

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 595/Ind/2018  
Assessment Year: 2014-15

Smt. Premlata Jain,  
89, Ravindra Nagar, New Palasia  
Indore  
PAN – ADOPJ8776B

:: Appellant

Vs

ITO, 5(1), Indore

:: Respondent

Appellant by	Shri Ateek Bansal, CA
Revenue by	Shri R.S. Ambedkar, Sr. DR
Date of hearing	14.11.2018
Date of pronouncement	16 .11.2018

O R D E R

This appeal is filed by the Assessee against the order of Commissioner of Income Tax (Appeals)-II, Indore dated 12.03.2018 pertaining to A.Y. 2014-15. The assessee has raised following grounds of appeal:

*“1. The order of the Ld. ITO was confirmed by the CIT(A) where he erred legally and on facts also by confirming the addition of transfer expenses of Rs.2,34,650/- in capital gain despite the fact that deduction u/s 54 was available.”*

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as 'the Act') was framed vide order dated 01.09.2016 while framing the assessment, the assessing officer disallowed the transfer expenses of Rs.2,34,650/- as claimed by the assessee.

3. Aggrieved by this order the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions partly allowed the appeal by giving direction to the assessing officer to consider the expenses in computing the income of capital gain.

4. Ld. counsel for the assessee reiterated the submissions as made in the written submissions. Ld. Counsel for the assessee submitted that no capital gain would be payable by the assessee, if the deduction u/s 54 of the Act is allowed. He submitted that before the assessing officer also this ground was taken. He has drawn my attention to paper book pages 23 & 24. He, therefore, submitted that if the benefit of section 54 of the Act is given in that event no capital gain would be payable by the assessee.

5. Ld. Departmental Representative (DR) opposed the submission and supported the orders of the authorities below.

6. I have heard both the parties and perused the material on record and gone through orders of authorities below. From the records, it is noticed that both authorities below have not adverted on the claim of section 54 of the Act, therefore, considering the totality of the fact the impugned order is set aside and issue relating to claim u/s 54 of the assessee is to restore to the file of assessing officer to reconsider the same and decide in accordance with law. Ground raised by the assessee is allowed for statistical purposes.

7. In result, the appeal of the assessee is allowed for statistical purposed.

Order was pronounced in the open court on 16.11.2018.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**Dated : 16.11.2018**

*Patel*

**Copy to:**

**Appellant/Respondent/Pr.CIT(A)/Pr.CIT/DR, Indore**

**Assistant Registrar, Indore**