

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

INCOME TAX APPEAL (L) NO. 1583 OF 2012

The Commissioner of Income Tax-21 ..Appellant
versus
Ms. Chhaya B. Parekh ..Respondent

Mr. Abhay Ahuja for the Appellant.

Dr. Shivram with Mr. Paras Savla for the
Respondent.

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**CORAM : J.P. DEVADHAR &
M.S. SANKLECHA, JJ.**

DATE : 24th January, 2013

P.C. :

In this appeal by the revenue, the following question of law has been proposed for our consideration.

Whether on the facts and circumstances of the case and in law, the Tribunal was correct in confirming the order of CIT(A) allowing the assessee's claim of exemption u/s 54F of the Act even though the Juhu Bungalow which the Assessee had purchased as co-owner had been demolished much before completing 3 years of purchase and no new bungalow was constructed thereby violating the condition u/s 54F(3) of the Act that the new property should not be

transferred within a period of three years and also ignoring that the facts in the Supreme Court case of Vania Silk Mills P. Ltd. v. CIT (SC) 191 ITR 647 were clearly distinguishable from the facts of this case?

2 The basic dispute between the parties is whether the respondent-assessee is entitled to benefit of Section 54E of the Income Tax Act, 1961 (the Act) when the asset is demolished within a period of three years from its purchase.

3 The revenue does not dispute the entitlement of the respondent-assessee under Section 54F of the Act on the purchase of the bungalow property. However, the grievance of the revenue is that as the respondent had demolished the bungalow within 3 years of its purchase, the same would amount to transfer and would be hit by Section 54F(3) of the Act. Consequently, in the previous year relevant to the assessment year under consideration the capital gain tax would be payable on the amounts not charged due to the benefit availed of Section 54F of the Act as held

by the assessing officer in his order dated 30.10.2009.

4 The Commissioner of Income Tax (Appeals) (the CIT(A)) by his order dated 18.03.2010 allowed the appeal of the respondent-assessee. The CIT(A) held that the demolition of the structure would not constitute a transfer of the assets in terms of Section 54(3) of the Act. Being aggrieved the revenue carried the matter in appeal to the Tribunal. By order dated 16.05.2012, the Tribunal dismissed the appeal of the revenue by placing reliance upon the decision of the Apex Court in the matter of Vania Silk Mills P. Ltd. v. CIT, reported in 191 ITR 647. In the above case, the Apex Court has held that when an asset is destroyed, there is no question of transfer taking place under the Act. The Apex court held that in terms of the Act that the words 'Extinguishment of any right' in Section 2(47) of the Act, does not include an extinguishment of right on account of destruction. It has to be an extinguishment of right on account

of transfer. Thus, a destruction of assets when not on account of any transfer would not be hit by Section 54F(3) of the Act.

5 Counsel for the revenue seeks to distinguish the decision of the Apex Court in the matter of Vania Silk Mills P. Ltd. (Supra) that the destruction in that case took place because of fire and hence it was involuntary. This distinction is of no consequence. In our view of the decision of the Apex Court in Vania Silk Mills (Supra) would squarely apply to the facts of the present case.

6 In view of the above, we see no reason to entertain the proposed question of law. Accordingly, the appeal is dismissed with no order as to costs.

(M.S. SANKLECHA, J.)

(J.P.DEVADHAR, J.)