

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.06/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

JCIT (OSD), Circle – 7, Pune	Vs.	Santosh Suresh Gupta Flat No.B-4, 105, Agrasen Society, Koregaon Park, Pune – 411001 PAN: ACNPG6836H
Appellant		Respondent

Assessee by

Shri Krishna Gujarathi

Revenue by

Shri Sudhendu Das

Date of hearing

05-08-2021

Date of pronouncement

05-08-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the ld. CIT(A) on 29.09.2017 in relation to the A.Y. 2013-14.

2. The only issue raised in this appeal is against the deletion of addition of Rs.3,01,10,936 made by the AO by disallowing the exemption u/s 54F of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. Briefly stated, the facts of the case are that the assessee has been engaged as a Builder. She developed a project, namely, 'Solitaire', situated at Sr. No.17, Dhanori, Pune. The land for the same was purchased on 10.06.1985. The assessee sold 1/4th of the land on 25.03.2011 for a sum of Rs.2.7 crores and decided to develop the remaining 3/4th land herself by converting the same into stock in trade. The assessee declared, *inter alia*, long term capital gain on sale of flats of the said project. She claimed exemption u/s 54F amounting to Rs.3,01,10,936 on the ground that she invested a total sum of Rs.3,24,39,500 by depositing Rs.1 crore in Capital gain scheme account and investing Rs.2,24,39,500 in purchase of residential land at A-36, Puru Society, Lohegaon, Pune for construction of house. The AO observed that the assessee had started construction of a bungalow at plot No.A-36, Puru Society, Lohegaon, Pune for claiming exemption u/s 54F. However, the construction of said bungalow was not complete on the date of assessment. In order to ascertain the stage of completion/construction of house of the assessee, an Inspector of Income Tax was deputed to find out the facts by way of a site visit.

Certain photographs have been reproduced in the assessment order indicating that a structure was there which was incomplete. The AO opined that even after a lapse of three years from the date of transfer of original asset i.e. 23.10.2012, the assessee could not complete the construction of house and hence exemption u/s 54F was not available. He, therefore, denied the benefit of exemption amounting to Rs.3,01,10,936. The CIT(A) overturned the assessment order on this issue, against which the Revenue has come up in appeal before the Tribunal.

4. We have heard both the sides through Virtual Court and gone through the relevant material on record. It is observed that the only issue on the basis of which the exemption u/s 54F has been denied is that the assessee did not *complete the construction* of house within a period of three years *albeit* the construction work was going on. We, therefore, need to ascertain as to whether it is completion of construction or just investment of net consideration in construction which is *sine qua non* for granting exemption u/s 54F of the Act. The relevant part of section 54F in this regard reads 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*, one residential house in India (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 sub-section 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)

5. On going through the above language of the provision, it is clear that the requirement of section 54F is, *inter-alia*, to *construct*

the residential house within a period of three years by investing the net consideration. The proviso to this section also states that the exemption shall not be allowed if the assessee *constructs* any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset. So the emphasis in the provision is on *constructing*. Nowhere does the provision lay down a stipulation of completion of construction as a condition precedent for claiming the exemption. Once the construction has been started and the requisite amount has been invested in the same, the requirement of section 54F gets fulfilled notwithstanding the fact that the construction does not get completed within the given period of three years. On the facts of extant case, it is amply clear that the assessee invested Rs.2.24 crores and odd in the construction of house within a period of three years, which construction was incomplete at the end of the stipulated period, but got actually completed at a later stage as has been recorded by the Id. CIT(A) on the last page of his order. It is further not disputed that the assessee invested a sum of Rs.1 crore in the Capital Gains Scheme Account.

In view of the foregoing discussion, we concur with the ld. CIT(A) in granting exemption u/s 54F of the Act and countenance his view.

6. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 5th August, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 5th August, 2021
GCVSR

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

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

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

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	05-08-2021	Sr.PS
2.	Draft placed before author	05-08-2021	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.		

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