IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 569 OF 2003

Krishnagopal B. Nangpal ***….Appellant***

: Versus :

Dy. Commissioner of Income Tax
Special Range – 3, Pune ***….Respondent***

Mr. Nishant Thakkar with Ms. Jasmin Amalsadwala and Mr. Bhavesh Bhatia i/b Lumiere Law Partners, *for the Assessee-Appellant.*

Mr. Akhileshwar Sharma, *for the Revenue-Respondent.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Judgment Reserved on : 17 July 2025.

Judgment Pronounced on : 22 July 2025.

JUDGMENT *(Per Sandeep V. Marne, J.)***:**

1) The Assessee has filed the present appeal under provisions of Section 260 (A) of the Income Tax Act, 1961 (**the Act**) challenging the judgment and order dated 7th March 2003, passed by Income Tax Appellate Tribunal, Pune Bench dismissing his Appeal to the extent of exemption on capital gains under Section 54 of the Act arising out of sale proceeds of a flat in Mumbai used towards purchase of seven row houses in Pune. The appeal has been admitted by a Bench of this Court

vide order dated 29th October 2004 on the following substantial question of law :

> On the facts and in the circumstances of the case, whether the Appellant is entitled for availing deduction under Section 54 of the Income Tax Act, 1961 against the entire capital gain arising out of sale of his flat in Mumbai in as much as he has invested the sale proceeds from the sale of his flat at Mumbai by joint venture agreement with Samant Estate Pvt. Ltd. for acquisition/construction of the 7 row houses in their project at Yashodanandan Viman Nagar, Pune ?

2) The solitary issue that arises for consideration in this appeal is whether Section 54(1) of the Act allows the Assessee to set off the purchase cost of more than one residential units against the capital gains earned from sale of a single residential house.

3) A brief reference to the facts of the case would be necessary to appreciate the controversy at hand. Residential Flat No. 30 situated at Prabhat Building, 28 B Road, Marine Drive, Mumbai-400020 (**Mumbai Flat**) was owned by Appellant's mother late Smt. Vishnabai Nangpal. Appellant's mother executed Will on 23rd December 1988 and bequeathed the said Mumbai Flat to the Appellant. One Madan Samant was appointed as guardian of the Appellant, since he was minor at that time. Appellant's mother expired on 30th August 1990. Mr. Madan Samant, in his capacity as Appellant's guardian, entered into an agreement for sale of the Mumbai Flat on Appellant's behalf on 08th September 1993 for a consideration of Rs.1,45,00,000/-. The purchasers paid the amount of Rs. 45,00,000/- to the Appellant on the date of execution of the agreement. An application was made on Appellant's behalf to the Income Tax Department in February 1994 for clearance under provisions of Chapter XXA of the Act and the appropriate authority issued "No Objection Certificate" for transfer of the flat. On 17th April 1994, purchasers paid balance amount of consideration of Rs.1 crore to the Appellant who handed over possession of the flat to

the purchasers. On 20th June 1995, Appellant entered into joint venture agreement with Samant Estate Private Limited for construction of residential house in their project Yashodanandan situated at Vimannagar, Pune and invested therein entire sale proceeds of the said flat. During assessment year 1994-95 or 1995-96, the Appellant did not file any return of income. Proceedings of search under Section 132 (1) of the Act were initiated on 19th June 1996 against the Appellant. Appellant entered into 5 agreements with Samant Estate Private Limited on 22nd July 1995 for allotment of 5 row houses. The said agreement was cancelled and a fresh agreement was entered into on 28th July 1995 for allotment of 7 row houses in the project Yashodanandan at Vimannagar, Pune.

4) In the above factual background, Appellant received notice under Section 158 BC of the Income Tax Act, 1961 on 13th September 1996. Appellant filed return on 22nd April 1997 for the block period declaring undisclosed income at Rs.13,41,350/-. On 21 July 1997, Appellant filed revised return for the block period of 1987-88 to 1996-97 disclosing that the total undisclosed income for the block period was Rs.51,20,990/-. He showed Nil income for assessment year 1994-95 and 1995-96 stating that he had invested the entire capital gain of Rs.1,08,30,625/- arising out of sale of his flat at Mumbai for acquisition/construction of the 7 row houses in a joint venture with Samant Estate Private Limited and that therefore he was entitled for exemption under Section 54 of the Act against the entire capital gain on sale of his flat. The Deputy Commissioner of Income Tax, Special Range-3 Pune passed assessment order dated 27th June 1997 disallowing the deduction under Section 54 of the Act against capital gain of Rs.1,08,30,625/- arising out of Appellant's flat at Mumbai for assessment year 1995-96. Appellant preferred appeal before the Income Tax Appellate Tribunal, Pune Bench, Pune **(ITAT)** against the order passed by the Deputy Commissioner

claiming exemption under Section 54 of the Act against capital gain of Rs.1,08,30,625/-. The ITAT has partly allowed the appeal preferred by the Assessee directing the Assessing Officer to consider investment made in acquiring/construction of only one row house bearing B-16 worth Rs.21,78,000/- as qualifying for exemption under Section 54 of the Act while computing the long term capital gain arising out of sale of flat at Mumbai for a total consideration of Rs.1,45,00,000/-. Being aggrieved by the order dated 7th March 2003, passed by ITAT in respect of block assessment years 1987-88 to 1996-97, the Assessee has preferred the present appeal under Section 260A of the Act.

5) Mr. Thakkar the learned Counsel appearing for Assessee would submit that the Assessee is entitled to exemption against the entire capital gain of Rs.1,08,30,625/- which amount was invested for purchase of seven row houses by him. He would demonstrate the comparison between provisions of Section 54(1) of the Act prior to and after its amendment by Finance (No. 2) Act, 2014. He would submit that the unamended Section 54(1) of the Act used the expression 'a residential flat' as against use of the expression 'one residential house in India' in the amended Section 54(1) of the Act. That the words 'a residential house' are merely descriptive of nature of the asset and not restrictive of the number of assets sold/purchased. That since the Section 54 (1) covers sale of "lands and building" (*i.e. in plural*), there is no reason why purchase or construction of residential house should not be interpreted to be in the plural and be restricted to only 'one' residential house as canvassed by the Revenue. That the phrase 'a residential house' is only meant to qualify the nature of asset purchased/sold, viz. what is sold or purchased cannot be a commercial asset/premises. That amendment made by Finance (No. 2) Act, 2014 makes it explicitly clear that the restriction of exemption of capital gain against 'one residential house' is made applicable prospectively, i.e.

with effect from 01st April 2015. That, it is absurd to interpret the expression 'a residential house' as 'one house' especially in the context of HUF/large families selling one house and relocating into another house comprising of multiple units. That Section 13 of General Clauses Act, 1897 provides singular to include plural. That even if two views are possible, the view in favour of the Assessee must be adopted since provisions of Section 54 (1) are beneficial in nature and must be interpreted liberally. He would rely on judgment of the Apex Court in ***Mavilayi Service Co-operative Bank Ltd. and Ors. Vs. CIT & Anr.***[1].

6) Mr. Thakkar would further submit that the ITAT has held that all the 7 houses are contagious and in fact 6 of the said 7 units are interconnected with a common entrance. Despite recording such finding, the ITAT has erroneously treated the same as separate units. That the ITAT has erred in relying on judgment of this Court in ***K. C. Kaushik Vs. P. B. Rane***[2]. He would rely upon Karnataka High Court in ***Arun K. Thiagarajan Vs. CIT (Appeals)***[3] submitting that similar issue has already been answered in favour of the Assessee. He would also rely upon judgment of Madras High Court in ***Tilokchand & Sons Vs. ITO***[4] and of Delhi High Court in ***CIT Vs. Gita Duggal***[5]. He would further submit that the reliance placed by the ITAT on subsequent letting of one of the row houses after 3 years of assessment year 1989-90 is clearly erroneous. That Karnataka High Court was confronted with the similar situation in ***CIT Vs. D. Ananda Basappa***[6] where occupation of flats by two different tenants was found to be irrelevant factor by the Karnataka High Court. That department's SLP against the said decision has been dismissed. On above broad submissions, Mr. Thakkar would

1 AIR 2021 SC 612
2 1990 (1) 85 ITR 499 (BOMBAY)
3 2020 (427) ITR 190 (KARNATAK)
4 2019 (413) ITR 189 (MADRAS)
5 (2013) 357 ITR 153 (DELHI)
6 2009 (309) ITRA 329 (KARNATAKA)

pray for setting aside the order passed by the ITAT and for answering the question of law in favour of the Assessee.

7) The appeal is opposed by Mr. Sharma, the learned Counsel appearing for the Revenue. He would submit that the concurrent findings recorded by the department and ITAT do not warrant any interference in exercising appellate jurisdiction by this Court under Section 260A of the Act. That the interpretation placed by the ITAT on provisions of Section 54(1) of the Act, after taking into consideration the ratio of judgment of this Court in ***K.C. Kaushik*** (supra), is perfectly valid. That judgment of this Court in ***K.C. Kaushik*** was not brought to the notice of Karnataka High Court while deciding ***Arun K. Thiagarajan*** (supra). He would submit that in the light of ITAT, Mumbai taking contrary view in some of the cases involving multiple houses, a Special Bench of ITAT was constituted in ***ITO Vs. Ms. Sushila M. Jhaveri***[7] and by judgment and order dated 17th April 2007, the Special Bench has ruled that the exemption under provisions of Section 54 of the Act is allowable in respect of only one residential house. That the Special Bench of ITAT has followed *inter alia* the judgment of this Court in ***K.C. Kaushik.*** That the attention of Karnataka High Court while deciding ***Arun K. Thiagarajan*** (supra) was not brought to the judgment of special Court in ***ITO Vs. Ms. Sushila M. Jhaveri*** (supra)**.** That the Legislature has intended to give different meanings to the words 'any' and 'a' in different Sections of the Act and has consciously used the words 'a residential house' instead of using the words 'any residential house'. That the word 'a' is intended to mean only one residential house unlike use of the word 'any' to convey investments in one or more assets. That the only exemption recognised by the Special Bench is where more than one residential house is connected by common kitchen. That in the present case, separate kitchens exist for 7

7 2007 (107) ITD 327 (Mumbai)

row houses and the claim of the Assessee has rightly been rejected. That the judgment of the special bench in ***ITO Vs. Ms. Sushila M. Jhaveri*** continues to apply and has not been reversed by any Court. He would also rely upon judgment of Punjab and Haryana High Court in ***Pawan Arya Vs. CIT***[8], of this Court in ***CIT Vs. Raman Kumar Suri***[9] (two houses joined together) and ***CIT Vs. Devdas Naik***[10]**.** On above broad submissions, Mr. Sharma would pray for dismissal of the Assessee's appeal.

8) Rival contentions of parties now fall for our consideration.

9) The short issue that arises for consideration in the present Appeal is whether the Assessee is entitled to claim exemption under provisions of Section 54(1) of the Act against the entire capital gains of Rs.1,08,30,625/- arising out of sale of his flat in Mumbai, on account of utilization thereof towards purchase of seven row houses in Pune ? To paraphrase, the issue for consideration is whether sale proceeds of one residential house, used for purchase of multiple residential houses, would qualify for exemption under Section 54(1) of the Act ?

10) Before proceeding further, it must be noted that the case pertains to the Assessment Year 1995-96, and accordingly, provisions of Section 54(1) of the Act, prior to its amendment by Finance (No. 2) Act, 2014, are relevant. The unamended Section 54(1) of the Act read thus:

> **"54. Profit on sale of property used for residence.**
>
> (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the **transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house,** the income of which is chargeable under the head Income from house property (hereafter in this section referred to as the original asset), and

8 2011 (237) CTR 210 (P & H)
9 2014 (3) ITR OL 127 (BOMBAY)
10 2014 (366) ITR 12 (BOMBAY)

> 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**, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,..."
>
> *(emphasis supplied)*

11) After amendment by Finance (No. 2) Act, 2014, provisions of Section 54 (1) of the Act read thus:

> **"54. Profit on sale of property used for residence.**
>
> (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the **transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house,** the income of which is chargeable under the head "Income from house property" (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, **one residential house** in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say-,..."
>
> *(emphasis supplied)*

12) For purpose of the present appeal, what is relevant is replacement of the expression 'a residential house' by the expression 'one residential house' by way of 2014 amendment. Prior to the 2014 amendment, capital gains arising from transfer of a long term capital asset, including a residential house, qualified for exemption if the same was invested for purchase or construction of 'a residential house'. The department has disallowed the claim of the Assessee for adjustment of the entire capital gain arising of sale of the flat in Mumbai, on the ground that the Assessee has purchased seven row houses in project at Pune. According to the department, exemption under Section 54 (1) of the Act is applicable only in respect of investment made in purchase of only one residential house and is not permissible for the purchase of multiple residential houses. The ITAT has accordingly granted the

benefit of Section 54(1) of the Act in respect of one of the seven row houses purchased by the Assessee.

13) In our view, the amendment brought in by Finance (No.2) Act 2014 makes the position clear that after the amendment, the capital gains can be adjusted against purchase of only 'one' residential house. The word 'a' is consciously replaced by the legislature by the word 'one' by way of amendment making the intention clear that after the amendment, it is impermissible to adjust the capital gains arising out of one house towards purchase of more than one houses. If the restriction of adjustment of capital gains against only one house was already there in the unamended Section 54(1), there was no necessity of amendment by specifically using the word 'one'.

14) The Tribunal has relied on judgment of Single Judge of this Court in ***K.C. Kaushik*** (supra) while rejecting Assessee's claim in respect of all seven row houses and while allowing the same only against one row house. However, while deciding the case in ***K.C. Kaushik***, this Court did not have the benefit of comparing the amended and unamended provisions of Section 54(1) of the Act. Also, the issue involved before Single Judge of this Court in ***K.C. Kaushik*** was altogether different. In that case, the Assessee had sold the residential house in the year 1979 and had purchased one residential house in the year 1979, and a second residential house in 1980. The cost of second residential house (brought in 1980) was sought to the set off by the Assessee against the capital gains earned from the sale of original residential property. The Assessing Officer permitted set off for the cost of the first residential house and not the second residential house, and accordingly, granted partial relief under Section 54 of the Act. In a revision application filed under Section 264 of the Act by the Assessee, the Commissioner held that the Assessee was right in claiming set off

with respect to the second house. However, since the second house was not occupied by the Assessee and was rented out within 3 years after its purchase, the Assessee was held not entitled to claim relief under Section 54 (1) of the Act. It was this finding of the Commissioner, which became subject matter of challenge in a writ petition filed by the Assessee before the learned Single Judge of this Court. This Court was not called upon to consider correctness of decision of the Commissioner in holding that the Assessee was entitled to set off the cost of acquisition of the second residential house purchased against the capital gains arising out of the sale of the original residential property. The issue of setting off cost of acquisition of multiple residential houses was never involved before this Court. The issue before this Court was about the act of the Assessee of letting out the second residential property within a period of 3 years of its purchase and whether such act would disentitle him from claiming the cost of second residential property as a set off against the capital gain of the original residential property. This issue was answered in favour of the Assessee and against the revenue. In our view therefore, the judgment in ***K.C. Kaushik*** cannot be read in support of a proposition that capital gains can be adjusted against only one residential house.

15) On the other hand, the issue involved in the present case appears to be squarely covered by the judgment of the Karnataka High Court in ***Arun K. Thiagarajan*** (supra), authored by one of us (*The Chief Justice*). In the case before Karnataka High Court, the Assessee owned a residential property in Chennai, which was sold on 9th October 2002 and in the return of income, the Assessee declared long term capital gain arising out of the sale of the said property of Rs.15,44,009/- by claiming deduction under Section 54 of the Act in respect of two properties purchased in Bangalore on 23rd September 2002 and 23rd October 2002. The Assessing Officer, however, held that the Assessee

was not entitled to claim deduction under Section 54 of the Act in respect of investment made in acquiring two residential properties. The issue for consideration is formulated in paragraph-2 of the judgment as under :-

> 2. The issue, which arises for consideration in this appeal is whether the assessee is entitled to claim exemption under Section 54 of the Act as he had purchased more than two houses. In order to appreciate the factual background, in which the aforesaid issue arises for considertion, reference to relevant facts is necessary, which are stated hereinafter.

After taking into consideration the unamended provisions of Section 54 of the Act, the Division Bench held in paragraphs 11 to 15 as under :-

> "11. From close scrutiny of the aforesaid provision, it is axiomatic that property sold is referred to as original asset and the original asset is prescribed as buildings and lands appurtenant thereto and being a residential house. **The expression 'a residential house' therefore, includes building or lands appurtenant thereto. It cannot be construed as one residential house.**
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> 12. **A Bench of this court in case of *Smt. KG Rukminiamma (supra)* dealt with the meaning of expression 'a residential house' used in Section 54(1) of the Act while taking into account Section 13(2) of the General Clauses Act, 1897 held that unless there is anything repugnant in the subject or context, the words in singular shall include the plural and vice versa.** It was further held that context in which the expression 'a residential house' is used in Section 54 makes it evident that it is not the intention of the legislature to convey the meaning that it refers to a single residential house. It was also held that an asset newly acquired after sale of original asset can also be buildings or lands appurtenant thereto, which also should be residential house, therefore, the letter 'a' in the context it is used should not be construed as meaning singular, but the expression should be read in consonance with other words viz., buildings and lands. Accordingly, the contention raised by the revenue was rejected. **Similar view was taken by a bench of this court in *Khoobchand M. Makhijasupra, B. Srinivassupra* and in the case of *Smt. Jyothi K Mehtasupra.* The Madras High Court while dealing with Section 54 of the Act as it stood prior to amendment by Finance Act No. 2/2014 in the case of *Tilokchand & Sons supra* took the similar view and held that the word 'a' would normally mean one but in some circumstances it may include within its ambit and scope some plural numbers also. The Delhi High Court also took the similar view in case of *Gita Duggal supra*.**
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> 13. It is well settled in law that an Amending Act may be purely clarificatory in nature intended to clear a meaning of a provision of the principal Act, which was already implicit. [See: Decision of The Supreme Court In *CIT v. Ram Kishan Das* [2019] 103 taxmann.com 414/263 Taxman 657/413 ITR 337. **In view of aforesaid enunciation of law by different**

High Courts including this court and with a view to give definite meaning to the expression 'a residential house', the provisions of Section 54(1) were amended with an object to restrict the plurality to mean singularity by substituting the word 'a residential house' with the word 'one residential house'. The aforesaid amendment came into force with effect from 1-4-2015. The relevant extracts of Explanatory note to provisions of Finance (No. 2) Act, 2014 reads as under:

> 20.3 Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-Section (1) of Section 54 of the Income-Tax Act has been amended to provide that the rollover relief under the said Section is available if the investment is made in one residential house situated in India.
> 20.5 Applicability:- These amendments take effect from 1st April, 2015 and will accordingly apply in relation to Assessment year 2015-16 and subsequent Assessment years.

Thus it is axiomatic that the aforesaid amendment was specifically applied only prospectively with effect from Assessment year 2015-16.

14. **The subsequent amendment of Section 54(1) also fortifies the fact that the legislature felt the need of amending the provisions of the Act with a view to give a definite meaning to the expression 'a residential house', which was interpreted as plural by various courts by taking into account the context in which the aforesaid expression was used**. The subsequent amendment of the Act also fortifies the view taken by this court as well as Madras High Court and Delhi High Court. It is trite law that the principle underlying the decision would be binding as precedent in a case. In Halsbury Laws of England, Volume 22, Para 1682, Page 796, the relevant extract reads as under:

The enunciation of the reasons or principle on which a question before a court has been decided is alone binding as a precedent. This underlying principle is often termed the ratio decided, that is to say, the general reasons given for the decision or the general grounds on which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision.

15. This Court as well as Madras and Delhi High Court have interpreted the expression 'a residential house' and have held that the aforesaid expression includes plural. The ratio of the decisions rendered by coordinate bench of this court are binding on us and we respectively agree with the view taken by this court while interpreting the expression 'a residential house'. Therefore, the contention of the revenue that the assessee is not entitled to benefit of exemption under Section 54(1) of the Act in the facts of the case does not deserve acceptance
In view of preceding analysis, the substantial question of law framed by this court is answered in favor of the assessee and against the revenue. In the result. The order passed by the assessing officer and Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal insofar

as it deprives the assessee of the benefit of exemption under section 54(1) of the Act are hereby quashed and the assessee is held entitled to benefit of exemption under section 54(1) of the Act. In the result, the appeal is allowed."

16) The Karnataka High Court took into consideration ratio of Division Bench judgment of Madras High Court in ***Trilokchand & Sons*** (supra), in which similar issue was involved. It is held in paragraphs 20 and 21 of the judgment in ***Tilokchand & Sons*** as under :-

"20. We have discussed about the two decisions from the Karnataka High Court, which, in our opinion, dealt with similar controversy as is raised before us herein. The only difference which we find is that the purchase of the residential houses in the present case is at different address in the same city of Madurai. In *D. Ananda Basappa* case stated (*supra*), two flats in question were admitedly adjacent to each other and which were joined to become one residential house. In the case of *Khoobchand M.Makhija* (supra), two door nos are given viz., 623 and 729, but the complete addresses and even the name of the city is not clear in the facts narrated in the said Judgment. But in our considered opinion, the difference of location of the newly purchased residential house(s) will not alter the position for interpretation of the word 'a residential house' to the effect that it may include more than one or plural residential houses, as held by Karnataka High Court, with which we respectfully agree. The location of the newly purchased houses by the same assessee viz., HUF out of sale consideration received on the sale of original capital Asset or a residential house in the given circumstances of availability of such residential houses as per the requirement of the HUF will not alter the position of interpretation.

21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the words 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y. 2015-2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same Assessee should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to

> deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee-HUF in the present case, in our opinion, complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in *D Ananda Basappa (supra)* & *Khoobchand M. Makhija (supra)* cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case."

17) Thus, the Madras High Court in ***Tilokchand & Sons*** (supra) has held that the word 'a' used in Section 54, prior to the amendment and substitution by the word 'one' with effect from 1st April 2015, itself means that there was provision in the unamended Section 54 to include plural units of residential houses, which is a reason why the amendment was necessary. The Madras High Court has also held that even if the multiple houses are purchased bearing different addresses, the same did not make any difference, so long as the same Assessee has purchased the same out of sale consideration of the sold house.

18) Both Karnataka High Court in ***Arun K. Thiagarajan*** and Madras High Court in ***Tilokchand & Sons*** have also referred to another judgment of Karnataka High Court decision in ***CIT Vs. Khoobchand M. Makhija***[11]. The Madras High Court also took note of another judgment of Karnataka High Court in ***CIT Vs. D. Ananda Basappa***[12]. The Madras High Court also took note of the fact that the Special Leave Petition preferred by the Revenue against the judgment in ***D. Ananda Basappa*** was dismissed by the Supreme Court. The Delhi High Court in ***CIT Vs. Geeta Duggal*** (supra) has also adopted the same view. Thus, the issue involved in the present appeal is squarely covered by several judgments as discussed above.

11 (2014) 43 taxmann.com 143/223
12 (2009) 309 ITR 329/180 Taxman 4

19) Thus, the position appears to be fairly well settled that use of the words 'a residential house' in unamended Section 54 (1) of the Act would not mean a single residential house and the contemplated even multiple residential houses. The emphasis in the unamended Section 54 (1) of the Act is on residential nature of the property and the objective was never to restrict the number of residential houses purchased against capital gains. The words 'a residential house' were merely descriptive nature of the assets sold/purchased and not restrictive of the number of assets sold or purchased. The position got modified by the Legislature only w.e.f. 01 April 2015.

20) Mr. Sharma has strenuously relied on the judgment of Special Bench of ITAT in ***ITO Vs. Ms. Sushila M. Jhaveri***(supra) which does not bind this Court, and therefore, it is not necessary to discuss the ratio of the said judgment. We have already distinguished the judgment of Single Judge of this Court in ***K. C. Kaushik*** which was relied upon by the Special Bench of ITAT in ***Sushila M. Jhaveri.*** Also, as against the Special Bench judgment of ITAT, there are subsequent judgments of Division Benches of Karnataka and Madras High Court, which squarely answer the issue involved in the present appeal.

21) Also of relevance is the fact that the provisions of Section 54(1) of the Act are beneficial in nature. The benevolent provision is aimed at encouraging the house purchase activities. It therefore needs to be read literally and reasonably. Therefore, even though two interpretations of the provisions of unamended Section 54(1) of the Act may be possible, the one in favour of the Assessee will have to be accepted. Reliance in this regard by Mr. Thakkar on Apex Court judgment in ***Mavilayi Service Coop Bank Ltd.*** (supra) is apposite.

22) What remains now is to deal with three judgments relied upon by Mr. Sharma:

(a) In ***Pawan Arya Vs. CIT*** (supra), the Division Bench of Punjab and Haryana High Court has refused to admit the appeal of the Assessee. The attention of the Division Bench was invited to the judgment in Karnataka High Court in ***D. Ananda Basappa,*** which was sought to be distinguished by holding that exemption against purchase of two flats was allowed having regard to the fact that both the flats were treated as one house, as both were combined to make one residential unit. However, after the order passed by the Punjab and Haryana High Court in ***Pawan Arya*** on 13th December 2010, the Karnataka High Court in ***Khoobchand M. Makhija*** (decision rendered in 2014) and ***Arun K. Thiagarajan*** (decision rendered in 2020) have interpreted the provisions of unamended Section 54 (1) of the Act for holding that the expression 'a residential house' would also include within its ambit and scope, plural number as well. Similarly, at the time of passing the order in ***Pawan Arya***, the Division Bench of Punjab and Haryana High Court did not have benefit of subsequent amendment brought about by the Finance (No.2) Act, 2014. The effect of the said amendment has been discussed by the Madras High Court in ***Tilokchand & Sons*** and by Karnataka High Court in ***Arun K. Thiagarajan.*** Therefore reliance on the order of Punjab and Haryana High Court in ***Pawan Arya*** does not assist the case of Revenue.

(b) The judgment in ***Raman Kumar Suri*** (supra), a decision rendered prior to amendment of Section 54 (1) of the Act, has been rendered purely in the facts of the case where two flats

were joined together, and therefore, the exemption under Section 54 (1) of the unamended Act was held to be admissible. In fact, in the present case, the Assessee has contended that 6 of 7 row houses were joined by common passage and ought to have been treated as one residential unit, and in that sense, the judgment of this Court in ***Raman Kumar Suri*** (supra) may assist the case of Assessee. However, we need not go into that issue as we have held that the expression 'a residential house' in unamended Section 54(1) of the Act would also include multiple houses as well.

(c) The judgment of this Court in ***CIT Vs. Devdas Naik*** (supra) is again rendered considering peculiar facts where two flats were purchased under two distinct agreements from different sellers but there was a common kitchen for both the flats and the flats were converted into one unit for the purpose of residence of the Assessee.

23) Considering the overall conspectus of the case, we are of the view that the issue involved in the present case is squarely covered by the judgments of Karnataka High Court in ***Arun K. Thiagarajan*** and of Madras High Court in ***Tilokchand & Sons.*** We are in respectful agreement with the view expressed therein that the expression 'a residential house' in unamended Section 54(1) of the Act includes more than one residential house.

24) In view of the foregoing analysis, the Appeal is **allowed.** The substantial question of law formulated by this Court is answered in favour of the Assessee and against the Revenue. In the result, the order passed by the Assessing Officer and the ITAT, to the extent of deprivation of benefit

of exemption under Section 54 (1) of the Act is hereby quashed and set aside and the Assessee is held entitled to the benefit of exemption under provisions of Section 54(1) of the Act against the entire capital gains of Rs.1,08,30,625/- arising out of sale of his flat in Mumbai, on account of utilization thereof towards purchase of seven row houses in Pune.

[SANDEEP V. MARNE, J.] [CHIEF JUSTICE]