

Sec. 54F : Two adjacent flats won't form two residential units though purchased by separate sale deeds

Summary – The High Court of Madras in a recent case of Abhijit Bhandari, (the Assessee) held that where as per survey report, two adjacent flats purchased by assessee formed a single residential unit, mere fact that subject flats were purchased by two separate sale deeds and had separate electricity meter connections, would not necessarily lead to conclusion that there were two separate residential units and, thus, assessee's claim for deduction under section 54F could not be rejected on said basis

Facts

- During relevant year, assessee earned capital gain from sale of shares. In order to avail the benefit of section 54F, assessee took a decision to invest the amount received in two residential flats. The flats were, admittedly, adjacent to each other.
- The assessee got executed two separate sale deeds with respect to the subject flats. However, it was assessee's case that, since, his intention was to convert the two adjoining flats into a single residential unit, upon receipt of the NOC, he had commenced the modification and renovation works. In response to letter written to the housing society, assessee was informed that since he had in his possession a single residential unit, he would be entitled to a single vote.
- The assessee thus filed his return claiming deduction under section 54F. The Assessing Officer passed assessment order under section 143(3) allowing assessee's claim.
- The Commissioner passed a revisional order taking a view that the flats purchased by the assessee were two separate residential units and hence, he was not entitled to claim the benefit, which might otherwise have been available to him under section 54F.
- On writ :

Held

- A perusal of the impugned order would show that the respondent has set aside the order and directed the Assessing Officer to revisit the issue, as according to him, he had faulted to take into account the fact that the subject flats had been purchased via two separate sale deeds, and had separate electricity meter connections. It appears that the respondent was unnecessarily burdened by the fact that the subject flats were purchased by two separate sale deeds and had separate electricity meter connections. The issue at hand before the Assessing Officer was whether or not the subject flats formed a single residential unit.
- The size of the flat, or, that they had separate electricity meter connections would not, necessarily, lead to a conclusion that they were two separate residential units. The Assessing Officer was required to look at other attendant circumstances, which included the survey report, in reaching a conclusion in the matter. Notably, what was available on record, was not only the survey report, but

also the material provided by the concerned housing society. The survey report, as it appears, did advert to the fact that the subject flats formed a single residential unit.

- The revenue has not assailed the survey report. Therefore, quite clearly, there was material available to the Assessing Officer to come to a possible view, if not, definite view that the subject flats formed a single residential unit.
- If, that be the conclusion, then, clearly, the respondent had no jurisdiction to initiate proceedings under section 263 and thereupon, proceed to pass the impugned order.
- In view of the aforesaid conclusion, the preliminary objection taken by revenue that the writ petition ought not to be entertained, would have to be rejected. It would be trite to say that an order passed without jurisdiction can be interfered with in writ proceedings.
- For the foregoing reasons, the impugned order is set aside. The writ petition is allowed.