

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

ITA No.262/Mum/2015

(A.Y.:2010-11)

Mr. Rajeev B. Shah, 98, Dariya Mahal -‘A’, 80, Nepeansea Road, Mumbai – 400 006	Vs.	The Income Tax Officer, Ward -19(2) (1), Matru Mandir,Tardeo, Mumbai -12
PAN: AAAPS 8240 K		
Appellant	..	Respondent

Appellant by		S/Shri Subhash Shetty & R. N. Vasani, ARs
Respondent by		Shri Somanath S. Ukkali, DR

Date of hearing		23-06-2016
Date of pronouncement		08-07-2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of the CIT (A)-27, Mumbai passed in appeal No. CIT (A)-27/16(2)(2)/81/13-14 dated 15-09-2014. Assessment was framed by the ITO, Ward- 16(2)(2), Mumbai for assessment year 2010-11 vide his order dated 14-03-2013 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. The only issue in this appeal of the assessee is against the order of the CIT (A) confirming the action of the AO in disallowing the claim of deduction u/s 54F of the Act. For this, the assessee has raised the following two grounds:-

“(1) *The learned Commissioner of Income-tax (Appeals)- 27, committed a gross error of law and facts in rejecting the claim of deduction u/s. 54F of the Income-tax Act, 1961 made by the appellant for purchasing a residential house under construction against the sale of land.*

(2) *He failed to appreciate the facts that the appellant complied with all the requirements of provisions of section 54F and made full investment within the prescribed time”.*

3. Briefly stated facts of the case are that the assessee during the year under consideration sold one plot of land for a consideration of Rs.19,35,325/- and claimed deduction of investment made in under construction flat in the month of March,2010 amounting to Rs.18,60,000/- under the provisions of Section 54F of the Act. The AO

disallowed the claim of the assessee for deduction u/s 54F of the Act for the reason that the assessee has not registered the document for his claim for purchase of property even after three years of the said investment of capital gains in property. He also made a passing reference that the genuineness of the investment in question is not proved. Accordingly, he disallowed the claim. Aggrieved, the assessee preferred appeal before the CIT (A), who also confirmed the action of the AO by observing in Para 2.5.4 of his order as under:-

“2.4.5 There is no doubt that an assessee would be eligible for the benefit u/s.54F if he invests in an under construction building but it is his bounden duty to first inquire whether the so called under construction building was eligible to be constructed. Merely because a so called letter of allotment was issued in a building which was never given permission for construction beyond two floors, it cannot be said that for the purpose of section 54F, the appellant’s obligation ended as soon as he issued the cheque”.

Aggrieved, the assessee is in second appeal before the Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. The admitted facts under consideration are that the assessee sold a plot of land at Rajkot, Gujarat for a consideration of Rs.19,35,325/- on 09-02-2010. The assessee has earned Long Term Capital Gains of Rs.14,81,284/-. The assessee invested a sum of Rs.15,00,000/- on 12-03-2010 and Rs.3,60,000/- on 19-03-2010 for buying a residential flat under construction in the project “LA – CITADEL” from Seth Developers Pvt. Ltd. and Poonam Builders. The Developer allotted Flat No.602 of 6th Floor in the project for a sum of Rs.1,43,96,800/- on the terms & conditions given in the letter of allotment issued to him by the Builder dated 16-03-2010. Copy of the allotment letter is enclosed in assessee’s paper book at pages 4 to 7. The assessee also paid further amount in joint partnership. This investment was made by two co-owners viz. Mitesh K. Patel 60% and the assessee Rajeev B. Shah 40%. They made investment to the tune of Rs.43.10 lacs and assessee’s share was Rs.18,60,000/-. The AO rejected the claim of deduction u/s 54F of the Act only on the ground that the property is incomplete and registered document was not filed by the assessee in respect to the claim of deduction u/s 54F of the Act. The learned Counsel for the assessee before us explained that this happened due to the fact that the builder was avoiding the customers due to disputes and the project was also stalled and there was no further progress in construction of the project. To prove his point, the assessee filed civil suit

before the Hon'ble Bombay High Court in Suit No.162 of 2016 and notice of Motion issued vide No.669 of 2016 wherein relief claimed in the Plaint is mentioned at page 3 of the Plaint and the relevant Clause 3 (d) and 3 (e) of the Plaint reads as under:-

- “(d) *An order and direction calling upon the Defendants to commence construction of the said project on the said property and construct the suit as per the agreement evidences by the allotment letter;*
- (e) *An order and injunction restraining the Defendants from creating third party rights in respect of the suit flat and/or equivalent area in the said project or any other project of the Defendants as directed by this Hon'ble Court”;*

In view of the above, the learned Counsel for the assessee stated that the suit filed by the assessee and others against the Developer/Builder is enough evidence that the assessee could not get the flat completed or registered in his name due to impossibility and acts of other parties. The learned Counsel for the assessee also explained that he has fulfilled the conditions laid down u/s 54F of the Act by investing a sum of Rs.18,60,000/- in the above flat within the stipulated period in a residential house property under construction. We find that so far as the facts in question are not disputed, the only issue is that when the assessee is not able to get the title of the flat registered in his name or unable to get the possession of the flat, which is under construction, due to fault of the Builder, the assessee cannot be denied deduction u/s 54F of the Act. It is a fact that the assessee has invested this amount of Rs.18,60,000/- in purchase of residential house within the stipulated period prescribed u/s 54F of the Act. But, it is not in the assessee's hand to get the flat completed or to get the flat registered in his name, because it was incomplete. The intention of the assessee is very clear that he has invested almost the entire sale consideration of land in purchase of this residential flat. It is another issue that the flat could not be completed and the matter is pending before the Hon'ble Bombay High Court seeking relief by the assessee by filing suit for direction to the Builder to complete the flat. It is impossible for the assessee to complete other formalities i.e. taking over possession for getting the flat registered in his name and this cannot be the reason for denying the claim of the assessee for deduction u/s 54 of the Act. In view of the above facts of the case, we are of the view that the assessee is entitled for deduction u/s. 54F of the Act, because the assessee has already invested a sum of Rs.18.60 lakhs in the residential property under construction within the time

limit prescribed u/s. 54F of the Act. Accordingly, this issue of assessee's appeal is allowed.

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

Order pronounced in the open court on 08 /07/2016.

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated 08/7/2016
Lakshmikanta Deka/Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI