

Mumbai challenging the aforementioned two additions/disallowances (supra). The learned CIT(A) discussed the assessee's appeal vide the impugned order dated 06.08.2014.

3. Aggrieved by the order of the CIT(A)-34, Mumbai, the assessee has preferred this appeal, raising the following grounds: -

1. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appals)-34 ('CIT(A)-34') has grossly erred in confirming the actions of the Assessing Officer of not granting the benefit of section 54F of the income-tax Act, 1961 ('the Act'). It is prayed that the learned Assessing Officer be directed to grant the benefit of section 54F of the Act to the Appellant.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-34 has erred in disallowing an amount of Rs.2,56,495/- under section 14A of the Act.*
3. *The consequent interest and penalty demanded under section 271(1)(c) be dropped. It is prayed that the Learned Assessing Officer be directed to drop the penalty proceedings and quash the consequent interest and penalty demanded."*

4. **Ground No. 1 - Disallowance of Exemption under section 54F of the Act**

4.1 The facts of the matter as emanate from the record are that in the year under consideration the assessee sold shares of Trans American Air Conditioning Pvt. Ltd. for consideration of ₹5,99,29,697/-. The assessee declared LTCG of ₹15,21,387/- thereon after claiming exemption of ₹5,75,77,693/- u/s.54F of the Act in lieu of purchase of a residential property (flat) at 'Emporis', Bandra, Mumbai on 07.08.2008. The transfer deed/agreement for purchase of the property was dated 07.08.2008 when payment of ₹5,17,00,000/- was made. The remaining amounts were paid from 01.08.2008 onwards. The AO examined whether the consideration received was utilised before the date of furnishing the return of income under section 139(1) and if not whether the same was deposited in the specified capital gains account before due date for filing of return as per provisions of section 139(1) of the Act. According to the Assessing Officer (AO), the assessee, as per the provisions of section 54F of the Act, in the event of not investing the capital gains arising on sale of the property either in the purchase of a residential house or construction of a

residential house within the period specified in section 54F, then if he wants to avail the benefit of section 54F, he should deposit the said capital gains or the unutilised amounts thereof in an account duly notified by the central government before the due date for filing the return of income under section 139(1) of the Act, i.e. in the case before 31.07.2008. Since the factual position remained that only ₹5 lakhs of the consideration was invested by the assessee towards the purchase of the flat upto 31.07.2008, the due date for filing the return of income for A.Y. 2008-09, the AO recomputed the LTCT of the assessee at ₹5,90,99,080/- after denying the assessee's claim for exemption of ₹5,75,77,693/- under section 54F of the Act. On appeal, the learned CIT(A) upheld the AO's action in denying the assessee exemption claimed under section 54F of the Act and in computing the LTCG at ₹5,90,99,080/- on the ground that the assessee had not deposited the net consideration/balance capital gains in the notified account of the government before the due date of filing the return of income under section 139(1) of the Act.

4.2.1 In this ground, the assessee has assailed the impugned order of the learned CIT(A) in upholding the AO's action in recomputing the LTCG on sale of shares and denying the assessee the exemption claimed under section 54F of the Act. Before us, the learned A.R. for the assessee reiterated the facts as submitted before the authorities below, that the extended period for filing the return of income under section 139(4) of the Act has to be considered for the purpose of utilization of the capital gains for claiming exemption under section 54f of the Act. According to the learned A.R., the assessee has invested the capital gains arising from sale of shares to the extent of ₹5,74,53,660/- in the purchase of flat from M/s. Invex Pvt. Ltd. at 'Emporis', Bandra, Mumbai by 07.08.2008 which is within the extended period available to the assessee to file the belated return under section 139(4) of the Act for A.Y. 2008-09. It is submitted that the very same issue had come up before the Coordinate Bench of this Tribunal in the case of Kishore H. Galaiya vs. ITO (2012) 24 taxmann.com 11(Mum) and wherein on similar facts the issue has been decided in favour of the assessee. In this regard the learned A.R. submitted that the

assessee's case was squarely covered, inter alia, by the following judicial pronouncements: -

- (i) CIT vs. M/s. Jagriti Agarwal (2011) 339 ITR 610 (P&H)
- (ii) CIT vs. Rajesh Kumar Jalan (2006) 296 ITR 374 (Gau)
- (iii) Anil Kumar Omkar Singh Aurora (ITA No. 4648/Mum/2013 dated 06.11.2013)
- (iv) Fatima Bai vs. ITO (2009) 32 DTR 243 (Kar HC)

4.2.2 It is prayed by the learned A.R. that since the assessee's case is squarely covered by the aforecited judicial pronouncements, the authorities below be directed to grant the assessee exemption claimed under section 54F of the Act.

4.3 Per contra, the learned D.R. for Revenue placed reliance on the decisions of the authorities below denying the assessee's claim for deduction under section 54F of the Act.

4.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. From an appreciation of the material on record the undisputed fact in the case on hand is that the assessee purchased the new house property (i.e. flat) before expiry of the period for filing the return under section 139(4) of the Act. The only point of dispute for our consideration is whether since the assessee failed to deposit the unutilized portion of the capital gains arising on sale of the shares in the capital gains account scheme notified by the government before the period for filing the return of income under section 139(1) of the Act, i.e. 31.07.2008, but has utilised the same to the extent of ₹5,75,53,660/- thereafter, i.e. by 07.08.2008 before expiry of period to file return under section 139(4) of the Act, the assessee is entitled to exemption under section 54F of the Act. In our view, the above issue is squarely covered by the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Jagriti Aggarwal (2011) 339 ITR 610 (P&H) wherein their Lordships have held that the provisions of section 139(4) is not an independent provision, but is related to the time contemplated under section 139(1) of the Act. Accordingly, 139(4) of the Act has to be read alongwith subsection (1) of section 139 and the due date for

furnishing the return of income under section 139(1) is subject to the extended period under section 139(4) of the Act has to be considered for the purpose of utilization of the capital gains.

4.4.2 The Hon'ble Gauhati High Court in the case of Rajesh Kumar Jalan (supra) has held that if the assessee fulfils the conditions for availing the benefit of exemption under section 54 of the Act within the extended period for filing the return of income under section 139(4) of the Act, the assessee would be entitled to exemption under section 54 of the Act. We find that the Coordinate Benches of the ITAT Mumbai Benches, inter alia, in the cases of Kishore H. Galaiya vs. ITO (2012) 24 taxmann.com 11 (Mumbai ITAT) and Shri Anil Kumar Omkar Singh Aurora vs. ITO (ITA No. 4648/Mum/2013) have followed the aforesaid decisions of the Hon'ble Punjab & Haryana High Court and Hon'ble Gauhati High Court to hold that the assessee was entitled to be allowed deduction under section 54F of the Act for utilisation of sale consideration/capital gains for investment in the purchase of new residential property within the period specified under section 139(4) of the Act.

4.4.3 Respectfully following the decisions of the Hon'ble High Courts and Coordinate Bench of this Tribunal referred to in paras 4.4.1 and 4.4.2 of this order (supra), we hold that since the assessee in the case on hand has utilized the amount of ₹5,77,53,660/- of capital gains in investing in the purchase of a residential property (flat) within the extended period as stipulated under section 139(4) of the Act for A.Y. 2008-09, the assessee is entitled for exemption under section 54F of the Act. We therefore reverse the orders of the authorities below on this issue and consequently allow ground No. 1 of the assessee's appeal.

5. **Ground No. 2 - Disallowance under section 14A of the Act**

5.1 In this ground the assessee has challenged the disallowance of ₹2,56,495/- made by the authorities below under section 14A of the Act. Before us, the learned A.R. for the assessee submitted that the disallowance has been made under section 14A r.w Rule 8D(2)(iii). According to the learned A.R., a mistake has crept into the computation

made by the AO under Rule 8D(2)(iii) wherein instead of ₹2,56,495/-, since the average value of investments at the beginning and end of the relevant period has been wrongly taken at ₹5,12,99,131/- instead of ₹2,56,49,515/- (i.e. $0 + ₹5,12,99,131/2$). Then the disallowance @0.5% thereof would be ₹1,28,247/- and not ₹2,56,495/- as computed by the authorities below. It is prayed that the authorities below be directed accordingly.

5.2 Per contra, the learned D.R. supported the orders of the authorities below.

5.3 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. From the working of the disallowance under section 14A r.w. Rule 8D(2)(iii) made by the AO at para 4 of the order of assessment, it appears to us that there is some merit in the averments of the learned A.R. However, we restore the matter for verification of the correctness of the assessee's claim, that the AO's computation of the disallowance under Rule 8D(2)(iii) at ₹2,56,495/- is incorrect and that correct working of the said disallowance by the assessee is ₹1,28,247/- as given at para 5.1 (supra). The AO is directed to verify the veracity of the assessee's claim and workout the correct disallowance under section 14A r.w. Rule 8D(2)(iii) after affording the assessee adequate opportunity of being heard.

6. **Ground No. 3 - Initiation of penalty proceedings**

6.1 In this ground, the assessee has sought that penalty proceedings initiated under section 271(1)(c) of the Act be dropped. This ground being premature, since no penalty thereunder has been levied on the assessee in the impugned order, the same plea of the assessee is dismissed.

7. In the result, the assessee's appeal for A.Y. 2008-09 is partly allowed.

Order pronounced in the open court on 17th August, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 17th August, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -34, Mumbai*
4. *The CIT - 24, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.