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

\+ **ITA No.1241/2007**

7th August, 2009.

VIPIN MALIK (HUF) ...Appellant.

Through: Mr. S.Ganesh, Sr. Adv. with Mr. Johnson Bara, Advocate

VERSUS

C.I.T. ....Respondent

Through: Mr. N.P.Sahni & Mr. P.C.Yadav, Advocates.

CORAM:
HON'BLE MR. JUSTICE A. K. SIKRI
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

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VALMIKI J. MEHTA, J.

1. The appellant/assessee, which is a HUF, sold its agricultural land for Rs.14,28,400/- in September, 1995 giving rise to a long term capital gain of Rs.9,67,412/-. The assessee claimed that the capital gain be not charged as it was entitled to the benefit of Section 54-F of the Income Tax Act, 1961. The

assessee claimed to have purchased a three bed room flat in Kanung Cooperative Group Housing Society and, therefore, claimed the entitlement for the benefit of Section 54-F of the Act. All the three authorities below namely, the Assessing Officer (A.O), The Commissioner Of Income Tax (Appeals) (CIT)(A) and Income Tax Appellate Tribunal (I.T.A.T) have declined the benefit of Section 54-F to the Assessee.

2. The relevant portion of Section 54-F 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, a residential house (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 ....
>
> (4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purpose or construction of the new asset before the date of furnishing the return of income under Section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of assessee for furnishing the return of income under sub-section (1) of Section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Office Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit... ."

3. As per the claim made before the authorities below, the claim was wi respect to 'purchase' of a flat. This is important because Section 54-F contains two eventualities claiming for benefit, one, is the purchase of the residential house and second is construction of a residential house.

4. Before us, the learned Senior Counsel Mr. S.Ganesh, on behalf of the assessee, has strongly urged that the authorities below misdirected themselves in requiring that the purchase of the property must be paid after the selling of the agricultural property in as much as the very language of Section 54F contains an eventuality of purchase of the residential house even before one year of the sale of the agricultural land.

5. The proposition as canvassed by the counsel for the appellant is not in question and surely the section itself says that the purchase of the new residential house can be made either before one year of the sale of the agricultural land or after two years of the sale of the agricultural land. However, in the present case, on facts, the proposition as urged does not apply.

6. The following facts have emerged as per the orders of the Assessing Officer, CIT(A) and I.T.A.T :-

(i) The agricultural land was sold in September, 1995.

(ii) Allotment of the flat in the co-operative society was made in terms of t allotment letter dated 27.10.1998, though the same was in pursuance of the draw of lots on 20.9.1998.

(iii) Out of the total amount paid to the co- operative society of Rs.6,41,014/- till 28.7.1995. The following sums were already paid from 1988 to 31.3.1995 as under:-

YEAR	**AMOUNT (Rs)**
88-89	18,125.00
90-91	45,000.00
92-93	90,000.00
93-94	2,01,311.80
94-95	2,32,577.00
95-96	1,06,825.00
96-97	4,370.00
97-98	50,000.00
98-99	1,00,000.00
99-00	1,325.44
	8,49,534.24

Thus, most of the payment was already made before one year of the sale of the agricultural land in September, 1995.

(iv) The amount invested for the purpose of purchasing the flat was not t entire amount of the capital gain of Rs.9,67,412/- but only an amount of Rs.6,41,014/- till 28.7.1995.

(v) The balance amount of the capital gain was not deposited in the specified account in terms of sub-section 4 of Section 54-F and also, consequently, no proof of such deposit was filed along with the return.

7. A reading of the orders of the CIT(A) and the I.T.A.T shows that the assessee has sought to bring his case under the eventuality of 'purchase' or 'construction', at his own convenience before the authorities. While before the CIT(A) the stand which was taken was that of purchase of a flat, the stand which was taken up before the I.T.A.T by the assessee was that of a construction of a house within three years of sale of agricultural land. Before this court, once again the stand which has been taken up was of purchase and not of construction within three years of the sale agricultural land.

8. The facts above clearly show that the amount which was available to be taxed as capital gain was not utilized for the purchase of the flat either one year before the sale of the agricultural land or two years after the sale of the agricultural land in as much as most of the amount had already been paid to the co-operative society before one year of the sale of the agricultural land. The assessee also cannot be said to have constructed a residential house within 3 years of the sale of the agricultural land as the amount received from sale of the

agricultural land was not utilised for the purchase of the flat. The assesse, therefore, cannot be said to have purchased a residential house within the meaning of Section 54-F either one year before the sale of the agricultural land or within two years after the sale of the agricultural land. If we look at the ownership from the point of view of an allotment letter as draw of lots, then the allotment letter or the draw of lots is only in September/October, 1998 i.e., after two years of the sale of the agricultural land. We may note that, and as already stated above, before the I.T.A.T, the assessee took up a stand of his having constructed the flat within three years of the sale of the agricultural land relying upon a circular of CBDT which gave benefit of Section 54-F to an allottee of a DDA flat. The scheme of the DDA which was approved by the CBDT was on the basis that the allotment letter is issued and when payment of the first instalment of the cost of construction is made then such allotment is final unless it is cancelled or the allottee withdraws from the scheme. The allottee under the DDA scheme of Self Financing gets title on the issuance of the allotment letter. The said circular of the CBDT was, therefore, held inapplicable to the case of the appellant rightly by the I.T.A.T

9. Independent of the above discussion, an aspect which overrides the above issue, is that, the agricultural land which was sold was of Vipin Malik HUF and the flat purchased in the co-operative society was not in the name of the HUF. The flat was in the individual name of Vipin Malik along with his mother Smt.

Chanan Devi Sachdeva. To claim the benefit of Section 54-F the resident house which is purchased or constructed has to be of the same assessee whose agricultural land is sold and which is therefore not the case here. The following paragraph 12 of the order of the I.T.A.T effectively and exhaustively sets out these facts and we reproduce the same below:-

> "12. We have considered the rival submissions and also perused the relevant material on record. It is observed that the claim of the assessee for exemption under Section 54F was disallowed by the authorities below on various grounds. First of all, it was held by the AO that the investment claimed to have been made by the assessee in the residential property/flat in Kanungo Cooperative Group Housing Society Ltd. was not in its name but the same was in the joint name of two individual viz., Smt. Chanan Devi Sachdeva and Shri Vipin Malik. Before us, the learned DR has strongly supported and substantiated this ground given by the AO for disallowing the claim of the assessee for deduction u/s 54F by referring to the various certificates and receipts issued by the said society wherein the names of individuals were appearing without any indication of HUF. The learned counsel for the assessee, on the other hand, has relied on the possession certificate issued by the society on 30.4.2000 wherein both the individual names were appearing with Shri Vipin Malik being mentioned as Karta of M/s Vipin Malik, HUF. He has also contended that Smt. Chanan Devi Sachdeva being the oldest member of the assessee-HUF, her name was given as member for the sake of convenience. After careful examination of all these documents as well as keeping in view all the facts and circumstances of the case, we find it difficult to agree with the stand taken on behalf of the assessee on this issue. In this regard, a reference can be made at the outset to the certificate issued by the society bearing No.237/4135/92 dated 22.7.1992 (copy at page 17 of assessee' paper book) which certifies that as per the records of the society, the membership 237 stands in the joint name of Smt. Chanan Devi Sachdeva and Shri Vipin Malik, resident of S-370, Greater Kailash, Part-II, New Delhi. There is no mention whatsoever to suggest or indicate any involvement of HUF in

the said membership or Vipin Malik holding the membership as Karta of the assessee-HUF. Page 11 of the paper book is a letter issued by the said society on 19.10.1995 giving details of amounts deposited by them aggregating to Rs.6,41,014/- upto 19.10.1995 which again was addressed to Smt. Chanan Devi Sachdeva and Shri Vipin Malik without there being any mention or indication of HUF. Page 12,14 and 15 are the Photostat copies of the receipts issued by the said society for payments made by the assessee on 31.10.95, 12.6.98 and 19.5.99 which again are issued in the name of two individuals without there being any mention of HUF. Page 13 is the ledger account extract from the books of the society for the period 1.4.96 to 31.3.97 with a title of account being "Chanan Devi Sachdeva and Vipin 237" which again goes to show that the membership was stated to be held jointly by the said individuals without there being any indication of HUF. The only document which contains the name of HUF with reference to Shri Vipin Malik as Karta of HUF is a possession certificate issued by the society on 30.4.2000 and a perusal of the copy of the said certificate placed at page No.16 of the assessee's paper book shows that the words "(KARTA), M/S VIPIN MALIK-HUF" are written in capital letters against the name of Shri Vipin Malik which appears in small letters. Even the manner in which the said words are written in the said certificate shows that the same are apparently added/inserted afterwards. Having regard to this patent anomaly apparent from the said certificate as well as keeping in view the fact that all the letters, certificates and receipts issued by the said society earlier did not contain any reference to HUF, we find it difficult to accept the stand of the assessee that the membership in the said society was held by it in the capacity of HUF and the investment made in construction of the said property was in its own name. On the contrary, the documentary evidence placed on record clearly shows that the said membership was standing in the joint name of Smt. Chanan Devi Sachdeva and Shri Vipin Malik in their individual capacity and an attempt to show the same as held on behalf of the HUF on the basis of possession certificate was clearly made as an afterthought to claim deduction u/s 54F from the capital gain arising from sale of property belonging to HUF."

10. Clearly, therefore, there was no question of applicability of Section 54 in the aforesaid facts and circumstances.

11. In view of the detailed finding of facts arrived at by the three authorities concurrently below, no substantial question of law arises and the appeal is, therefore, dismissed.

A. K. SIKRI, J

VALMIKI J. MEHTA, J

AUGUST 07, 2009/ib