

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.6883/MUM/2014 (AY. 2011-12)

Income-tax Officer 3(1),
Room No.114, 1st Floor,
Scindia House, Ballard Pier,
N.M.Road, Mumbai 400 038

..... Appellant

Vs.

Mr. Nishant Lalit Jadhav,
Flat No.601, 6th Floor,
Madhuban CHS, 51, TPS Road,
Borivali (W) Mumbai 400 092
PAN: AAPPJ 3988L

.... Respondent

C.O.NO.90/MUM/2016
(Arising out of 6883/MUM/2014 ,AY. 2011-12)

Mr. Nishant Lalit Jadhav,
Flat No.601, 6th Floor,
Madhuban CHS, 51, TPS Road,
Borivali (W) Mumbai 400 092
PAN: AAPPJ 3988L

... Cross Objector

Vs.

Income-tax Officer 3(1),
Room No.114, 1st Floor,
Scindia House, Ballard Pier,
N.M.Road, Mumbai 400 038

... Appellant in Appeal

Appellant by : Shri Suman Kumar

Respondent by : Shri Hari S. Raheja

Date of hearing : 10/04/2017

Date of pronouncement : 26/04/2017

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the Revenue and Cross Objection by the assessee pertaining to assessment year 2011-12 are directed against an order passed by CIT(A)-10, Mumbai dated 31/07/2014, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 20/01/2014.

2. The Revenue has raised the following Grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of exemption u/s 54 of the I.T. Act by the assessee for the investment of Rs.1,12,75,000/-, being the sale consideration of immovable property in India, in buying the residential apartment in New York, USA of Rs.2,20,00,000/- without appreciating the fact that the exemption is available only when investment is carried out in India.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on the decision of Mumbai Tribunal in the case of Mrs. Prema P. Shah & Sanjiv P. Shah Vs. ITO(100 ITR 60(Mum)) without appreciating the fact that reference appeal u/s 260A of the IT. Act, was . earlier preferred, but later on withdrawn in this, case on the ground of lower tax effect and not on Merit.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the exemption u/s 54 of the IT. Act for the capital gain arising from the sale of residential property in India in investing the same in the residential apartment in New York, USA(Outside India) without appreciating the fact that claim of exemption of Section 54F of the I T. Act, has not been allowed by the Ahmedabad ITAT in the case of Leena J Shah 6 SOT 721 (ITO Ahmedabad)"

3. In this appeal, although Revenue has raised multiple Grounds of appeal, but the solitary grievance is against the decision of the CIT(A) in allowing assessee's claim for exemption under section 54 of the Act. Briefly put, the relevant facts are that the respondent assessee is a Non-resident Indian(NRI) and during the year under consideration he, inter-alia, earned a long term capital gain of Rs.67,06,652/- from sale of residential property located at Mumbai. In the computation of income assessee claimed

exemption under section 54 of the Act on the ground that the capital gain arising on the sale of property was utilized in the purchase of a residential property at New York, USA. The Assessing Officer denied the claim of exemption under section 54 of the Act on the ground that investment in new residential property did not meet the requirements of section 54 of the Act as the property was acquired outside India. In coming to such conclusion, the Assessing Officer relied upon the decision of the Ahmedabad Tribunal in the case of Smt. Leena J. Shah , 6 SOT 721(Ahd). In appeal before the CIT(A), assessee contended that during the relevant period, there was no requirement in section 54 of the Act that the investment in the new property is to be made in India. The CIT(A) noticed that the requirement of making the investment in a property in India India was inserted by the Finance (No.2) Act, 2014 w.e.f. 01/04/2015 and, therefore, in the instant assessment year the claim of exemption under section 54 of the Act could not be denied on this ground. In coming to such conclusion, the CIT(A) also relied upon the decision of the Mumbai Tribunal in the case of Mrs. Prema P. Shah & Sanjiv P. Shah vs. ITO, 100 ITD 60 (Mum) , ITO vs. Girish M. Shah in ITA No.3582/Mum/2009 and Vinay Mishra vs. CIT , in ITA No.895/(bang) of 2012.Against such a decision of the CIT(A), Revenue is in appeal before us.

3. Before us, the Ld. Representative for the assessee pointed out that decision of the Ahmedabad Tribunal in the case of Smt. Leena J. Shah(surpa), which has been relied upon by the Assessing Officer has since been reversed by the Hon'ble Gujarat High Court in its judgment in ITA No. 483 of 2006 dated 14/06/2016, a copy of which has been placed on record. Apart therefrom, the Ld. Representative for the assessee pointed out that the following decisions of the Tribunal support the stand of the assessee, which has rightly been upheld by the CIT(A) :-

- (1) Mrs. Prema P. Shah vs. ITO, (2006) 100 ITD 60(Mum)
- (2) ITO vs. Dr. Girish M. Shah, ITA No.3582/Mum/2009 dated 17/2/2010.
- (3) ITO vs. Shri Anil P. Mukhi, ITA 6803/Mum/2010 dated 16/02/2012.
- (4) Vinay Mishra vs. CIT , in ITA No.895/(bang) of 2012 dated 12/10/2012.

4. The Ld. Departmental Representative has merely reiterated the stand of the Assessing Officer that even prior to amendment by Finance (No.2) Act, 2014, it was to be implicitly understood that the requirement of section 54 of the Act was to make investments in a new residential house within India only.

5. We have carefully considered the rival submissions. Undoubtedly, prior to the amendment made by Finance (Nos.2) Act, 2014 w.e.f. 01/04/2015, the language of section 54 of the Act required the assessee to invest the capital gain in a residential property. It is only subsequent to the amendment, which has come into effect from 01/04/2015, that such investment is required to be made in a residential property in India. The assessment year before us is prior to 01/04/2015, and, therefore, the amendment would not be applicable. A similar situation, though in the context of section 54F of the Act, has been considered by the Hon'ble Gujarat High Court in the case of Smt. Leena J. Shah (supra); notably, so far as the impugned issue is concerned, the requirement of sections 54F & 54F of the Act is pari-materia, inter-alia, requiring the assessee to make investment in a new residential house in order to avail the exemption on the capital gains earned. As per the Hon'ble High Court, prior to the amendment the only stipulation was to invest in a new residential property and that there was no scope for importing the requirement of making such investment in a residential property located in India. On similar analogy, in the present case

too, we do not find any reason to uphold the stand of the Assessing Officer that the exemption under section 54 of the Act is to be allowed only if the investment is made in residential property in India. Considered in the aforesaid light and in the absence of any contrary decision, the parity of reasoning laid down by the Hon'ble Gujarat High Court has to prevail and we find no reason to distract from the conclusion arrived at by the CIT(A). Accordingly, the order of the CIT(A) is hereby affirmed and Revenue fails in its appeal.

6. In so far as the cross objection filed by the assessee is concerned, the same has not been pressed at the time of hearing and the same is accordingly dismissed as not pressed.

7. In the result, appeal of the Revenue as well as cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 26/04/2017

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 26/04/2017
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy /Asstt. Registrar)