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3/57-02

**IN THE INCOME TAX APPELLATE TRIBUNAL, NEW DELHI
BENCH 'G'
BEFORE SHRI N.K.KARHAIL, JUDICIAL MEMBER AND
SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER**

**ITA No.2579 /Del/2004
(Assessment Year 2001-02)**

Mrs. Kamlesh Bansal, Vs. ITO, Ward 8(1), New Delhi.
C/o GRA & Associates,
Flat No.101, A-9/1,
Nariana Indl. Area Phase-I,
New Delhi-110028
(Appellants) (Respondents)

Appellant by: Shri Ved Jain, CA
Respondent by: Shri Bhim Singh, Sr. DR

ORDER

PER RAJENDRA SINGH, AM:

1. This appeal by the assessee is directed against the order dated 31.3.2004 of CIT(A) XI, New Delhi for the assessment year 2001-02. Though the assessee has raised several grounds of appeal, the effective ground of appeal is only one i.e. on the facts and in the circumstances of the case, CIT(A) was not justified in holding that the assessee was not entitled to exemption u/s 54F.
2. The facts of the case in brief are that the assessee during the relevant assessment year had earned a long term capital gain of Rs.2005113/- on sale of shares which had been claimed exempt u/s 54F of the I.T. Act. The assessee claimed that it had invested the sale consideration in construction of residential house within the period of three years as required u/s 54F. The land on which the house was constructed belonged to the husband of the assessee. The assessee explained to the A.O. that as per collaboration agreement dated 15.12.2000, the assessee as a developer had agreed to construct the residential building on the plot owned by the husband and in which share of the assessee was 50%. The A.O. however, did not allow the



claim on the ground that the title of the property had not been transferred in the name of the assessee, which in the opinion of the A.O. was an essential ingredient for the claiming exemption u/s 54F. In appeal, the assessee submitted before CIT(A) that she satisfied all the conditions u/s 54F. As regards the ownership of the house, it was submitted that it was not necessary that the transfer deed should be executed in favour of the assessee. The assessee had taken over the possession of the house as per the collaboration agreement and as per section 27(iii)(a) a person who is allowed to take or retain possession of any building or part thereof in part performance of the contract of the nature referred to in section 53A of the Transfer of Property Act, is deemed to be the owner of the building or part thereof. Thus, even if the property was not registered in the name of the assessee, but the contract enables the assessee the enjoyment of property, it amounts to transfer. CIT(A) was however, not satisfied. It was observed by him that the collaboration agreement did not give any title or possession of the constructed building to the assessee as the share was defined. Considering this and also the fact that both the contracting parties were related husband and wife, CIT(A) confirmed the order of the A.O. denying the claim of exemption. Aggrieved by the said decision, the assessee is in appeal before the tribunal.

3. Before us, the Ld. A. R. for the assessee reiterated the stand taken before the lower authorities. It was submitted that there was no dispute that the assessee was the owner of super structure built on the land belonging to the husband. The assessee had constructed the residential house as per the agreement and was owner of 50% of the house in terms of the sale agreement. Under the provisions of law, it is not necessary that the assessee should be the holder of registered title in respect of the property in order to become owner. In terms of

the provisions of section 27(iiiia), a person is deemed to be owner if he has taken possession of the house in part performance of the contract referred to in section 53A of the Transfer of Property Act. He also relied on the following judgements in which under similar circumstances it had been held that the assessee was the owner of the building:

- i) 156 ITR 127 (Raj.) Saifuddin Vs CIT;
- ii) 252 ITR 468 (Cal.) CIT Vs Amit Kr. Roy;
- iii) 2 ITR 209 (Mad.) CIT Vs. Madras Cricket Club.

3.1 The Id Sr. DR on the other hand supported the orders of authorities below and placed reliance on the findings given by CIT(A) in the appellate order.

4. We have perused the records and considered the rival contentions carefully. The assessee has built the super structure for the residential house on the land owned by the husband as per agreement in terms of which she holds 50% share in the house. The claim of deduction u/s 54F had been denied on the ground that the assessee does not hold the legal title of the property. This view is legally not tenable. In the context of Income tax Act, it is not necessary for someone to hold the registered title in respect of house property in order to become an owner. This issue was settled long ago by the judgement of Hon'ble Supreme Court in case of R B Jodhamal Kulthiala (82 ITR 570) in which it was held that owner is a person who exercises the right of owner not on behalf of owner but in his own right. The registration of property is not warranted. Suitable provisions were subsequently incorporated in the Act in section 27(iiiia) as per which, a person who is allowed to take or retain possession of any building or part thereof in part performance of the contract, referred to in section 53A of the Transfer of Property Act is deemed to be an owner of the building. As per the provisions of section 53A, if a person contracts to transfer any property or part thereof for

consideration and the transferee has taken the possession in part performance of the contract and the transferee has performed and is willing to perform his part of the contract, the transferor is debarred from enforcing any right against the transferee in respect of the said property. Thus, registration of the property in the name of the holder is no longer necessary.

- 4.1 Merely because in this case, the contract is between husband and wife, it cannot be said that the assessee is not owner of the 50% of the house. No case has been made by the revenue that the agreement between husband and wife was not genuine or that the investment in the super structure has not been made by the wife. It is an undisputed fact that the super structure had been built by the assessee. The only requirement of section 54F is that the assessee should have constructed a residential house. In the facts of this case it cannot be said that the assessee had not constructed a residential house. There is no requirement of section 54F that the assessee should be exclusive owner of the house constructed by her. Further, as both the contracting parties are living together, division is immaterial. What is material is the ownership. The assessee is no doubt the owner of the 50% of the house which has been built by her.
- 4.2 The judgements relied upon by the Ld. A. R. for the assessee also supports the case of the assessee. In case of Saifuddin (supra) land belonged to the assessee and the building had been constructed by the assessee and his two brothers, all the three sharing the expenditure equally. It was held by the Hon'ble High Court of Rajasthan that the income from the property belonged to the three equally.
- 4.3 In case of Amit Kumar Roy (supra), the property was in the name of wife but entire investment had been made by the assessee. The Hon'ble High Court of Calcutta therefore held that the income from property had to be taxed in the hands of the assessee.

- 4.4 In case of Madras Cricket Club, supra), the assessee had taken land on long term lease from Government and erected building thereon. The Government was entitled to remove the building within a stipulated period from the termination of lease. It was held by the Hon'ble High Court of Madras that assessee remained the owner of the building.
- 4.5 In the facts and circumstances of the case and considering judicial pronouncements on the subject, we are unable to sustain the order of CIT(A). The same is set aside and the claim of the assessee is allowed.
- 5. In the result, the appeal of the assessee is allowed.
- 6. This decision was pronounced in the open court on ^{30th} June 2006.

Sd
 (N.K.KARHAIL)
 JUDICIAL MEMBER
 Date: ^{30th} June 2006

Sd
 (RAJENDRA SINGH)
 ACCOUNTANT MEMBER

- Sp.
 Copy forwarded to: *By hand.*
- 1. Appellant
 - 2. Respondent
 - 3. CIT
 - 4. CIT(A)
 - 5. DR

MP
 Assistant Registrar
 By order true copy
 Income Tax Appellate Tribunal
 DR, I.A.T. New Delhi.
 Delhi Baches, N. Delhi
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