

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “G”, MUMBAI  
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND SHRI PAWAN  
SINGH, JUDICIAL MEMBER**

**ITA No. 2161/Mum/2016 (Assessment Year-2008-09)**

Dr. Sanjay J. Mehta 2/5, Hanvant Bhavan, 90/E, Napean Sea Road, Mumbai-400006. <b>PAN: AFOPM8467J</b>	<b>Vs.</b>	ACIT-16(3), Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Mrugakshi Joshi (AR)

Revenue by : Shri V, Vudgtadgar (DR)

Date of hearing : 27.12.2017

Date of Pronouncement : 03.01.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee under section 253 of the Income-Tax Act (“The Act”) is directed against the order Id. CIT(A)-7, Mumbai dated 29.02.2016 for Assessment Year (AY) 2008-09 which in turn arises from the penalty order under section 271(1)(c) dated 30.03.2014 passed by the Assessing Officer (AO). The assessee has raised the following grounds of appeal:

**1. Penalty LEVIED U/S 271(1)(c) FOR EXEMPTION u/s. 54F – Rs. 1,35,05,423/-**

- a) The learned CIT(A) erred in holding that the Appellant has not purchased any residential house as required u/s. 54F and confirmed the penalty u/s 271(1)(c), although the Appellant has furnished sufficient documentary evidence to show that the purchase was genuine and bonafide.
- b) The learned CIT(A) erred in confirming the denial of exemption u/s. 54F, on the ground that the Appellant has not made a bonafide

agreement for purchase of a residential house, since it was not duly stamped and registered before the filing of the return.

2. Brief facts of the case are that the assessee filed return of income for relevant AY on 25.10.2008. The assessment was completed on 23.12.2010 under section 143(3) of the Act. The AO while passing the assessment order made the addition of Rs. 3,96,96,640/- by disallowing Long Term Capital Gain (LTCG) and made addition on account of interest expenses of Rs. 12,28,883/-. On appeal before the Id. CIT(A), the addition on account of interest of Rs. 12,28,883/- was restricted to Rs. 10,00,000/-. However, the addition of Rs. 3,96,96,640/- on account of LTCG was sustained. The AO levied the penalty on disallowance of deduction under section 54F of Rs. 3,96,96,640/- and on addition of interest of Rs. 12,28,883/-. The AO levied the penalty of Rs. 1,35,05,423/- @ 100% of the tax sought to be evaded. On appeal before the Id. CIT(A), the penalty was sustained on disallowance of LTCG. However, it was deleted on interest expenses. Thus, further aggrieved by the order of Id. CIT(A), the present appeal is filed before us.
3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee argued that the grounds of appeal raised in the present appeal are covered by the decision of Tribunal in assessee's case in quantum appeal. It was argued that the addition on disallowance of claim/exemption under section 54F has already been allowed in favour of assessee by the Tribunal in assessee's appeal vide

order dated 15.02.2017. On the other hand, the ld. DR fairly conceded that the Tribunal has deleted the disallowance on account of LTCG.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the AO levied the penalty on disallowance of deduction under section 54F for Rs. 3,96,96,640/- and on addition of interest of Rs. 12,28,883/-. On appeal, the ld. CIT(A) deleted the penalty on interest expenditure of Rs. 12,28,833/-. The addition/disallowance under section 54F has been deleted by the Tribunal in ITA No. 7795/Mum/2012 dated 15.02.2017. Thus, considering the fact that the addition on account of LTCG on which the penalty was sustained by ld. CIT(A) has already been deleted by the Tribunal in ITA No. 7795/Mum/2012 dated 15.02.2017. Thus, the consequent penalty order is also set-aside.
5. In the result, appeal of the assessee is allowed.
6. Order pronounced in the open court on 3<sup>rd</sup> day of January 2018.

Sd/-

**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 03/01/2018

S.K.PS

**Copy of the Order forwarded to :**

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

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**