

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.6562/M/2013
Assessment Year: 2010-11**

ACIT-18(2), Room No.115, 1 st Floor, Piramal Chambers, Parel, Mumbai - 400012	Vs.	Smt. Shalini Kamath, 1203, Chaitanya Towers, A Wing, Appasaheb Marathe Marg, Prabhadevi, Mumbai - 400025 PAN: AAQPK0502M
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Gopal, A.R.
Revenue by : Shri G.N. Makwana, D.R.

Date of Hearing : 07.10.2015
Date of Pronouncement : 31.12.2015

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 16.08.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The Revenue in this appeal has agitated the action of the Ld. CIT(A) in allowing the deduction claimed by the assessee under section 54 of the Income Tax Act. The brief facts of the case are that the assessee during the period under consideration sold her property at Delhi and worked out the long term capital gains amounting to Rs.34,10,000/- and claimed the same as exempt under section 54 of the Act. The Assessing Officer (hereinafter referred to as the AO) however disallowed the said claim of the assessee observing that the assessee had not constructed/taken possession of the new flat within the time schedule of three years as provided in the Act. He observed that merely

entering in the agreement for the purchase of the flat with the builder was not sufficient for allowance of deduction under section 54 of the Act.

3. In appeal, the Ld. CIT(A) observed that the assessee had invested the entire amount of capital gains of Rs.34,10,000/- in the new asset within six months of the sale of original asset. Therefore, the condition of investing the entire capital gains into the acquisition of new asset gets fulfilled. The assessee had been paying the installments for the flat as per schedule of payment with the builder. The assessee had paid three installments totaling Rs.52,15,361/- on 03.07.13 by way of a cheque and therefore the assessee had invested the entire capital gains in the acquisition of new asset within three years. He therefore deleted the disallowance made by the AO.

4. We have heard the rival contentions and have also gone through the records. We find that the Ld. CIT(A), while relying upon the decision of the Hon'ble Jurisdictional High Court of Bombay in the case of "CIT vs. Mrs. Hilla J.B. Wadia" (1993) 113 CTR (Bom.) 173 and further the decision of this Tribunal in the case of "Kishore H. Galaiya vs. ITO" (2012) 137 ITD 229 (Mum.) and considering the beneficial nature of the provisions of section 54 of the Act, has allowed the claim of the assessee holding that the assessee had invested the money for acquisition of the residential house and that the exemption under section 54 of the Act cannot be denied merely because the construction was not completed during the prescribed period. We find that the provision of section 54 of the Act being beneficial provisions brought for the purpose of encouraging the purchase/construction of residential houses and the assessee having made investment of the capital gains for the purchase of new house within the prescribed period, hence was eligible to claim deduction under section 54 of the Act. The same cannot be denied merely because the assessee could not get the actual physical possession of the house within the prescribed period due to certain reasons or non completion of construction.

5. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) in this respect. There is no merit in the appeal of the Revenue and the same is accordingly dismissed.

Order pronounced in the open court on 31.12.2015.

Sd/-
(N.K. Billaiya)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 31.12.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.