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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 13713/2022, CM APPL. 41874/2022 & CM APPL. 41875/2022

KAMLESH KESWANI ..... Petitioner

Through: Mr. Robin Ratnakar David, Ms. Ruchi Khurana, Mr. Dhiraj Philip & Mr. Samuel David, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 49(1), DELHI ..... Respondent

Through: Mr. Abhishek Maratha, Sr. Standing Counsel for Revenue.

% Date of Decision: 22nd September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. Present writ petition has been filed seeking direction for setting aside the order dated 28th July, 2022, passed by the respondent under Section 148A(d) of the Income Tax Act, 1961, (the 'Act') and notice dated 28th July, 2022, issued under Section 148 of the Act with respect to the Assessment Year ('AY') 2015-16.

2. Learned counsel for the petitioner states that the facts arising for consideration in the present proceedings are admitted and there is no dispute in this regard. He states that on 25th February, 2015, the property situated at

B-83, Defence Colony, New Delhi, ('Delhi Property') comprising of the entire second floor and 50% of the share of the terrace above the third floor along with 20% undivided, indivisible and impartible ownership rights in the said plot of land was sold by the petitioner herein for a sale consideration of Rs. 2 Crores. He states that balance 50% share of the terrace above the third floor which was owned by his brother, Sh. Parkash Keshwani, was sold by the said brother for Rs. 5 Lakhs. He states that the sale consideration of Rs. 2 Crores was received by the petitioner and the buyer deducted 1% Tax Deducted at Source (TDS) on the said sale consideration. He states that petitioner declared the receipt of the said amount of Rs. 2 Crores as Long Term Capital Gain ('LTCG') in his Income Tax Return ('ITR') for AY 2015-16. He states that subsequently on 01st June, 2015, the petitioner purchased a new property situated at Sector-31-32A, Gurugram, Haryana ('New Property') for a total consideration of Rs. 2,54,20,000/- jointly with his wife Mrs. Rekha Keswani. He states that the entire sale consideration in respect of the purchase of the New Property was paid from petitioner's bank account. He also states that the stamp duty payable on the sale deed dated 01st June, 2015, was also incurred by petitioner. He states that all the aforesaid transactions are duly recorded in petitioner's bank account statement held with the HDFC Bank.

3. The learned counsel for petitioner states that, thereafter, on 23rd September, 2016, petitioner was issued a notice under Section 143(2) of the Act, wherein, the petitioner was informed that his return has been selected for scrutiny under Computer Aided Scrutiny Selection ('CASS') and the issue of capital gains was a specific issue identified for examination therein. The petitioner responded to the said notice and duly placed before the AO

('Assessing Officer') all the relevant documents including the sale deed pertaining to the sale of the Delhi Property and the purchase of the New Property as well as the HDFC Bank statement. The learned counsel for petitioner states that after consideration of the aforesaid documents, the AO passed an assessment order on 07th November, 2017, under Section 143(3) of the Act by duly taking note that the petitioner had submitted all necessary details and documents. The AO specifically recorded the facts with respect to the deduction claimed by the petitioner under the head of capital gain in the assessment order and no addition or disallowance was made in the return. The relevant extract of the said assessment order reads as under:-

> *"The whole amount of the sale consideration was reinvested in a residential (house) property in Haryana which was acquired on 26th May 2015 for Rs 2,54,20,000- and stamp duty paid of Rs 15,25,200/. The AR submitted the necessary details and documents from time to time which have been examined and placed on record. Books of accounts have been verified on test check basis and returned."*

4. The petitioner was thereafter served with a notice dated 23rd June, 2021, under Section 148 of the Act wherein it was alleged that the AO has reasons to believe that the petitioner's income chargeable to tax for AY 2015-16 has escaped assessment. The said notice was thereafter deemed to be a show cause notice under Section 148A(b) of the Act following the directions of the Supreme Court in ***Union of India vs. Ashish Agarwal, 2022 SCC OnLine 543*** and accordingly on 01st June, 2022, the petitioner herein was served with a show cause notice wherein the material part of the information provided to him reads as under:-

> *"Subsequently, the case was selected for scrutiny for AY 2015-16 and scrutiny assessment u/s 143(3) of the Income Tax Act, 1961,*

completed at the assessed income of Rs. 34,62,000/-.

Subsequently, during the audit it was pointed that the assessee has sold a residential house at B-83, Defence Colony, New Delhi (entire 2nd floor and entire terrace above 3rd floor along with 20% undivided, indivisible and impartible ownership rights in the said plot of land) for Rs. 2,05,00,000/- dated 25/02/2015. Out of this sum, Rs. 5,00,000/- has been paid to Sh. Parkash Keshwani (brother of assessee) for the sale of 50% share of entire terrace above third floor and balance Rs. 2,00,00,000/- has been paid to Mr. Kamlesh Keshwani (the assessee) which he has declared as L TCG in its ITR.

Later on, the assessee purchased a new house at 157, sector-31-32A, Gurgaon for Rs. 2,54,20,000/- on 26/05/2015 jointly with his wife Mrs. Rekha Keshwani. Here, it is to be noted that the new property has been purchased in the name of Mr. Kamlesh Keshwani and Mrs. Rekha Keshwani jointly with the first name in the property of Mrs. Rekha Keshwani.

Further, neither the shareholding pattern nor the details of the person making the payments has been mentioned in the agreement or anywhere during the submissions.

Thus, the shareholding as well as the payments are to be construed as half for each shareholder. However, the total cost of the new property amounting to Rs. 2,54,20,000/- is claimed to have been paid by the assessee himself and in lieu of this the assessee has claimed the LTCG of Rs. 2,00,00,000/- earned on the sale of another property as exempt u/s 54."

5. He states that this was the only information provided to petitioner and there was no further information. The petitioner had duly replied to the show cause notice vide reply dated 06th June, 2022. He states that the information annexed to the show cause notice alleges that the sole basis for re-opening the assessment proceedings was on a conjecture that 50% of the ownership of the New Property in favour of the petitioner's wife since the New

Property was purchased in the joint name of the petitioner and his wife. The evidence regarding the payment made from petitioner's account into which the sale proceeds of Delhi Property owned by him were deposited (not owned by wife) was ignored. He states that the respondent has passed the impugned order dated 28th July, 2022 under Section 148A(d) of the Act opining that the petitioner has claimed excess exemption of LTCG under Section 54 of the Act amounting to Rs. 65,27,400/- however, while passing the said order, the AO had failed to take into consideration the irrefutable documents filed on record which evidence that the entire sale consideration for the New Property has been paid by the petitioner. He states that the impugned order is liable to be set aside as the conclusion drawn by the AO on the admitted facts is contrary to the judgment of this Court in ***Commissioner of Income-Tax vs. Ravinder Kumar Arora, 2011 SCC OnLine Del 5615***, wherein, in similar facts, the Court held that the Assessee is entitled to claim exemption with respect to a new asset purchased in the joint names of the Assessee and his/her spouse if the total consideration has been paid by the Assessee.

6. The learned counsel for petitioner also submits that in the impugned notice and order, the AO failed to appreciate that during the scrutiny proceedings, the deductions claimed by the petitioner under LTCG was accepted and verified by the AO and therefore, it cannot be reviewed.

7. Issue notice. Mr. Abhishek Maratha, learned Senior Standing Counsel for Revenue accepts notice. He states that there is no dispute with respect to the facts set out in the writ petition. He states that, since admittedly the new property has been purchased in the joint names of the petitioner and his

wife, there was an objection raised in the Audit with respect to the LTCG claim.

8. We have heard the learned counsel for the parties. The sale of the residential house by the petitioner and purchase of the New Property by the petitioner within the stipulated time is admitted by Revenue. It is further admitted that the entire sale consideration for the New Property as well as the stamp duty has been paid by the petitioner.

9. The respondent has not disputed that this information was available and scrutinised by the AO during the assessment proceedings which resulted in the assessment order dated 07th November, 2017, and the AO was satisfied with respect to the claim of the LTCG of the petitioner. The judgment of this Court in ***Ravinder Kumar Arora*** *(supra)* relied upon by the petitioner as regards his entitlement to claim LTCG is squarely applicable to the facts of the case. The relevant paragraphs of the said judgment reads as under:

> *"7. A plain reading of the aforesaid provision indicates that in order to get benefit of this section, the assessee should, inter alia, "purchase" a house. As per the Revenue, this house has to be purchased in the name of the assessee only and the benefit is not given if it is purchased by the assessee jointly with his wife.*
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> *8. At the outset, the important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house though in his own name but along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of the registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the, house. The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a single penny has been contributed by*

the wife in the purchase of the house. The Tribunal also noted the argument that the property was purchased by the assessee in the joint names with his wife for "shagun" purpose and because of the fact that the assessee was physically handicapped. The Tribunal further concludes that as a matter of fact, the assessee was the real owner of the residential house in question.

9. On the aforesaid facts, we are of the view that the conditions stipulated in section 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife. If the view of the Assessing Officer (AO) or the contention of the Revenue is accepted, it would be a derogatory step.

10. Even when we look into the matter from another angle, the facts remain that the assessee is the actual and constructive owner of the house. In CIT v. Podar Cement P. Ltd. [1997] 226 ITR 625 (SC), the Supreme Court has also accepted the theory of constructive ownership. Moreover, section 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only. Here is a case where the house was purchased by the assessee and that too in his name and wife's name was also included additionally. Such inclusion of the name of the wife for the above-stated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee. The objective of section 54F and the like provision, such as section 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the Legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Section 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the

exemption/deduction to the taxpayer and deduction should not be denied on hyper technical ground. The Andhra Pradesh High Court in the case of Late Mir Gulam Ali Khan v. CIT [1987] 165 ITR 228 (AP) has held that the object of granting exemption under section 54 of the Act is, that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gains are concerned. The word, "assessee" must be given wide and liberal interpretation so as to include his legal heirs also There is, no warrant for giving too strict an interpretation to the word "assessee" as that would frustrate the object of granting exemption. We also find judgments of other High Courts giving the benefit of section 54F(1) of the Act when the house of the assessee is purchased jointly with his wife. In the case of CIT v. V. Natarajan [2006] 287 ITR 271 (Mad), though this case was decided in relation to section 54 of the Act, the said section is in pari materia of section 54F(1) of the Act. Likewise, the Punjab and Haryana High Court in the case of CIT v. Gurnam Singh [2010] 327 ITR 278 (P&H) took the same view while discussing the provisions of section 54 of the Act which is again in pari materia of section 54F(1) of the Act."

(Emphasis supplied)

10. We also find merit in the submission of the learned counsel for petitioner that the re-assessment has been initiated on the basis of change of opinion, which is not permissible. There is no new information available with the respondent to re-assess the LTCG claim. The AO had considered the same documents during the earlier assessment proceedings and was satisfied with the claim of LTCG made under Section 54 of the Act.

11. The petitioner is entitled to claim exemption under Section 54 of the Act on these admitted facts, as the conditions stipulated in Section 54 stand fulfilled. The New Property would be treated as the property purchased by the petitioner in his name and merely because he has included the name of his wife and the property has been purchased in the joint names, it would not

disentitle the petitioner from claiming the exemption under the statutory provisions. Accordingly, the order dated 28th July, 2022 under Section 148A(d) of the Act, and notice dated 28th July, 2022, issued under Section 148 of the Act by the respondent with respect to the Assessment Year 2015-16 are set aside.

12. Accordingly, the present writ petition stands allowed and the pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 22, 2022/msh