

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'Friday' 'G' NEW DELHI**

MS SUCHITRA KAMBLE, JUDICIAL MEMBER

AND

SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER

M.A No. 437/Del/2018

in

(ITA No. 6712/DEL/2015 (A.Y 2012-13))

Harbinder Singh Chimni D-1/102, Parsvnath Exotica, Sector- 53, Golf Course Road, Gurgaon AARPH6109C (APPELLANT)	Vs	DCIT Circle-2 Gurgaon (RESPONDENT)
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Appellant by	Sh. Y. K. Kapoor & Sh. Bhushan Kapoor, Adv
Respondent by	Ms. Priney Singla, Sr. DR

Date of Hearing	31.08.2018
Date of Pronouncement	20.11.2018

ORDER

PER SUCHITRA KAMBLE, JM

This Miscellaneous Application is filed by the assessee in respect of order dated 12/04/2018.

2. The Ld. AR submitted that during the year under consideration, the assessee who was a joint owner of property No. C-6/57, SDA alongwith his brother sold the same for a consideration of Rs.5,80,00,000/- (Rupees Five crores eighty lakhs only). The Ld. AR further submitted that to have the benefit of exemption from Capital Gain, arising out of the sale of SDA property purchased within a period of one year before or two years after the date on which transfer took place purchased the following three residential flats:-

S. No.	Address of Property	Date of Purchase	Amount
1	IREO - Victory Valley, Golf Course Extension Road, Sector - 67, Gurgaon	29.05.2012	2,04,86,586/-
2	D 1-102, Parshavnath Exotica, Gurgaon	15.12.2011	92,63,112/-
3	Apartment No. F 101, First Floor, Building No. F, The Palm Drive, Sector - 66, Gurgaon	28.11.2011	1,50,74,796/-

3. The Ld. AR submitted that in so far as the purchase of the three properties are concerned there is no dispute regarding their purchase and this fact stands admitted by the Assessing Officer, CIT(A) as well as by this Tribunal, but the dispute is with regard to the benefits of exemption being available to assessee i.e. whether the assessee is entitled to the benefit of exemption with regard to "one" residential house or all the three "residential houses" in view of the wording of Section 54 where the expression used is "at residential house". The second area of dispute submitted by the Ld. AR is that assuming though not admitting, the expression "a" used in Section 54 qualified for one residential house then is the assessing officer obligated to give the option to the assessee as to which property 'A' would opt for the purposes of claiming exemption?

4. The Ld. AR submitted that during the course of hearing of appeal, the assessee filed a compilation of judgments on the point that the word 'a' means plural in the context of Section 54, the details of which are reproduced as under :

- i) CIT vs. Khubchand M. Makhija - 2014 (223) Taxman 189 (Kar.)
- ii) CIT vs. Smt. K.G.Rukminiamma - (2011) 239 CTR (Kar.) 435
- iii) CIT vs. D.Ananda Basappa - (2009) 223 CTR (Ker) 186
- iv) CIT vs. Sri Syed Ali Adil - 2013 (260) CTR AP 219
- v) CIT Vs. Gita Duggal-ITA No. 1237/2011

These judgments were placed under Issue No. 3 of the compilation. In addition to the above referred judgments, the assessee placed on record one more order of this Tribunal which order was confirmed by the Delhi High Court in appeal being ITA 272/2015 - Commissioner of Income Tax vs. Laxman Singh Rawat wherein it is held that the expression "a residential house" would mean more than one residential house. This order was after the amendment. In this case against the sale of one property, the assessee claimed two properties at different locations and he was held entitled to exemption for both.

5. The Ld. AR submitted that Section 54 of the Income Tax Act was Amended w.e.f. 01.04.2015 wherein against "a residential house" the expression "one residential house" was substituted. Not only this, the Ld. AR relied upon and placed on record apart from the order of Laxman Singh Rawat (Supra) which was after the amendment another order of the Tribunal which formed part of compilation under filed issue No. 2 in case of ITO vs. K. Jaipal & Ors . - Manu/1G/0490/2015 as well as another judgment of Hon'ble Madras High Court in the case of CIT vs. V. R. Karpagam report in 2015(273) ITR 127 (Mad.). The Ld. AR submitted that though these judgments were relied upon and filed by him stands acknowledged by this Bench in its order, at the time of the passing of the order dated 12.04.2018, the aforesaid judgments escaped the attention of the Tribunal otherwise the frame of the order would have been different and would have been the net effect.

6. The Ld. AR submitted that the issue involved in the present appeal

amongst others was the effect of amendment carried out to Section 54 and in view of the amendment carried out to Section 54 and in view of the amendment carried out to Section 54 thereby defining the scope of the Section, all the judgments referred to above applied fully. The Ld. AR submitted that during the course of hearing, the Ld. DR relied upon the judgment of Pawan Arya the effect of which after the amendment to Section 54 of Income Tax Act. The Ld. AR submitted that while upholding the order of CIT(A) this Tribunal observed:

"Thus, the CIT(A) is right in holding that the claim of deduction under Section 54 to investment in only one residential property and uphold the disallowance of exemption claimed on investment in two other residential properties".

The case of assessee was that the AO was duty bound, in law to give an option to the assessee as to which property he would opt for, for the purposes of claiming exemption and it is for the assessee to make a choice. While making submission, the assessee on this issue relied upon the judgments and those formed part of Compilation of judgment and placed under Issue no. 4 that read "choices to be given to 'A' as to which property he would opt for. Neither the said argument nor the judgments relied upon have been noticed and appear to have, by inadvertence escaped the attention of this Tribunal resulting in serious miscarriage of justice to the assessee. The Ld. AR submitted that as a result of non-consideration of various judgments relied upon by the assessee during the course of hearing placed on record a serious mistake has crept in the order that is apparent on the face of records and needs to be rectified.

7. The Ld. DR opposed the Miscellaneous Application.

8. We have heard both the parties and perused the material available on record. From perusal of the order passed by us, prima facie it appears that though the order mentioned the decisions of the Ld. AR as well as Ld. DR there

is no detailed finding to that aspect. Therefore, there is mistake apparent on face of record. Therefore, we recall the order dated 12.04.2018.

9. Now, we are taking up the appeal to be decided in light of the decisions submitted by both the parties. In case of Laxman Singh Rawat vs. ACIT, the Tribunal observed and held as under:

"4. Ld. Counsel for the assessee submitted that exemption u/s 54 is admissible for both the residential houses as held by Mumbai Bench of the I TAT in the case of Meher R. Surti v. ITO [2013] 40 taxmann.com 138 (Mumbai - Trib.) (ITA nos. 531 & 1186(Mum) of 2013 dated 4-9-2013), wherein in paras 36 & 37 the Tribunal has observed as under:

"36. On the other hand the learned authorized representative of the assessee has submitted that in view of the various decisions of the High Court, a deduction under section 54 is eligible even for purchase of more than one house. He has relied upon the following decisions:

ITA nos. 1668 & j!256/Del/2013 Laxman Singh Rawat Vs. ACIT

(i) In the matter of CIT v. Smt. Jyothi K. Mehta [2011] 12 Taxmann.com.440/201 Taxman 79 (Mag.)(Kar);

(ii) CIT v. Smt. K.G. Rukminiamma [2011] 331 ITR 211/196 Taxman 87 (2010) 8 taxmann.com 121 (Kar);

(iii) CIT v. D. Ananda Basappa [2010] 320 ITR (St.) 19 (FRSC);

(iv) CIT Vs. Jeo B. Fernandes (2010) 322 ITR (St.) 8.

(v) CIT VS. Smt. Rashmi Khanna (2010) 322 ITR (St.) 9

(vi) CIT Vs. D. Ananda Basappa (2009) 309 ITR 329/180 Taxman 4 (Karn).

37. We have considered the rival submissions as well as relevant material on record. Undisputedly the assessee has deposited Rs. 1.25 crore in the capital gain account within the prescribed period and further the said amount has been invested in another flat. The issue is now covered by the various decisions of the Hon'ble High Courts as relied upon by the learned authorized representative of the assessee. Accordingly, there is no reason to interfere with the impugned order of the Commissioner of Income-tax (Appeals) qua this issue."

5. Ld. DR relied on the order of CTT(A).

6. We have considered the submissions of both the parties and perused the record of the case. We find that this issue no more res integra in view of various decisions referred by the ITAT in the case of Meher R. Surti (supra).

6.1. Further, we find that amendment has been brought in section 54 to limit the exemption u/s 54 to one Residential unit, which is applicable from 5 ITA nos. 1668 & 2256/Del/2013 Laxman Singh Rawat Vs. ACIT A.Y. 2015-16. therefore, for the year under consideration the assessee was entitled for exemption u/s 54 in respect of more than one flat. In the result, assessee's appeal is allowed."

This order of the Tribunal was confirmed by the Hon'ble High Court vide order dated 07.08.2015. After considering the orders of Tribunal and Hon'ble Delhi High Court, as well as the decision of Pawan Arya of the Punjab and Haryana High Court, the assessee is holding more than one property which was not disputed by either of the party. The Tribunal in case of Laxman Singh Rawat held that the expression "a residential house" would mean more than one residential house after taking into account the amendment to Section 54 which is apt in the present case. Therefore, we set aside the order of the CIT(A) in light of the decision of the Hon'ble Delhi High Court and allow the appeal of the

assessee along with the consequential grounds. In result, ITA No. 6712/DEL/2015 is allowed.

10. In result, appeal filed by the assessee along with Misc. Application are allowed.

Order pronounced in the Open Court on 20th November, 2018.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 20/11/2018
R. N*

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	12.11.2018
Date on which the typed draft is placed before the dictating Member	12.11.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	20.11.2018
Date on which the final order is uploaded on the website of ITAT	20.11.2018
Date on which the file goes to the Bench Clerk	20.11.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	