IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND SHRI R.S. PADVEKAR, JUDICIAL MEMBER

ITA No.1143/PN/2012
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax
Circle – 3, Pune …. Appellant

Vs.

Shri Prakash Shivanrayan Bhootra
Office No. 601, 6th Floor, B-4,
Unit – C, Pridekumar Senate,
Senapati Bapat Road, Pune - 16

PAN : ABBPB2933K …. Respondent

Department by	:	Mr. K. K. Ojha
Assessee by	:	Mr. Vipin Gujrathi
Date of hearing	:	29-07-2013
Date of pronouncement	:	28-08-2013

ORDER

PER G. S. PANNU, AM

This appeal by the Revenue is directed against an order of the Commissioner of Income Tax (Appeals)-II, Pune dated 30.01.2012 which, in turn, has arisen from an order dated 24.12.2010 passed by the Assessing Officer, under Section 143(3) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2008-09.

2. In this appeal, although the Revenue has raised multiple Grounds of Appeal but the solitary issue relates to assessee's claim for exemption under Section 54 of the Act in relation to long term capital gain arising on sale of a residential house.

3. Briefly put the relevant facts can be summarized as follows. The assessee is an individual who filed his return of income for assessment year 2008-09 declaring total income at NIL which inter-alia contained long term

capital gain on sale of a residential house situated at Prabhat Road, Shivajinagar, Pune for a consideration of Rs.47,00,000/-. The assessee sold the said property on 06.06.2007 and the long term capital gain was computed at Rs.35,56,572/-. The said capital gain was claimed as exempt under Section 54(1) of the Act on the ground that assessee purchased a new residential house on 15.06.2006 for a total consideration of Rs.57,61,010/-. The new residential property comprised of Flat Nos. C-2/601 & C-2/602 in Shivnandan Towers, at Someswarwadi, Pune and the total amount invested was Rs.56,10,000/-. The assessee contended that since the amount of capital gain i.e. Rs.35,56,572/- was lesser than the cost of the new residential property purchased, the entire capital gain was exempt within the meaning of Section 54(1) of the Act.

4. Section 54 of the Act prescribes for exemption from levy of tax on capital gains where the assessee invests the long term capital gain in purchase of new asset within a period of one year before or two years after the date of transfer or in construction of new asset within a period of three years from the date of transfer of the original asset. In this case, assessee contended that the date of transfer of the original asset was 06.06.2007 and the date of purchase of the new asset was 15.06.2006, and, thus, the purchase of the new asset i.e. residential property was within a period of one year before the transfer of the original asset, and the cost of investment in the new asset was more than the capital gain earned of Rs.35,56,572/-, the entire capital gain was exempt under Section 54(1) of the Act.

5. The Assessing Officer has declined the claim of the assessee on the ground that the capital gain earned on the sale of the original asset was not appropriated towards the purchase of a new asset inasmuch as the new asset was purchased prior to the date of sale of the original asset and therefore it was a case where the payment towards purchase of new asset was made

from sources other than the sale proceeds of the original asset. According to the Assessing Officer, there was no identity between the sale proceeds of the original asset and the investment made towards purchase of the new asset and thus assessee's claim for exemption under Section 54(1) of the Act was denied.

6. The CIT(A) has however allowed the claim of the assessee by primarily relying on the decision of the Hyderabad Bench of the Tribunal in the case of Muneer Khan vs. ITO, 41 SOT 504 (Hyd) and also the judgement of the Hon'ble Bombay High Court in the case of CIT vs. P S Pasricha (2009) ITA No. 1825 of 2009 (Bom). Against the aforesaid, Revenue is in appeal before us.

7. The learned Departmental Representative has primarily reiterated the reasoning adopted by the Assessing Officer in the assessment order which we have already noted above and is not being repeated for the sake of brevity. Notably, the learned Departmental Representative has not brought out any decision contrary to those relied upon by the CIT(A) in deciding the issue in favour of the assessee.

8. The objection of the Assessing Officer that there was no identity between the sale proceeds of the original asset and the investment in the new asset has been specifically dealt with the Hyderabad Bench of the Tribunal in the case of Muneer Khan (supra) where it is held that ***"it is not necessary that the same fund must be used in purchasing of the new residential house and neither the law nor does any circular requiring the identity of the amount received on sale and utilization for purposes of Section 54F and other relevant provisions. Since law permits investment in a new property even before sale of property covered by Section 54, the law does not contemplate the identity of funds on sale for its investment.***

Since money has no colour, all that is required is compliance with the condition of investment within the specified time."

9. In-fact, similar objection in the context of 54(2) of the Act was considered by the Hon'ble Bombay High Court in the case of P S Pasricha (supra) and the relevant portion of the judgement has been also reproduced by the CIT(A) in para 3.5.1, which reads as under :-

> *"9. Having heard the rival submissions and from careful perusal of the orders of the lower authorities and provisions of Section 54 of the Act, we find that assessee has initially utilized the sale proceeds on sale of its residential flat in commercial properties and later on he purchased two residential flats within a period specified in Sub-section (2) of Section 54 of the Act, and these facts are not disputed by the Revenue. The Revenue's main disputed is that the sale proceeds were utilized for purchase of a commercial property and residential house was purchased out of the funds obtained from different sources, as such, the identity of heads has been changed. We do not find much force in this argument as the requirement of Section 54 is that the assessee should acquire a residential house within the period of one year before or two years after the date on which transfer took place. Nowhere, it has been mentioned that the same funds must be utilized for the purchase of the another residential house. The requirement of the Law is that, the assessee should purchase a residential house within the specified period and source of funds is quite irrelevant.*
>
> *10. Since the assessee has purchased the residential house before the due date of filing of the return of income, its claim is not hit by Sub-section (2) of Section 54 of the Act. We, therefore, are of the view that assessee is entitled for deduction under Section 54(1) of the Act."*

10. As per the parity of reasoning laid down by the Hon'ble Bombay High Court in the case of P S Pasricha (supra), the objection of the Assessing Officer that there should be identity between the sale proceeds of original asset and investment made towards the new asset for the purposes of allowing exemption under Section 54 of the Act is quite misplaced. As observed by the Hon'ble Bombay High Court, there is no requirement in Section 54 of the Act that the same funds must be utilized for the purchase of new asset. The requirement of law is to the effect that assessee ought to have

purchased the residential house within the specified period which in the present case is fulfilled and the source of funds is quite irrelevant. For the aforesaid reasons, we hereby affirm the order of the CIT(A), and the Revenue fails.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 28th August, 2013.

Sd/-	**Sd/-**
(R.S. PADVEKAR)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune, Dated: 28th August, 2013

Sujeet

Copy of the order is forwarded to: -

1) The Assessee;
2) The Department;
3) The CIT(A)-II, Pune;
4) The CIT-II, Pune;
5) The DR, "B" Bench, I.T.A.T., Pune;
6) Guard File.

By Order

//True Copy//

Sr. Private Secretary
I.T.A.T., Pune