

The Commissioner Of Income Tax ... vs Anurag Pandit on 14 May, 2019

Author: S.Muralidhar

Bench: S.Muralidhar, I.S.Mehta

\$~38

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ITA 1169/2018

THE COMMISSIONER OF INCOME TAX -INTERNATIONAL
TAXATION -2

..... Appellant

Through: Mr. Ruchir Bhatia, Senior Standing
Counsel for Revenue.

versus

ANURAG PANDIT

..... Respondent

Through:

Mr. Ajay Vohra, Senior Advocate
with Mr. Rohit Jain and Mr. Aniket
D. Agrawal, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

% 14.05.2019

1. This is an appeal by the Revenue directed against an order dated 23rd May 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4159/DEL/2016 for the Assessment Year 2013-14. The question is ought to be urged by the Revenue is whether the ITAT erred in holding that the claim of the Assessee to get the benefit of the deduction under Section 54 /54F of Income Tax Act, 1961 (Act) can be allowed, even where the investment was made in a residential house outside India for the AY in question.

2. The facts in brief are that the Assessee is a non-resident settled in the United States of America. During the AY in question, the Assessee had sold his share in a rented house in New Delhi, the cost of acquisition of which after indexation was shown as Rs. 87,80,287/-. The Assessee also claimed transfer expenses of Rs.11,99,443/- and arrived at a long term capital gain of Rs. 1214,20,270/-.

3. The Assessee invested Rs. 8,70,97,925/- in purchasing a residential property in Boston, USA. The balance amount of Rs. 3,43,22,345/- was declared as long term capital gains.

4. The Assessing Officer took the view that the Assessee's claim for exemption under Section 54 of the Act was outside the purview of Section 54 read with Section 54F of the Act since the residential property purchased from the capital gains was located outside India. After the Commissioner of Income Tax (Appeals) confirmed the assessment order by an order dated 11th May 2016 the

Assessee appealed to the ITAT. The ITAT has noted that the amendment made under Section 54 of the Act by inserting the words 'in India' to follow the words 'has within a period of three years after that date constructed a residential house' was prospectively with effect from 1st April 2015. Following the decision of the Gujarat High Court in Leena Jugalkishor v. ACIT Shah (2017) 392 ITR 18 (Guj) which held likewise, the ITAT allowed the appeal of the Assessee.

5. Mr. Ruchir Bhatia, learned senior standing counsel for the Revenue referred to the decision of the Supreme Court in American Hotel & Lodging Association Education Institute 2008 170 Taxman 306 (SC), where the Supreme Court was considering whether the exemption under Section 10 (23C) (vi) of the Act should be extended to an Assessee who is imparting education in India, despite there being no expenses provision in that regard.

6. The context in which Section 10 (23C) (vi) of the Act allows an exemption and the context in which an exemption from capital gains is allowed under Section 54F is entirely different. Further the Court finds that the legislative intent has been made explicit by inserting the amendment to require to purchase/construction of the residential property in India only with effect from 1st April 2015. As rightly held by the Gujarat High Court "prior to amendment to Section 54F of the Act, the only condition stipulated was investment in a residential house. When the Section 54F of the Income-tax Act was clear and unambiguous, there is no scope for importing into the statute the words which are not there. Such important would be not to construe but to amend the statute. If there is any defect in the Act, it can be remedied only by the legislation and not by judicial interpretation".

7. Mr. Ajay Vohra, learned senior counsel appearing for the Assessee further points out that the above decision of the Gujarat High Court has been accepted by the Department, as is noted by the Authority for Advance Ruling in paragraphs 10.4 of its decision in Dipankar Mohan Gupta, In re AAR 2018 401 ITR 129 (AAR).

8. In that view of the matter, the Court finds that the ITAT has committed no legal error in allowing the appeal of the Assessee.

9. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J MAY 14, 2019 nd