

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7431/Mum/2013  
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Sunil Mangharam Motwani C/o. Naik Watch Co.,7-C, Chhapra Building, N.C.Kelkar Road, Dadar, Mumbai - 400028	<b>बनाम/</b> Vs.	ITO 18(2)(1) Piramal Chambers, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJUPM8862F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Bhupendra Shah
Department by:	Shri Vikram Batra

सुनवाई की तारीख / Date of Hearing: 14.09.2016  
घोषणा की तारीख /Date of Pronouncement: 23.09.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 17.10.2013 passed by the Commissioner of Income Tax (Appeals) 19, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds:-

**Grounds of Appeal Before the Honourable ITAT Mumbai**

- “1. In the facts and the circumstances of law, the Assessing Officer erred in denying exemption u/s.54 in respect of LTCG arising on sale of ancestral property even though the re-investment is made within stipulated period of two years by purchasing a new flat, only because the sale proceeds were deposited in bank FD instead of Capital Gain Account during the investing period.
2. In the facts and the circumstances of law, Learned CIT(A)-19, Mumbai also erred in confirming the above said denial of exemption u/s.54.
3. In the facts and the circumstances of law, the Assessing Officer erred in wrongly charging interest u/s.234B, C and D and has wrongly initiated penalty u/s.274 r.w.s. 271(1)(c).”

**Relief Prayed**

1. To allow the exemption u/s.54 to the extent of re-investment made out of sale proceed of LTCG on sale of ancestral property.
2. To delete the above said interest u/s.234B, C and D and initiation of penalty u/s.274 r.w.s. 271(1)(c).

3. The brief fact of the case are that the assessee filed the return of income on 26.02.2010 declaring total income to the tune of Rs.1,56,350/-. The return has already been processed u/s.143(2) of the Income Tax Act, 1961 ( in short “the Act”) resulting in a Nil demand. The case was selected for scrutiny and notice u/s.143(2) of the Act was issued on 19.08.2010 and duly served upon the assessee on 25.08.2010. Notice u/s.142(1) of the Act along with the

questionnaire was issued to the assessee on 06.01.2011 and 09.06.2011, which were duly served upon the assessee. The assessee was an individual deriving income from business, income from capital gain and income from other sources. During the year under assessment, the assessee sold a flat at B-35, Brother CHS, Mahim, Mumbai for a sum of Rs.13,75,000/- on 28.07.2008. The assessee computed the Long Term Capital Gain of Rs.7,93,000/- after deducting indexed cost of acquisition of Rs.5,82,000/-. He invested an amount of Rs.12,00,000/- in new residential property vide agreement for sale dated 31.08.2009 and claimed exemption of Long Term Capital Gain u/s.54 of the Act. The said flat was inherited by the assessee. The flat was earlier owned by Shri Wadhmal Motwani i.e. assessee's grandfather who expired in 1983 leaving behind him his legal heir Shri Mangaram Motwani i.e. assessee's father. Shri Mangaram Motwani expired on 04.06.2007 leaving behind him four sons including the assessee. The assessee held the 1/4<sup>th</sup> share of flat on 04.06.2007. The Assessing Officer computed the indexed cost of acquisition i.e 551 pertaining to F.Y.2007-08 whereas the assessee had taken index 133 of F.Y.1985-86 and computed revised Long Term Capital Gain vide his letter dated 12.09.2011. The assessee taken the cost of acquisition to the tune of Rs.4,53,150/- being value as on 01.04.1981 as per valuation report dated 09.09.2011 of Shri K. S. Shikari and Associates furnished by the assessee. The assessee's 1/4<sup>th</sup> share was to the extent of Rs.1,13,287/-. The contention of the

assessee was not accepted. The property was sold on 28.07.2008 for Rs.13,75,000/- and taking the cost of acquisition to the tune of Rs.1,19,660/-. The Long Term Capital Gain was assessed to the tune of Rs.12,55,340/- and the said Long Term Capital Gain was added to the income of the assessee. The assessee claimed the exemption to the tune of Rs.12,00,000/- u/s.54F(4) of the Act but the same was declined and therefore the total income of the assessee was assessed to the tune of Rs.14,11,690/- and accordingly taxed. Feeling aggrieved the appeal was filed before the CIT(A) who confirmed the order, therefore the assessee has filed the present appeal before us.

**ISSUE NO.1-3:-**

4. Issue no.1 to 3 are inter connected, therefore are being taken up together for adjudication. Under these issues the assessee has raised the point with regard to denying the exemption u/s.54F of the Act in respect of Long Term Capital Gain arising out on the sale of ancestral property. The Assessing Officer denied the exemption on the ground that the assessee was required to deposit an amount of capital gain in a specified account before the due date of furnishing of the return of income u/s.139 of the Act whereas the assessee kept the sale consideration in a fixed deposit account in Bank of India in the name of Smt. Kajal Motwani who was the wife of the assessee. Since the assessee failed to abide the provision u/s.54 of the Act, therefore the exemption u/s.54F of the Act was declined and the total income of the

Long Term Capital Gain was assessed towards the income of the assessee. The CIT(A) has confirmed the same. The learned representative of the assessee has argued that this issue has duly been covered by the Hon'ble High Court of Karnataka titled as Commissioner of Income Tax, Bangalore Vs. K. Ramchandra Rao [2015] 56 taxmann.com 163. On the other hand the learned representative of the department has strongly relied upon the order of CIT(A) in question. No doubt the matter of controversy has now been settled by the Hon'ble High Court of Karnataka in case titled as Commissioner of Income Tax, Bangalore Vs. K. Ramchandra Rao (Supra) in which it has been specifically held that the assessee was not required to be deny the exemption u/s.54F of the Act on the ground that assessee did not deposit said amount in capital gains account scheme before due date prescribed u/s.139(1) of the Act. The facts of the present case are quite similar of the case of Commissioner of Income Tax, Bangalore Vs. K. Ramchandra Rao (Supra). In view of the said circumstances the benefit of section 54F(4) of the Act is not required to be denied to the assessee. Hence the same is hereby allowed and accordingly the assessment is required to be completed. The interest issue is consequential and need not required to be adjudicated separately. In view of the said circumstances it is quite clear that the learned CIT(A) has decide the matter wrongly and illegally which is not liable to be sustainable in the eyes of law hence

the finding of this issue is ordered to be set aside. Accordingly these issues are decided in favour of the assessee against the revenue.

5. In the result, the appeal filed by the assessee is hereby **Allowed.**

Order pronounced in the open court on 23<sup>rd</sup> September, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23<sup>rd</sup> September, 2016

*MP*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai