

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'B' PUNE – VIRTUAL COURT**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.834/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Shivratan Shrigopal Mundada, Plot No.28/29, Fine Living Society, Behind Golden Jubilee School, Jalna, Maharashtra – 431203 PAN : ABPPM8459H	Vs.	ACIT, Jalna Circle, Jalna
Appellant		Respondent

Assessee by

Shri B.D. Bhide

Revenue by

Shri Deepak Garg

Date of hearing

19-05-2021

Date of pronouncement

19-05-2021

**आदेश / ORDER**

**PER R.S.SYAL, VP :**

This appeal by the assessee is directed against the order dated 25-03-2019 passed by the Pr. Commissioner of Income-Tax-1, Aurangabad u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2014-15.

2. Briefly stated, the facts of the case are that the assessee filed his return declaring total income of Rs.18,06,880/-. The assessment was completed u/s.143(3) on 29-12-2016 at the same income. The Id. PCIT noticed that the assessee sold a piece of land on 11-12-2013 (Daregaon Land) for a consideration of Rs.1.30 crore, which

had been purchased in the year 2004 for a sum of Rs.4,73,880/-. After indexation, the assessee had computed the long term capital gain of Rs.1,20,72,972/- and thereafter claimed exemption u/s.54F towards investment of Rs.1,42,05,400/- on construction of a new residential house. The Id. PCIT noticed that the assessee obtained the permission from Municipal Council, Jalna on 20-08-2014 for commencement of construction on a plot which was purchased on 17-12-2013. It was thus opined that the AO wrongly allowed exemption u/s.54F because the assessee did not submit 'Completion certificate' towards construction of the new residential house during the course of assessment. It was still further noticed from the relevant certificate that the construction of new residential house was to be commenced on Plot No.28 only whereas the assessee included cost of Plot No.29 also for computing the cost of construction in claiming exemption u/s.54F of the Act. The Id. PCIT thus came to hold that the AO did not conduct any enquiry on this issue.

3. On being show caused, the assessee put forth that the details of sale of land and construction of new residential house were submitted to the AO during the course of regular assessment completed u/s.143(3). It was also stated that the construction of

new house was completed well before the completion of three years from the date of transfer of asset, i.e. in the month of October, 2016. The assessee furnished certificate in this regard issued by the Land owner/promoter of Fine Living Cooperative Housing Society Land where he had acquired plots for construction of the new residential house. It was stated that the completion certificate was applied for on 24-10-2016 to The Chief Officer, Jalna Municipal Council which was received later on. As regards the investment in two plots, the assessee submitted that the construction was carried out on both the plots even though the application was inadvertently made only w.r.t. one plot and sanction was also given accordingly.

4. Without accepting the assessee's copy of Invitation card of house warming on 02-11-2016, the Id. PCIT went with the 'completion certificate' which was beyond a period of three years from the date of transfer. He also did not accept the assessee's contention that the construction was carried out on two plots as against permission sought and accorded only in respect of Plot No.28. This is how, he held that the AO failed to apply his mind while framing the assessment which led to the passing of an erroneous order which was prejudicial to the interest of revenue.

Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

5. We have heard the rival submissions through Virtual Court and gone through the relevant material on record. The assessee's computation of total income has been placed at page 2 onwards of the paper book. Under the head "Long term capital gain", the assessee declared sale consideration of Daregaon Land at Rs.1.30 crore and computed capital gain at Rs.1.20 crore and odd. Then, there is a reference to investment of Rs.1.42 crore in the new house for the purposes of exemption u/s.54F of the Act. It can be seen from the assessment order dated 29-12-2016 that there is no reference to the claim of exemption u/s.54F. However, it is discernible from the copy of AO's order sheet entry that he did inquire about the "*details of admissibility of deduction claimed u/s.54F*". In the order sheet entry dated 26-12-2016, there is again a reference to the assessee furnishing the necessary details, such as, commencement certificate of new residential house constructed along with approved plan on 20-08-2014 in support of the claim for exemption u/s.54F. In response to the AO's query, the assessee furnished the relevant details vide his letter dated 22-08-2016, a copy of which has been placed at page 2 onwards of the

departmental paper book. Point No.3 in this letter states about the “investment of the amount of sale consideration received of Daregaon Land in construction of residential house at Fine Living, Jalna. The Fine Living residential house ledger account for the F.Y. 2013-14 & F.Y. 2014-15 is enclosed herewith as Annexure-3. The copy of fine living plot purchased is also enclosed with this letter as Annexure-3.” There crept some dispute about the contents of Annexure-3 before the Tribunal. We go with the copy of Annexure-3, taken from the assessment folder, as produced by the ld. DR. The Annexure-3 is a copy of the ledger account of “Fine Living Residential House A/c. as on 30-09-2014”, which shows total investment amounting to Rs.1,42,05,404/-. Thus, it is discernible that the assessee properly declared the transaction of disposal of Daregaon Land and investment made in the new residential house for which exemption was claimed u/s.54F in the return of income; the AO required the assessee to produce necessary details in support of claim u/s.54F during the course of assessment proceeding; the assessee furnished the details which are evident from the departmental paper book showing investment of Rs.1.42 crore; the AO got convinced and hence did not make any disallowance u/s 54F in the assessment order. In such circumstances, it cannot be

said that the AO did not examine the issue which could have led to the revision of the assessment order u/s.263 of the Act on that count.

6. Now we turn to the specific objections taken by the Id. PCIT. The first objection is that the assessee did not furnish 'completion certificate' at the time of assessment, which he is disputing to be beyond a period of three years. As against that, the assessee is claiming that though the completion certificate was issued beyond the period of three years but the construction was, in fact, completed within the statutory period and the assessee also did house warming well within the stipulated period. We do not find any relevance of the 'completion of construction' insofar as the exemption u/s.54F is concerned. What the section requires is that the assessee purchases a new residential house or "*has within a period of three years, after the date constructed, one residential house in India.*" This section simply talks of purchasing a house or constructing a house with the net consideration received from the transfer of old asset. It nowhere warrants the completion of construction within the stipulated period. If the amount required for exemption u/s.54F has been properly invested in the new house, the claim cannot be denied simply because the construction was not completed within the period of three years. As and when the target of investment of the eligible

amount is achieved within a period of three years, the assessee earns exemption u/s.54F notwithstanding that he may continue to invest more on such new house beyond the given period. Since the law simply provides for investing the net consideration of the earlier transferred property as a *sine qua non* for claiming the exemption and not the completion of construction of the new residential house, such a condition cannot be read in the provision, as has been canvassed by the Id. PCIT.

7. The other objection taken by the Id. PCIT is that the assessee claimed to have invested a sum of Rs.1.42 crore which was not reflected either in the balance sheet or in the capital account of the assessee. On the contrary, we find from the Departmental paper book itself that the assessee did furnish “Fine Living Residential House A/c. as on 30-09-2014” with investment of Rs.1.42 crore as on 30-09-2014. Thus, this view point of the Id. PCIT also does not stand.

8. Another objection taken by the Id. PCIT is that the assessee claimed purchase cost of Plot Nos.28 and 29 in the sum total of Rs.1.42 crore for the purposes of exemption u/s.54F, whereas the permission for construction was taken only in respect of Plot No.28. It is seen that both the plots, namely, 28 and 29 were simultaneously

purchased and are adjacent to each other. The assessee has claimed that both the plots were used for construction of new residential house. Simply because the application for construction was given only with reference to Plot No.28, the claim for actual investment in Plot No.29, qualifying for exemption u/s.54F, cannot be denied. Be that as it may, even if we proceed with the presumption that the assessee constructed new residential house only on Plot No.28, still Plot No.29 adjacent to new residential house will form part of new residential house thus entitling the assessee to exemption *pro tanto*.

9. The next objection taken by the Id. PCIT is that the AO failed to enquire and verify the issue of 'cost of construction' which should have been done. Here again, the Id. PCIT is not correct. Not only this issue was verified by the AO but the necessary evidence to corroborate the assessee's claim was also placed before him, which is evident from the "Fine Living Residential House" deciphering investment of Rs.1.42 crore in the new house. The Id. DR submitted that the commencement of construction certificate was issued on 20-08-2014 whereas the assessee claimed to have invested a sum of Rs.1.42 crore as on 30-09-2014. We find from the details of Fine Living residential house that a sum of Rs.55.04 lakh was invested in purchase of two plot Nos. 28 and 29. This leaves with a



sum of Rs.87.00 lakh which has been invested by the assessee towards purchase of cement, steel, sand, bricks, murum and soiling, labour payment and other construction expenses. Except for casting a doubt, the ld. DR could not point out as to how the spending of Rs.87.00 lakh within a period of 1 month and 10 days was not possible. Mere doubt cannot lead to the revision of an order unless it is shown that either the AO failed to apply his mind on the issue or he applied his mind but his view was wrong in facts or in law. None of the conditions is satisfied in the instant case. In view of the foregoing discussion, we are satisfied that the ld. PCIT failed to make out a proper case for revision of the assessment order passed u/s.143(3) of the Act. Ergo, the impugned order is overturned.

10. In the result, the appeal is allowed.

Order pronounced in the Open Court on 19<sup>th</sup> May, 2021.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 19<sup>th</sup> May, 2021  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

- 1. अपीलार्थी / The Appellant;
- 2. प्रत्यर्थी / The Respondent;
- 3. The Pr.CIT(A)-1, Aurangabad
- 4. DR, ITAT, ‘B’ Bench, Pune
- 5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	19-05-2021	Sr.PS
2.	Draft placed before author	19-05-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

\*