

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No 7387/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

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| ITO 34(1)(4), R. No. 106,1 st floor, Pratyakshakar Bhavan, BKC Bandra(east), Mumbai-400051 | बनाम/ Vs. | Ms. Homai Homi Shroff Aderbad Flat No. 23, 24, Hughes Rd, Mumbai-400007. |
| स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFPS4218R | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थीकीओरसे/ Appellant by | : | Shri M. C. Omi Ningshen, DR |
| प्रत्यर्थीकीओरसे/ Respondent by | : | Shri Farukh Irani and Shri Falee H. Bilimoria, AR |

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| सुनवाईकीतारीख/ Date of Hearing | : | 17.04.18 |
| घोषणाकीतारीख / Date of Pronouncement | : | 26.04.18 |

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 46, Mumbai dated 14.09.16 for AY 2012-13on the grounds mentioned herein below:-

(i) *"On the facts and circumstances of the case and in law learned CIT(A) ignored the fact that, to prove the transfer, the assessee was failed to produce any sale Agreement. The assessee was not executed any sale agreement for relinquishment of the tenancy rights which is mandatory for transfer of immovable property. Further, an 'Irrecoverable General Power of Attorney' was furnished by the assessee, which was neither Notarized nor Registered. The Power of Attorney was signed by the assessee and jointly family members and not even signed by the appointees i.e. purchasers".*

(ii) *" On the facts and circumstances of the case and in law learned CIT(A) erred in allowing the benefit to the assessee u/s. 54F of I.T. Act, 1961 without appreciating the facts that, the assessee failed to produce any documentary evidence in support of the proof of purchase of immovable property and any nexus between the receipt amount and investment amount".*

(iii) *"The Ld.CIT(A) has also failed to appreciate the fact, that the assessee has made the payment of Rs. 17,25,000/- to the other co-tenants on self made receipts which is not considered as genuine as the*

same was not reflected in their Return of Income which are placed on records."

(iv) "The Appellant prays that the order of the Ld CIT(A) on the above grounds be set aside and that of the AO be restored"

(v) "The Appellant craves leave to amend or alter any ground or add a new ground"

2. The brief facts of the case are that the assessee is an individual and filed its return of income for the year under consideration on 26.07.12 declaring total income at Rs.3,45,921. Subsequently, the case was selected for scrutiny and after serving statutory notices and seeking reply of the assessee, order of assessment u/s 143(3) was passed by AO thereby determining total income at Rs. 65,66,933/- by disallowing the claim of deduction u/s 54 of Rs. 64,80,000/-

Aggrieved by the order of AO, the assessee preferred the appeal before Ld. CIT and the Ld. CIT(A) after considering the case of both the parties partly allowed the appeal filed by the assessee.

Aggrieved by the order of Ld. CIT(A), the revenue has filed the present appeal before us on the grounds mentioned hereinabove.

Ground No. (i) to (iii).

3. Since all the grounds raised by the revenue are inter-related and inter-connected and relates to challenging the order of Ld. CIT(A) in ignoring the fact that assessee was not executed any sale agreement for relinquishment of the tenancy rights which is mandatory for transfer of immovable property and assessee failed to produce any documentary evidence in support of the proof of purchase of immovable property, therefore, we thought it fit to decide all the above grounds of the present consolidated order.

4. We have heard the counsel for both the parties and we have also perused the material placed on record, judgment cited by both the parties as well as orders passed by the revenue authorities. We find that Ld. CIT(A) passed an elaborate order thereby taking into consideration the details and documents filed by the assessee and rightly come to the conclusion that assessee had received consideration for relinquishing the right she had on

the property i.e. flat No. 7. This right over the property was in the nature of her share as a tenant only. Ld. CIT(A) has also considered various documents including copy of bank account, etc. in order to conclude that the assessee was resident of the above property. Even the provisions of section 45 read with section 2(47) of the I.T. Act requires that consideration received for extinguishing any right u/s 2(47)(ii) is 'capital gain'.

After considering the facts of the present case, we find that the claim of the assessee was disallowed only on the ground that the documents on which the assessee was relying, was not registered. The fact that the documents was not registered, cannot be a ground to disallow, the very right of the assessee. In this respect, Ld. CIT(A) had relied upon the judgments contained in its orders and more particularly the judgment of **Chaturbhuj Dwarkadas Kapadia Vrs. CIT (260 ITR 491)** wherein such transfer of right in the property was recognized by Hon'ble Jurisdictional High Court.

Ld. CIT(A) after considering the entire facts had rightly concluded that assessee had enjoyed a 'right of possession'

which was by way of tenancy and the consideration received of transfer was rightly taxed as 'capital gain'.

Our attention was also drawn towards page no. 12 of the paper book, which is a receipt, reflecting that the assessee had received a sum of Rs. 47,55,000/- for the transfer of tenancy right in respect of flat no. 7.

Apart from above, our attention was also drawn towards page no. 20 of the paper book which is a sale deed of flat no. 13, executed in favour of the assessee in the month of December 2011. This document goes to show that the assessee had already invested sum of Rs. 48 Lacs towards purchase of new property within the stipulated time as allowed under the Act. Therefore assessee was correctly found entitled to the benefits of section 54F of the I.T. Act.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered

view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands **dismissed**.

Ground No. (iv) & (iv)

5. These grounds raised by the revenue are general in nature, thus requires no specific adjudication.

6. In the net result, the appeal filed by the revenue stands **dismissed**.

Order pronounced in the open court on 26th April, 2018

Sd/-
(R. C. Sharma)
लेखासदस्य / Accountant Member
मुंबई Mumbai; दिनांक Dated :
Sr.PS. Dhananjay

Sd/-
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member
26.04.2018

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai