section 119 (2)(c)(ii) of the Act, which applied to the petitioner's case. The afore-referred 04 kanals of land had been sold on 28.06.2011 and as within the period of three years as prescribed under Section 54-F of the Act, capital gains from the sale of the afore-referred long term capital asset having not been utilized for the purpose of construction of a residential house, under the provisions of Section 54-F (4), were liable to be taxed as income of the previous year, in which, the period of three years from the date of transfer of the long term capital asset expired. The deduction under Section 54-F (1) could have been claimed by the petitioner at the most within three years from the date of transfer of the aforesaid long term capital asset. The powers of the Board under Section 119 (2)(c)(ii) of the Act could be invoked by the petitioner only till the time that such deduction could be claimed under the provisions of Section 54-F (4) of the Act and that the petitioner could not seek extension of time to claim the deduction under Section 54-F in perpetuity.

It was still further submitted that the petitioner could have constructed a residential house anywhere else than on the afore-referred 27 kanals 16 marlas of land. Nothing precluded it from doing so.

Sections 54-F (1), (2) and (4), as also 119 (2)(c) of the Act read as under :-

54F. (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 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 (hereafter 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 subsection 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,—*

“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.

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(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.

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Section 119.

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(2) Without prejudice to the generality of the foregoing power,—

(a) xx xx xx xx

(b) xx xx xx xx

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction

thereunder, subject to the following conditions, namely:—

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.”

Under Section 54-F (1), in the case of an individual or a Hindu Undivided Family, if any capital gain arises from the transfer of any long term capital asset, not being a residential house and such individual or a Hindu Undivided Family, within a period of three years from the date of transfer of the long term capital asset, constructs a residential house, then such capital gain is to be dealt with as under :-

“(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.”

Section 54-F (4) read with its proviso inter alia stipulates that if the capital gains, which have arisen from the transfer of a long term capital asset, are not utilized or partly utilized for the purchase or construction of a residential house, within three years from the date of transfer of the long term capital asset, the unutilized amount shall be charged under Section 45 of the Act as income of the previous year, in which the period of three years from the date of transfer of the long term capital asset expires.

Section 54-F(1) and (4), when applied to the facts of the case in hand, leaves no manner of doubt in our minds that the assessee could avail the benefit under Section 54-F on account of the capital gains arisen from the sale of the said 04 kanals of land on 28.06.2011, if it utilized the amounts for construction of a residential house within three years of its sale i.e. up to 27.06.2014. If the assessee failed to do so, the capital gain was required to be taxed under Section 45 as income of the previous year, in which the period of three years from the date of transfer of the land in question expired. Thus, the deduction under Section 54-F could, at the most, have been claimed by the petitioner in the assessment year 2015-16 i.e. the previous year 2014-15.

As per Section 119(2)(c) of the Act, on a genuine hardship shown by any assessee, the Board can order relaxation in any requirement contained in any of the provisions of Chapters IV or VI-A of the Act, which

requirement the assessee has failed to comply with for claiming a deduction therein. Such power of Board is subject to two riders, which are :- **(i)** that the default in complying with such requirement was due to circumstances beyond the control of the assessee and **(ii)** that the assessee had already complied with the requirements before the completion of assessment in relation to the previous year in which such deduction is claimed.

Even otherwise, to claim a deduction under Section 54-F of the Act, the petitioner was well within its rights to raise construction of a residential house on any land other than the 27 kanals 16 marlas of land referred to above. Having failed to do so, no relief to the petitioner, as claimed, can be granted.

Moreover, sub-clauses (i) and (ii) of Section 119(2)(c) are cumulative. Both the conditions must be fulfilled in order to extend the benefit of Section 119 to an assessee. The petitioner's case does not fall within either sub-clause (i) or (ii) of clause (c) of Section 119(2). Firstly, it cannot be said that the default in complying with the requirements of Section 54-F, necessary to claim the benefit thereunder, was due to circumstances beyond the petitioner's control. Section 54-F requires the home to be constructed within a stipulated period. It does not require the home to be constructed on the assessee's other properties, even if he has any. In a given case, an assessee may be granted an extension for a reasonable period to construct his house on his property. That however cannot be for an indefinite period of time. The Board would be justified in

rejecting the application if the assessee's inability to construct a house on his own property is likely to continue for an unduly long period. There is no inherent right to an extension of time in such circumstances. Thus, the petitioner's application was liable to be rejected for this reason alone.

The petitioner has not even complied with sub-clause (ii) of clause (c) of Section 119 (2). The extension can be granted only if an assessee has complied with the requirements necessary to avail the benefit under Section 54-F before completion of assessment in relation to the previous year in which such deduction is claimed. The petitioner had admittedly not fulfilled the condition even as on date.

Faced with this, Mr. Mittal submitted that the petitioner has not yet claimed the deduction. He submitted that the assessee would be required to comply with the provisions under Section 54-F, required to claim the benefits thereof only within the stipulated period commencing from the extended date granted under Section 119 (2) (c) (ii) of the Act. The submission is based on the erroneous presumption that the words “year in which such deduction is claimed” mean the year in which the assessee seeks and is granted extension. The words in fact mean the year in which the assessee is eligible to tax, which in the case before us, is the Assessment Year 2012-13 as the sale was on 28.06.2011. A view to the contrary would entitle an assessee to postpone the payment of capital gain tax indefinitely by making the application at any time and even repeatedly, if required. The words mean the year in which the assessee may claim the

benefit and not the year in which he chooses to claim the same.

The relaxation in terms of Section 119 (2) (c) can be sought by the assessee at the time of claiming deduction and such claim can be made only within the time period, as prescribed under the Act for making such claim. There is nothing in Section 119 (2) of the Act which gives any power to the Board to extend the time to claim the deduction.

While applying the afore principle, to the facts of the present case, the petitioner could have applied for relaxation for claiming the benefit under Section 54-F only within the time prescribed under that Section and that too, if before making such claim, he had complied with the required conditions to claim such deduction. That not being there in the present case, we are of the opinion that the Board rightly rejected the petitioner's application.

Learned counsel for the Revenue has stated that the petitioner is a Hindu Undivided Family, whereas the revenue record appended with the petition shows that the owner of the land in question is a Karta of the Hindu Undivided Family in his individual capacity.

In view of what we have held above, even if we assume the owner of the land to be the petitioner Hindu Undivided Family, no relief can be granted.

On the issue of the petitioner having two houses, Mr. Mittal, learned counsel for the petitioner has explained that the petitioner does not own any house as alleged by the Revenue. However, we express no opinion

on the same.

In view of the above, finding there is no merit in the instant petition, the same is ordered to be dismissed.

<i>Whether speaking/reasoned ?</i>	<i>Yes.</i>
<i>Whether reportable ?</i>	<i>Yes.</i>



(S. J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

September 28, 2016
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