

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member &  
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 973/KOL/2017  
Assessment Year: 2013-2014**

**Smt. Indu Mahesh Shah,.....Appellant**  
**129A, S.P. Mukherjee Road,**  
**Kolkata-700 025**  
**[PAN: AMAPS 6603 D]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-35(2), Kolkata,**  
**Aayakar Bhavan Poorva,**  
**110, Shantipally, E.M. Bye Pass,**  
**Kolkata-700 107**

**Appearances by:**

*Shri M. Satnaliwala, FCA, for the Appellant*  
*Shri S. Dasgupta, Addl. CIT, D.R., for the Respondent*

Date of concluding the hearing : July 04, 2018  
Date of pronouncing the order : August 31, 2018

**O R D E R**

**Per Shri P.M. Jagtap, A.M.:**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-10, Kolkata dated 10.02.2017.

2. The main issue involved in this appeal relating to the disallowance of assessee's claim for deduction of Rs.43,44,214/- under section 54 of the Income Tax Act, 1961 is raised in Grounds No. 1 & 2. The relevant facts of the case apropos this issue are that the assessee is an individual, who is engaged in the business of trading in the name and style of her proprietary concern M/s. Arizona Company. The return of income for the year under consideration was filed by her on 07.03.2014 declaring total income at 'NIL'. In the said return, long-term capital gain (without indexation) was shown by the assessee at Rs.78,39,171/- and the same was claimed to be fully exempt from tax. The assessee was the co-owner

of flat No.9C of the 9<sup>th</sup> Floor, Golf Towers, 9, Prince Golam Muhammad Shah Road, Kolkata-700 095, which was sold for a sale consideration of Rs.1 crore. During the course of assessment proceedings, the revised computation of long-term capital gain was furnished by the assessee. As per the said working, the said flat was purchased by the assessee on 16.12.2003 for Rs.18,04,000/- and after claiming deduction on account of the indexed cost of acquisition, long-term capital gain of Rs.52,67,285/- was shown by the assessee. The said long-term capital gain to the extent of Rs.33,36,820/- was claimed to be exempt by the assessee under section 54 being investment made in her residential property at Mumbai and the balance amount of Rs.19,30,465/- was offered to tax in the revised computation of total income. The computation of long-term capital gain as shown by the assessee in the revised computation of total income was examined by the Assessing Officer and on such examination he found that the market value of the flat sold by the assessee was determined by the Stamp Duty Authorities at Rs.1,10,55,066/-. By adopting the said amount as sale consideration by invoking the provisions of section 50C of the Act and after disallowing the claim of the assessee for the Corporation Tax of Rs.14,487/- as part of cost of acquisition, the long-term capital gain arising to the assessee from the sale of flat was determined by the Assessing Officer at Rs.66,02,007/-. As regards the claim of the assessee for exemption under section 54, the Assessing Officer found that the flat in Mumbai was booked in the joint name of the assessee and her son Shri Siddharth M. Shah. He also found that there was no registered agreement for sale executed by the assessee for the said flat and there was only the Provisional Allotment Letter by the concerned developer M/s. K.R. Mali Builders & Developers Pvt. Limited. He further noted that the assessee as per the said provisional allotment letter was not having any right, title, interest or lien of any nature whatsoever in the said flat until the agreement for sale was executed and registered with the Office of the sub-Registrar of Assurances. He also found that the said flat had not come to the possession of the assessee even after the expiry of the cut off period prescribed in section 54. Accordingly the claim of the assessee for

exemption under section 54 was disallowed by the Assessing Officer and the long-term capital gain of Rs.66,02,007/- was brought to tax by him in the hands of the assessee vide an order dated 31.12.2015 passed under section 143(3).

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) confirmed the action of the Assessing Officer in disallowing the claim of the assessee for exemption under section 54 for the following reasons given in paragraph no. 6 of his impugned order:-

*"06. DECISION:*

*1. This ground taken by the appellant is on account of denial of exemption of Rs.43,44,214/- claimed u/s 54 of the Income Tax Act. I find that the Ld. AO has recorded elaborate reasons for such action in the relevant portion of the Assessment Order which has been reproduced above. On facts, it has been recorded by the Ld. AO that the assessee furnished a photocopy of letter dated 16.04.2013 issued by the Promoter/Developer, M/s. K.R. MALI Builder.& Developers Pvt. Ltd. for provisional allotment of Flat No,403-D Wing, 4th Floor at 'Parinee Almog', Village Eksar, Maharashtra from which it is evident that the said property was booked jointly in the names of the assessee and her son, Sri Siddharth M.Shah. As per the payment Schedule of the Provisional Allotment letter dated 16.04.2013, the total consideration of the flat is Rs.1,05,35,000/-, and that it was also seen that the assessee had paid a token amount of Rs,42,14,000/- and Service Tax of Rs.1,30,214/- totaling to Rs,43,44,214/- for the purpose of booking the said flat. The token booking amount of Rs,43,44,214/- was paid by the assessee in two instalments - Rs.11,00,000/- on 16.03.2013 and Rs.32,44,213/- on 10.04.2013. The payment schedule mentions the phases for payment of the balance amount of Rs.63, 21,000/-(excluding Service Tax).*

*2. I find that the Ld. AO has quite correctly stated that as per the provisions of Section 54 of the LT. Act, 1961, exemption is admissible on profits on sale of property used for residence only if the following primary conditions are fulfilled:*

a) *That the assessee has purchased a residential house within one year before the date of sale/transfer of the original asset.*

*Or*

b) *That the assessee has purchased a residential house within two years after the date of sale or transfer of the original asset.*

*Or*

c) *That the assessee has constructed a residential house within three years after the date of sale or transfer of the original asset.*

*3. On examination of the matter, I find myself in agreement with the Ld. AO that the assessee's claim of exemption does not fulfil the terms of Section 54 of the I.T. Act, 1961. The cut-off date for the purpose of claiming exemption u/s.54 ends on 24.08.2014, i.e. within two years from the date of sale or transfer of the original asset. However, as has been correctly noted by the Ld. AO, the property is not in the possession of the assessee even after the expiry of the cut off period. It is also seen that the assessee-individual has failed to provide any proof about the use for residential purposes of the flat in question before its sale. As has been rightly recorded by the Ld. AO, the appellant was unable to produce any neutral proof about the use of the said flat for residential purposes. The decisions relied upon by the appellant both in assessment and in appeal have been duly countered by the Ld. AO in the assessment order.*

*4. On facts, it is apparent that the assessee would be ineligible for any claim of exemption u/s 54. As such the action of the Ld. AO is confirmed and the ground taken by the appellant stands dismissed”.*

4. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. Counsel for the assessee has submitted that the investment in purchase of new flat was made by the Assessing Officer on 16.04.2013, i.e. within the period stipulated in the relevant provision, we find that the claim of the assessee for exemption under section 54 was disallowed by the authorities below mainly on the ground that the claim of the assessee of having purchased the new flat was not supported by any registered agreement for sale executed by the assessee with the concerned developer. As noted by them, the said claim was based merely on the provisional allotment letter

issued by the concerned developer, wherein it was clearly stated that the assessee was not having any right, title, interest or lien of any nature whatsoever in the flat until the agreement for sale was executed and registered with the Office of the Sub-Registrar. Even at the time of hearing before the Tribunal, no such agreement for sale executed and registered with the office of the Sub-Registrar has been filed by the assessee to support and substantiate her claim of having purchased the new flat. On the other hand, the letter dated 23.01.2017 issued by the concerned developer as placed at page no. 34 of the assessee's paper book shows that the Project is still under construction. We, therefore, find ourselves in agreement with the authorities below that the primary condition of having purchased a residential house within two years or constructed a residential house within three years after the date of sale or transfer of original asset is not satisfied by the assessee in order to claim exemption under section 54. We, therefore, uphold the impugned order of the Id. CIT(Appeals) in confirming the disallowance made by the Assessing Officer on account of assessee's claim for exemption under section 54 and dismiss Grounds No. 1 & 2 of the assessee's appeal.

5. As regards the issue involved in Ground No. 3 relating to the income tax charged by the Assessing Officer wrongly at 30% instead of 20% on the long-term capital gain, we direct the Assessing Officer to verify this aspect and allow appropriate relief to the assessee on such verification.

6. As regards the issue involved in Ground No. 4 relating to the disallowance of Rs.46,994/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) out of promotion expenses, it is observed that the total expenditure of Rs.1,08,328/- claimed by the assessee towards Exhibition Expenses was examined by the Assessing Officer during the course of assessment proceedings. On such examination, he found that the claim of the assessee for exhibition expense to the extent of Rs.46,994/- was not duly supported by the relevant documentary evidence. He,

therefore, disallowed the said expenses to the extent of Rs.46,994/-. During the course of appellate proceedings before the Id. CIT(Appeals), certain vouchers were filed by the assessee in support of her claim for the exhibition expenses of Rs.46,994/-. When the said vouchers were forwarded by the Id. CIT(Appeals) to the Assessing Officer for verification, the Assessing Officer in his remand report pointed out certain deficiencies and discrepancies to show that the relevant expenditure was unverifiable. The Id. CIT(Appeals) accordingly confirmed the disallowance made by the Assessing Officer on this issue by observing that the claim of the assessee was not supported by credible evidence.

7. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. A copy of the ledger account of the exhibition expenses placed at page no. 36 of the paper book shows that the expenditure in question was incurred by the assessee for participating in the exhibitions organized at Chennai, Ahmedabad and Rajkot. In our opinion, although the said expenditure was not fully supported by the relevant supporting documentary evidence as pointed out by the authorities below making it unverifiable, the same cannot be entirely disallowed keeping in view the nature of the assessee's business and it would be fair and reasonable to disallow the said expenditure to the extent of 50% for the unverifiable element involved therein. We, accordingly, modify the impugned order of the Id. CIT(Appeals) on this issue and restrict the disallowance of Rs.46,994/- made out of promotion expenses to Rs.23,497/-. Ground No. 4 of the assessee's appeal is thus partly allowed.

**8. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on August 31, 2018.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**Sd/-**  
**(P.M. Jagtap)**  
**Accountant Member**

**Kolkata, the 31<sup>st</sup> day of August, 2018**

- Copies to :
- (1) **Smt. Indu Mahesh Shah,  
129A, S.P. Mukherjee Road,  
Kolkata-700 025**
  - (2) **Income Tax Officer,  
Ward-35(2), Kolkata,  
Aayakar Bhavan Poorva,  
110, Shantipally, E.M. Bye Pass,  
Kolkata-700 107**
  - (5) **Commissioner of Income Tax (Appeals)-10, Kolkata,**
  - (6) **Commissioner of Income Tax- ,**
  - (7) **The Departmental Representative**
  - (8) **Guard File**

*By order*

*Senior Private Secretary,  
Head of Office/D.D.O.  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**