

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER)  
AND  
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.6099 /Mum/2014  
(Assessment Year : 2011-12)

ACIT 14(1), Mumbai	vs	Shri Sanjay B Pahadia C/o Vinod Dyeing Works 57/59, S.M. Street Mumbai-2
		PAN : AAGPP2790L
(Appellant)		(Respondent)

Appellant by	Shri H.N. Singh
Respondent by	Shri Hari S Raheja

Date of hearing : 06-12-2016  
Date of order : 11 -01-2017

**ORDER**

**Per ASHWANI TANEJA, AM:**

This appeal has been filed by the revenue against the order of Commissioner of Income-tax (Appeals)-25, Mumbai [hereinafter, Ld. CIT(A)] dated 09-07-2014 passed against assessment order of the AO u/s 143(3) dated 29-01-2014 for A.Y.2011-12 on the following grounds:-

*"1. On the facts and in the circumstances, the CIT(A) has erred in deleting the addition of Rs.23,21 ,83,740/- (Rs.3,00,48,820 + Rs.19,91 ,71 ,462) being disallowance of exemption claimed u/s 54 and 54F by holding that the assessee has made investment in 'a residential house property' without appreciating the finding*

*made by AO during the course of the assessment proceedings that the assessee has purchased two separate house vide two agreements duly executed, in accordance with layout of plan, which is clearly evident from the certificate issued by MCGM.*

*2. On the facts and in the circumstances, the CIT(A) has erred in allowing the benefit of section 54 and 54F to the assessee for investment in two separate house properties which were converted into one residential unit illegal after taking possession.*

*3. On the facts and in the circumstances of the case, the CIT(A) has erred in accepting the additional evidence i.e. report of structural engineer (an employee of the assessee), submitted by the assessee during the appellate proceedings without providing opportunity to the AO in view of the Rule 46(A)(3) (a) of the Income Tax Rule, 1962.*

*4. On the facts and in the circumstances of the case, the CIT(A) has erred by ignoring the documentary evidence already available on record, while allowing deduction u/s 54 and 54F.*

*5. For the above mentioned reason and any other reasons that may be urged at the time of hearing, it is requested that the order of CIT(A) be quashed and that of the A. O. be restored.”*

2. During the course of hearing, it was stated by the Ld. DR that the sole issue involved is with regard to allowability of deductions u/s 54 & 54F which were denied to the assessee merely on the ground that assessee had made investment in ‘two’ flats whereas assessee was entitled to make investment in ‘one’ flat only.

3. It was contended that though flats were adjoining flats, but assessee had made purchases in two separate flats, therefore, benefit has rightly been allowed with respect to one of the flats. With regard to ground of admission of additional evidence u/r 46A, it was fairly stated by Ld. DR that the CIT(A) had called for remand report from the AO wherein all these evidences were confronted to the AO and the remand report

sent by the AO was duly considered by Ld. CIT(A) while passing appeal order. In view of these facts, Ground No 3 with regard to admission of additional evidence is not seriously pressed by the Ld. DR.

4. With regard to merits of the issue, Ld. DR vehemently relied upon the order of the AO to argue that assessee had purchased two residential flats, therefore, benefit has been rightly granted against one flat only.

5. Per contra, the Ld. Counsel of the assessee vehemently supported the order of the Ld. CIT(A). It was submitted that all the evidences were confronted to the AO during remand proceedings. The AO had sent remand report which was duly considered by the Ld. CIT(A) before deciding the appeal. Thus, compliance of rule 46A was made before admitting the additional evidences by the Ld. CIT(A). Thus, Ground No 3 is devoid of any merits and therefore dismissed.

6. With regard to the other objections of the AO as well as the Ld. DR, it was submitted by Ld. Counsel that in fact, the assessee had purchased one flat bearing No.2601 & 2602 in C-Wing of the building known as "Beau Monde", Prabhadevi, Mumbai. In support of his claim, he drew our attention upon the following documentary evidences which were certified to be made available to the lower authorities also:-

- 1) Floor Plan as well as layout plan issued by the builder, Sheth Developers Pvt Ltd; who had planned aforesaid flats showing that there was one flat of 4 bedrooms;
- 2) Certificate from Shri Bhushan N Sanghavi (Consulting Structural Engineer) dated May 8, 2014 certifying that the impugned flat was one flat;
- 3) Certificate dated 20-03-2014 issued by Beau Monde, C Tower Co-operative Housing Society Ltd certifying that the impugned flat was one flat only.

7. It was submitted that all these documentary evidences were made available before the lower authorities, i.e. CIT(A) as well as AO. The AO

had full liberties to examine physically whether the impugned flat was one flat or two different flats. Without examining the same, the AO should not have rejected the claim merely on the basis of surmises and conjectures and other irrelevant considerations. Further, in support of his arguments, Ld. Counsel placed reliance upon the following judgements:-

- 1) CIT vs Devdas Naik (order dated 10-06-2014 in ITA No.2483 of 2011 passed by Bombay High Court)
- 2) CIT vs Raman Kumar Suri 81 DTR 33 (Bom)
- 3) Mr Vasudeo Matta vs ACIT (ITA No.6448/Mum/2012 order dated 23-12-2015 passed by Mumbai Bench of ITAT)

It was thus requested that the order passed by the Ld. CIT(A) should be upheld.

**8.** We have gone through the orders passed by the lower authorities, submissions made and evidences shown to us as well as the judgements relied upon before us. The brief background of the case is that during the year under consideration the assessee had sold its erstwhile flat as well as shares and claimed deduction u/s 54 & 54F respectively by making investment in the impugned flat, i.e. flat No.2601 & 2602 of building called "Beau Monde", Prabhadevi, Mumbai. The assessee claimed that it was 'one' residential flat, but the AO was of the view that assessee had made investment in two flats by registering two separate sale agreements dated 09-03-2011. The deduction is allowable against one flat only. During the course of assessment proceedings, the AO carried out detailed enquiries u/s 131 from the builder, viz. Sheth Developers Pvt Ltd and the evidences collected from the said builder in the form of approved plan, booking receipts as well as completion certificates issued by the competent authorities. It was concluded by the AO that the builder had constructed two separate flats and assessee modified them by joining them together illegally, as the permission for the same was not obtained by the

developer or the assessee. At this point, the observations of the AO was summarised by him in conclusive part of his assessment order as under:-

*"i) It is a settled principle that deduction u/s 54 & 54 F is available against purchase/investment of one residential house property only. However two or more residential units can constitute one residential house property but within legal frame work and through legal means only.*

*ii) There is no denying the fact that legally the assessee purchased two separate residential house property on 09.03.2011.*

*iii) These two residential flats were constructed as two residential house properties as it was proven by the completion certificate granted by the competent authority on 10.01.2012 and construction was completed on 19.12.2011 and the same was also the intention of the authorities as it was evident by ULC Certificate issued by Additional Collector.*

*iv) These two residential house properties were converted into one residential house property after 19.12.2011 and no legal permission of doing so was obtained. Being the legal owner of these flats (as the assessee became the legal owner of the flats on 09.03.2011 through registered sale agreement) the assessee was supposed to obtain such permission. In absence of legal permission for doing so, the conversion of these two residential house properties into one residential house property is illegal.*

*v) The assessee alleged that this conversion was planned and done by the developer however he has submitted no credible evidences in this regard. On the other hand, independent and credible evidence amply support the conclusion that the assessee was well aware of the facts that he was buying two separate residential house properties, hence he was aware of this plan of conversion. The allegation of assessee that the same was done by the developer may be a matter of inquiry. and investigation for Municipal Corporation of Greater Bombay. However there is no denying to this fact that this conversion took place within*

*knowledge of assessee and with his consent as the legal owner of these flats as this alleged conversion took place after the assessee became the legal owner of these flats.*

*vi) The legal benefits of any act cannot be availed through violation of any other act/law.*

*vi) My humble and considered view is this that since the two separate residential house properties got converted into one house property not through legal means, legally in the eyes of law the same position stands and should they should be treated as two separate residential house properties and benefits of section 54 & 54F should not be allowed against such investment where in two separate residential house properties were bought and to claim the deduction, the same were converted in to one house property outside the legal frame work and through illegal means. In view of the same, I hold that the two residential flats bought by the assessee should be treated as legally two separate and distinct residential house properties for the purpose of section 54 and 54F.*

*In view of the above discussion there is no doubt that benefits of the section 54& 54F are available to the one residential house only. The assessee purchased more than one residential house property. After the flats were bought by the assessee the same were converted in to single house property and of course that too was not done within legal framework. In view of the above discussion, the deduction claimed u/s 54 and 54F of the IT Act, 1961 is hereby disallowed. Long Term capital gain arising on sale of residential house property to the extent of Rs. 3,00,48,820/- is added to total income of the assessee as taxable Long Term Capital Gain. The Long Term Capital Gain arising on sale of shares of M/s Butala Farm Lands Limited of Rs. 19,91,71,462/- and the same is also added to the total income of the assessee as taxable Long term capital gain.”*

9. During the course of appeal before the Ld. CIT(A), the assessee brought out complete facts in detail and also submitted various evidences showing that the flats were constructed as one residential unit by the

builder and it has one common kitchen, entrance, etc. These evidences were sent by the CIT(A) to the AO for examination in the remand proceedings. The AO had sent remand report which was duly considered by Ld. CIT(A) and thereafter the Ld.CIT(A) held that the assessee owns 'one' residential unit irrespective of the fact whether these were built as 'one' residential unit by the builder or these were joined subsequently by the assessee. Relying upon the judgment of the Hon'ble Bombay High Court, this issue was decided in favour of the assessee by him by observing as under:-

*"4.5 I have perused the assessment order, remand report, submissions of the appellant, and the facts and circumstances of the case very carefully. I find that the only dispute is whether or not the two residential units purchased by appellant could be considered as "a residential house" within the meaning of Section 54/54F of the Act. Undisputedly, it is a settled legal position held in various judicial pronouncements that two residential units joined together and having common kitchen, common entrance etc. are considered as one residential house. The jurisdictional Hon'ble High Court of Bombay in the case of Raman Kumar Suri [2013] 255 CTR 257 (Bombay) relied upon by the appellant, has held that purchase of two flats can be considered as purchase of one flat for section 54F exemption because two flats were joined before assessee became owner of said property and certificate from society also established fact that these two flats were considered as one residential property.*

*In the present case of appellant, the AO has not denied the fact that the impugned two flats no. 2601 & 2602 in Beau monde, Tower-C at Prabhadevi, Mumbai are not joined together, or that there was no common kitchen & common entrance, or that there was any internal walls between the two flats. Rather, the dispute is with regard to the timing of making such alternation to the original approved plan, whether made before or after the appellant became owner of said property. On his part, the AO as tried to gather independent evidences by taking Statement U/S*

131 of the Builder's person, which facts were also confronted to the appellant. However, while going through the assessment order carefully, I find that on following points, the cause of natural Justice seems to have vitiated .

i) The appellant, in reply to the very first show cause notice, had informed the AO that the said flat purchased by him was one 4 BHK flat, as per plan appearing in the "Marketing Brochure", a copy of which was also submitted to the AO. I have gone through the copy of said plan attached to the marketing brochure, a copy of which is available on records. The said plan captioned "Typical Floor Plan (Tower-C) Type 4 BHK, Area Sq.Ft. 5.500 approx." shows a plan containing 1 Master Bedroom, 3 Bedroom, 1 Entertainment! Study Room, 1 Kitchen, 1 large Living Room at the north-west corner of entire area, some bathrooms etc. If the building is constructed as per this plan, there is no doubt in saying that it can be nothing but one residential house, even if two separate agreements might have been entered segregating the area in two units. I find that the assessment order itself speaks of the assessee having asked for physical inspection of the flat and the building by deputing any official from the department to verify the claim of the assessee. I find it high handed on the part of the AO not to adhere to such request of the appellant, which could have revealed the truth.

ii) Another important fact revealed by the appellant is that every floor in the same building has two adjoining flats and occupied as one residential unit by concerned owner/their family on all floors. This fact had further been certified by the appellant's building Society. This is an important fact to establish the floor plan of the building as originally constructed, leave aside the approved plan. Even if any changes in approved plan are made by appellant after getting possession, it is highly improbable that exactly the same changes would have been made by all flat owners. It is also highly improbable that all flat owners in the building would have purchased two flats together on each floor, if these were sold as separate units. These facts give prima facie credence to ,the contention of the appellant that the flats were sold by builder as one 4 BHK unit as per said Marketing Brochure. It was upto the AO to depute some officer to conduct physical inspection as repeatedly requested by the appellant, and rebut his claim on facts. By not doing so, the facts revealed

*by the appellant remain un-contradicted, and hence go in favour of the appellant.*

*ii) At the time of taking statement of Shri Rajesh J. Parekh (RJP), the Chief Accountant of the Builder, the Marketing Brochure was already in possession of the AO. He could have very well shown the same to RJP, and asked his comments, which would have revealed the fact at that stage itself as to whether they purportedly sold the flats as one 4 BHK unit or not. Had the said Marketing Brochure been confronted to RJP at that time, he would have either disowned the said brochure or would have taken altogether different stand vis-a-vis the approved plan and constructed plan. By not doing so, again the AO stalled the revelation of truth, and in fact heavily relied upon the said statement given by RJP, while disallowing the claim of the appellant. Further, it was not a statement given by any Director of the Builder company, and an accounts personnel cannot be expected to be in knowledge of full facts. Moreover, the cross examination of RJP, whose statement was so relied, was also not provided to the appellant. It has been held by Hon'ble High Court of Madras in the Thilagarathinam Match Work vs. Commissioner of Central Excise [2014] 46 taxmann.com 382 (Madras) that one certain reports or statements are relied upon by department, it is fundamental that author of report and persons from whom such allegedly recorded should be made available for cross examination; it is part of -principle of natural justice which cannot be denied. It is further held by High Court that right to peruse documents relied upon by department; and - cross-examine relied upon witnesses, are basic rights available with an assessee, and no reason need be stated by any person for exercising said rights. The Hon'ble Supreme Court in the case of Kishanchand Chellaram vs. CIT [1980] 125 ITR 713 (SC) has also upheld the right of assessee to cross examine the evidences relied upon by assessing officer.*

*iv) In the remand proceedings, the AO has objected to the admission of the certificate from the structural engineer by questioning his independence. It is important to note that the said certificate clearly stipulates that there is no sign of extension, alteration, renewal, replacement, removal or renovation in the said unit and it appears to be in original shape and condition and there is no sign of detachment of any*

*structure or fittings in the said residential unit. AO could have verified the authenticity of the said certificate by independent enquiry if he really doubted the same.*

*v) The appellant in his written submissions during present appellate proceedings reiterated these facts, which were forwarded to the AO so that the appellant's various contentions could be rebutted justifiably. However, on going through the Remand Report, I find that it was more a repetition of facts already contained in the assessment order, and no new facts were brought on record, which could have been gathered by conducting physical inspection of the building, or by further enquiring with the Builder about sale of building as per Marketing Brochure.*

*In remand report the AO has stated the issue in this case is whether deduction u/s 54/54F can be allowed ignoring the fact that assessee becomes eligible for education u/s 54/54F as a result of an illegal act or being of an illegal fact, I find at the appellant has not converted illegally two units into a residential unit, even if the house property comprising of two adjacent flats is not as per approved plans, exemption u/s 54 and u/s 54F cannot be denied. Section 54 and 54F does not speak about the legality and illegality. Section 54 and section 54F speaks about only investment in house property within the period specified. In recent Chennai ITAT judgment in case of B.Sivasubramanian vs ITO - ITA No.01/MDS/2013 decided on 12.03.2014 wherein it has been held that*

*" The provisions of section 54F mandates the construction of a residential house, within the period specified. However, there is no condition that the building plan of the residential house constructed should be approved by the Municipal Corporation or any other competent authority. If any person constructs a house without approval of building plan, he will be raising construction at his own risk and cost. As far as for availing exemption u/s.54F, approval of building plan is not necessary. In the present case, the fact that the assessee has raised new construction is evident from the interim order issued by the Corporation of Salem.*

We are of the considered opinion that in view of the above facts, it is evident that the assessee has put up a new construction in place of old residential building; thus, the assessee is entitled to claim exemption u/s.54F The impugned order is set aside and the appeal of the assessee is allowed. "

*Having discussed as above, I find that the only substantial question remains is whether the alteration to the approved plan was made before or after the appellant became the owner of the flat(s). In my opinion, the said alterations made, in whatsoever circumstances, do not alter the basic fact that the appellant is the owner of "a residential house" and he is using the said units as "a residential house". In the present case, I am of the considered opinion that the factual position should prevail over legality, as far as the provisions of Sec. 54 & 54F are concerned, which in my opinion are beneficial provisions, and hence should be interpreted liberally.*

*In the latest decision of the Jurisdictional High Court in the case of CIT Vs Devdas Naik in ITA No.1483 of 2011, dated 10th June 2014, the Court held as under:*

*3. It is urged that the factual position has been completely misread and construed so as to allow the claim. Mr Ahuja, learned counsel appearing in support of this appeal submits that the law laid down by the Mumbai Bench of the Tribunal in the case of Income Tax Officer, Ward 19(3)4, Mumbai vis Ms Sushila M Jhaveri, reported in (2007) 107 ITD 327 (MUM)(SB) and confirmed by this Court in the case of Commissioner of Income Tax vis Raman Kumar Suri in Income Tax Appeal No.6962 of 2010, decided on 27th November 2012, is applicable only when the house purchased is a single unit.*

*According to Mr. Ahuja, in the present case, two flats, one acquired in the Respondent Assessee's name and another jointly in the names of Respondent - Assessee and his wife but under two distinct agreements and from different sellers have been taken into consideration for the purpose*

*of this deduction or the claim. That is contrary to the Legislative intent and also the plain language of section 54 of the Act. Therefore, according to Mr. Ahuja, a substantial question of law arises for determination.."*

*4. We are unable to agree. We found that the evidence based on which the claim was granted by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal has been noted by the Tribunal in paragraph 4 of its order. Prior thereto, the factual position has also been noticed that the Assessee alongwith his wife jointly owned bungalow. The bungalow was sold at Rs.3/- crores. With this sum, they bought three flats, one in the Assessee's name, another in the name of Assessee and his wife and third in the name of the wife. The Assessee claimed deduction under section 54 on purchase of two flats in which he is either a sole owner or a joint owner. Though these flats were acquired under two distinct agreements and from different sellers, what has been noted by the Tribunal as also the Commissioner of Income Tax (Appeals) is that the map of the general layout plan as well as internal layout plan in regard to flat Nos.1 03 and 104 indicate that there is only one common kitchen for both the flats. The flats were constructed in such a way that adjacent units or flats can be combined into one. However, admitted fact is that the flats were converted into one unit and for the purpose of residence of the Assessee. It is in these circumstances, the Commissioner held that the acquisition of the flats may have been done independently but eventually they are a single unit and house for the purpose of residence. This factual finding could have been made the basis for recording a conclusion in favour of the Assessee. We do not find that such a conclusion can be termed as perverse. Reliance placed by the Tribunal on the order passed by it in the case of Ms Sushila M Jhaveri and which reasoning found favour with this Court is not erroneous or misplaced. The language of the section has been noted in both the decisions and it has been held that so long as there is a residential unit or house, then the benefit or deduction cannot be denied. In the present case, the unit was a single one.*

*The flats were constructed in such a way that they could be combined into one unit. Once there is a single kitchen then, the*

*plans can be relied upon. We do not think that the conclusion is in any way impossible or improbable so as to entertain this Appeal. In this peculiar factual backdrop, this Appeal does not raise any substantial question of law. The Appeal is devoid of any merit and is dismissed. No order as to costs .*

*In view of the above, I hold that the appellant has made investments in "a residential house property" and hence the exemption claimed U/S 54 & 54F of the Act is to be allowed. Therefore, the additions made to LTCG of Rs.3,00,48,820/- & Rs.19 91,71,462/- are deleted accordingly. Therefore, the grounds of appeal are allowed."*

**10.** We have carefully analysed the orders of the AO as well as that of Ld. CIT(A) and also considered the evidences shown to us as well as the judgements of Hon'ble Bombay High Court relied upon by the Ld. CIT(A). The issue involved before us is whether the assessee is eligible for benefit of deduction u/s 54 / 54F which were partly denied by the AO on the ground that the assessee had made investment in acquiring two residential flats whereas the benefit of deduction u/s 54 / 54F is available on acquisition / construction of 'one' residential house only. Before we deal with the facts of this case, we have gone through provisions contained in sections 54 and 54F of the Act, wherein claim of deduction was made by the assessee. These are undoubtedly beneficial provisions brought on the statute with an objective to promote housing in our country by giving concession from tax liability arising on long term capital gains so that various taxpayers are encouraged to build / acquire residential house properties. In the case of beneficial provisions, the well accepted rule of interpretation suggests that liberal view must be adopted. Thus, the approach which should be followed while examining the claim should be to find how an assessee becomes eligible to get the deduction, and not to find out ways as to how the benefit can be denied

to an assessee. In case, the assessee has made compliance of the provisions of the sections in substance, then, benefit should not be denied on the irrelevant considerations or for the reasons which are not material to the issue involved.

**11.** Undoubtedly, the benefit of deduction is available to an assessee in respect of only 'one' residential house. But no limit has been prescribed under the law upon the size, shape and nature of the residential house property. Thus, it may also happen sometimes that a smaller unit may not be sufficient for use of an assessee's family and therefore, he may choose to combine more than one unit so as to make it useful for him and his family. No such embargo has been laid down by the law as would be clear from the plain reading of section 54 / 54F. Under these circumstances, the AO is also not permitted to read any such restrictions under the law while examining the claim of the assessee.

**12.** Turning back to the facts of this case, it is noted that the AO had himself noted in the assessment order while summarising his observations at point No.4 which has been reproduced by us in the earlier part of our order that two residential house properties were converted into one residential house property and it has also been noted by him in point No.1 that as per law, two or more residential units can constitute one residential house property. Thus, there is no dispute on the principle. According to the AO also, principally speaking, the benefit of deduction u/s 54 / 54F is allowable to the assessee. But, the AO was adversely influenced by the fact assessee converted two residential house into one subsequent to its acquisition and that too without following due procedure as prescribed under the applicable local law.

**13.** Thus, the only dispute that is left to be resolved by us is whether the approach followed by the AO was fair and justified and in accordance with law and facts of this case or not. In this regard, our considered view is that the AO has gone wrong on law as well as on facts. As far as legal position is concerned, the issue before us is whether the assessee is eligible to claim exemption u/s 54 / 54F on the basis of his investment in acquisition of one residential house property or not. In our considered view, whether the house property is built upon an approved plan or not and whether the two flats have been converted into one after obtaining requisite approvals from the local authorities or not, shall not fall in the domain of Income-tax proceedings, so long as other conditions as prescribed under the law are duly fulfilled. Legal position has been threadbare clarified by **Hon'ble Bombay High Court** in the judgements relied upon by the Ld.CIT(A) in the case of **CIT vs Devdas Naik (supra)** as well as **CIT vs Raman Kumar Suri (supra)** wherein in the similar facts it was held that even if two flats were acquired under two distinct agreements, but if the flats were constructed in such a view that adjacent units of the flats can be combined into one, then the assessee would be eligible to claim the benefit on the entire amount invested in two flats combined into one by the assessee. Thus, on legal principle, the AO's action was not proper, therefore, it has rightly been reversed by Ld. CIT(A).

**14.** We have examined this issue on the basis of precise facts also. It is noted that the AO had himself made enquiries during the assessment proceedings on the basis of which he had drawn conclusion. It is found by us after taking into account all the facts as were considered by the CIT(A) and brought before us that enquiries made by the AO were half-cooked

and were not complete enough to draw final conclusions. Few evidences were submitted by the assessee in support of contention that the impugned flat was constructed as 'one' residential unit by the builder itself. These evidences were sent by the Ld. CIT(A) to the AO for their examination in the remand proceedings, wherein the AO carried out further enquiries and also recorded statement of the accountant of the builder. But, again the AO made an error by not going to the bottom of the truth and also erred by relying upon irrelevant or half-cooked pieces of information and also erred in disregarding evidences submitted by the assessee that too without making proper verification. The assessee had, time and again, requested the AO to carry out physical examination of the property to know the truth, but the AO disregarded or ignored the same for the reasons best known to him.

**15.** Our attention was drawn upon few evidences which throw light directly on the issue before us. Our attention was drawn on the typical floor plan of Tower "C", 25<sup>th</sup> Floor of Beau Monde Bldg, Prabhadevi, Mumbai constructed by M/s Sheth Developers Pvt Ltd. It was shown by Ld. Counsel on the basis of internal lay out plan that though two separate numbers were assigned to the flat, but it was planned to be constructed as one flat only right from the beginning. Further, our attention was also drawn on the certificate given by Shri Bhushan N Sanghavi dated 18-05-2014 wherein he had submitted report on the structural members of the flat as per his visual survey. Relevant part of his report is reproduced below:-

**“TO WHOM IT MAY CONCERN**

*Sub:- Report on structural members as per visual survey.*

*This is to state that we have carried out visual inspection and complete survey of residential unit bearing flat Nos. 2601 and 2602 in 'C' wing of the building known as “Beau Monde”, Prabhadevi, Mumbai at the request of the owner Mr. Sanjay B Pahariya.*

*On physical inspection of the said residential unit by us, we state that there is no sign of extension, alteration, renewal, replacement or removal of structural members, i.e. slabs, beams, columns etc. in the said unit.*

*All structural members seem to be in the original shape and condition as has been provided by the builder/developer. We further state that there is no sign of detachment of any structure or fittings in the said residential unit.*

*As per observation, it seems that the said residential unit is a flat of 4 BHK with one kitchen and one entrance without any internal wall and is occupied/ used as a single residential unit.”*

- 14.** Similarly, another certificate was submitted by the assessee, signed by Chairman of Beau Monde ‘C’ Tower Co-operative Housing Society Ltd wherein following facts were certified:

**“CERTIFICATE**

*This is to certify that residential flats bearing No. 2601 and 2602 in 'C' wing of the building known as "Beau Monde", Prabhadevi, Mumbai and owned by Mr. Sanjay B Pahariya is one residential flat of 4 BHK with one kitchen and one entrance and does not have any internal wall between the said two flats and is used also as single residential unit by the owner Mr. Sanjay B. Pahariya.*

*The builders have never constructed the above said flats as two separate residential houses. At the time of handing over of possession of the said flats by the builders (a) the said flats were*

*not separate dwelling units, (b) the said flats were not separated by any wall and (c) there was no separate entrance or separate kitchen for each such flat. In fact, the builders have constructed and sold similar flat of one residential flat of 4 BHK with one kitchen and one entrance (although bearing two flat numbers) on each and every floor of the same building which is used by respective owners as single dwelling unit.*

*None of the flat owners (including Mr. Sanjay B. Pahariya) have carried out any alteration/modification to the said flats either on their own or through the builders at any time i.e. before or after handing over of flats by the builders.”*

**15.** Thus, from these facts, it becomes clear that in any case and viewed from any angle, it becomes clear that when assessee acquired the flat, the intention was to use it as one residential unit. In our considered view, it will not make any distinction whether the flats were constructed as such by the builder or the same was altered or combined into one at the instance of the buyer (assessee). Thus, assessee is very much eligible to claim the benefit of deduction u/s 54 / 54F on the entire amount of investment made in residential flat bearing No 2601 & 2602 in Beau Monde, Tower ‘C’, Prabhadevi, Mumbai. Thus, Ld. CIT(A) has rightly granted relief to the assessee and, therefore, his order is upheld.

**16.** As a result, appeal filed by the Revenue is hereby dismissed.

*Order pronounced in the court on this 11<sup>th</sup> day of January, 2017.*

Sd/- (MAHAVIR SINGH ) JUDICIAL MEMBER	Sd/- (ASHWANI TANEJA) ACCOUNTANT MEMBER
---	---

Mumbai, Dt: 11<sup>th</sup> January, 2017

Pk/-

Copy to :

1. The appellant
  2. The respondent
  3. The CIT(A)
  4. The CIT
  5. The Ld. Departmental Representative for the Revenue, E-Bench
- (True copy) By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES