

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA  
BEFORE SHRI A. T. VARKEY, JM & DR. A.L. SAINI, AM**

**ITA No.788/Kol/2017**  
(Assessment Year: 2013-14)

<b>ACIT, Cir-32, Kolkata</b> 10B, Middleton Row, 3 <sup>rd</sup> Floor, Kolkata – 700 071.	Vs.	<b>Mrs. Ishita Mohatta</b> 24, Park Street, Magma House, 9 <sup>th</sup> Floor, Kolkata – 700 016.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJFPK 3943 P</b>		
(अपीलार्थी /Assessee)	..	(प्रत्यर्थी / Respondent)

**&**  
**CO No.45/Kol/2018**  
(Assessment Year: 2013-14)

<b>Mrs. Ishita Mohatta</b> 24, Park Street, Magma House, 9 <sup>th</sup> Floor, Kolkata – 700 016.	Vs.	<b>ACIT, Cir-32, Kolkata</b> 10B, Middleton Row, 3 <sup>rd</sup> Floor, Kolkata – 700 071.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJFPK 3943 P</b>		
(अपीलार्थी /Assessee)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Kapil Mondal, JCIT, Sr. DR  
Respondent by : Shri S. Jhajharia, AR

सुनवाई की तारीख / **Date of Hearing** : 19/09/2018  
घोषणा की तारीख/**Date of Pronouncement**: 28/11/2018

**आदेश / O R D E R**

**Per Dr. A. L. Saini, AM:**

The captioned appeal filed by the Revenue and Cross-Objection filed by the assessee pertaining to Assessment Year 2013-14, are directed against the order passed by Id. Commissioner of Income Tax (Appeals)-9, Kolkata, in Appeal No.35/CIT(A)-9/Circle-32/2016-17/Kol, dated 19.01.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 29.03.2016.

2. The present appeal filed by the Revenue is barred by limitation by two days. The Revenue moved a petition for condonation of delay. We have heard

both the parties on this preliminary issue and having regard the reasons given in the petition we condone the delay and admit the appeal for hearing.

3. The grievances raised by the Revenue are as follows:

*In the fact and circumstance of the case the ld CIT(A)-9, Kolkata has erred in deleting the disallowance made by the AO on account of and deduction U/s 54F of the I.T. Act, 61.*

4. The facts of the case which can be stated quite shortly are as follows. The original return of income, under section 139(1) of the Act, was filed by the assessee on 24.07.2013 declaring total income of Rs. 40,87,835/-. During the assessment year under consideration, the assessee earned income from Salary, House Property, Long term Capital Gains and Other Sources. During the assessment proceedings, the assessee has submitted, on various dates, all the details as were requisitioned from her by the ld assessing officer.

The ld assessing officer examined the documents and details submitted by the assessee, and noted the following facts, which are narrated below:

(a) That the assessee, Smt. Ishita Mohata, purchased jointly with her husband, Shri Gourav Mohta, one flat at a consideration of Rs. 39,21,00,000/-. About half of the said amount i.e. Rs.19,60,50,000/- is disclosed in the assessee's account.

(b) That the assessee has shown three sources of funding to purchase the said flat, which are given below:

(i) Gifts;

(ii) Home Loan;

(iii) LTCG shares of Rs. 3,10,60,677/-, subsequently revised to Rs. 3,20,40,285/- through letter dated 26.06.2015.

(c ) That the assessee has claimed exemption u/s.54F of the Income Tax Act, 1961, of Rs.3,10,60,677/- being the amount of capital gains on transfer of shares.

5. On acquisition of the said property, the assessee, jointly with her husband, Shri Gaurav Mohata had given the said property on rent to M/s. Benzo Chemical Industries Pvt. Ltd. on the following terms:

(i) That rent would be Rs. 10,00,000/- per month, equally divided between our assessee, Smt. Ishita Mohta, and her husband, Shri Gavurav Mohata.

(ii) That a security deposit of Rs. 2,00,00,000/- would be taken from M/s. Benzo Chemical Industries pvt. Ltd. equally divided between assessee, Smt. Ishita Mohta, and her husband, Shri Gavurav Mohata.

(iii) That the assessee has shown income from house property in his return of income for the relevant year;

(iv) That the assessee has kept Rs. 1,00,00,000/- as liability in her balance sheet.

6. On perusal of Balance sheets of the assessee for the A.Y-2012-13 and 2013-14, the Id AO noted that assessee had shown in her Balance Sheet, a singly owned second house property at Lavasa Corporation Ltd., (Hill Court No. 49, Hissa No. 56 Village-Dasve, Taluka-Mulshi, District- Puna, Maharashtra, value of the said house property was at Rs.1,24,77,351/-.

7. Based on these facts, narrated above, the main issue before the assessing officer was that whether the assessee was eligible to claim exemption under section 54F of the Income Tax Act, 1961, in respect of Rs.3,10,60,677/- being the amount of capital gains on transfer of shares. In order to ascertain the correctness of the assessee`s claim, the Id AO examined the exception clause in Proviso (b) to sub-section (1) of section 54F of the Act, which is reproduced below for ready reference:

*“Provided that nothing contained in this sub-section shall apply where-*

*(a) The assessee.-*

*(i) Owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or*

*(ii) Purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*

*(iii) Constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and*

*(b) The income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from House property"*

Having gone through the exception clause in Proviso (b) to sub-section (1) of section 54F of the Act, as noted above, the Id assessing officer concluded that in the assessee's case, the exception clause clearly states the exemption u/s.54F will not be entertained if the property generates income, which is chargeable under the head, "Income from House Property".

The Id AO also noted that the proviso (a)(i) of section 54F(1) stipulates that exemption u/s 54F is not allowable if the assessee –

*“owns more than one residential house, other than the new asset, on the date of transfer of the original asset.”*

In the light of the above provisions of the Act, the Id AO held that on analysis of the above provisions of section 54F of the Act, would reveal that the contention of the assessee vehemently violated the precondition of claiming exemption u/s 54F of the Act. Therefore, assessee would not be eligible to claim exemption under section 54F of the Act and hence Rs.3,10,60,677/- was added to the total income of the assessee.

8. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

9. The Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier and is not being repeated for the sake of brevity.

10. On the other hand, Id Counsel for the assessee, Shri S.Jhajharia, begins by pointing out that assessee had claimed exemption/deduction u/s 54F of the Act, in respect of long-term capital asset held in the form of shares for Rs.3,10,60,677/- which was subsequently revised to Rs.3,20,40,285/- through letter dated 26.06.2015. While computing the total income of the assessee, the A.O has disallowed the exemption u/s 54F of the Act, on completely a different ground i.e. the assessee purchased a new asset which has been let out. According to A.O, no exemption u/s 54F can be allowed in respect of property let out. The assumptions and presumptions of the A.O is wholly wrong. The Id Counsel submitted that assessee owned a residential house property at Lavasa. On 19.11.2012, the assessee purchased another residential house property (hereinafter called the new asset), the cost of which to the assessee was at Rs. 19,60,50,000/-. On 23.3.2013, assessee sold shares of M/s Benzo Chem Industries Private Ltd. on which assessee had earned long term capital gain of Rs.3,20,40,285/-, (hereinafter called the original asset) and against such long term capital gain on sale of shares the exemption u/s 54F was claimed.

The Id Counsel pointed out that on the date of sale of original asset, the assessee was holding two residential house properties, one at Lavasa and the other at Mumbai which was acquired on 19.11.2012 hereinafter called the New Asset. Since this property was acquired within one year before the date of sale of original asset, therefore the assessee is fully eligible for exemption u/s 54F of the Act. Since on the date of sale of original asset, the assessee had only two house properties i.e. one held earlier and the other being new asset acquired within one year before the date of sale of the long term capital asset. The Assessing Officer has refused exemption u/s 54F of the Act, on the ground that since the new asset purchased had been let out and hence it was presumed and assumed by the AO that assessee is not eligible for exemption u/s 54F of the Act. The presumption and assumption of the AO is wholly wrong because section 54F does not provide any such thing that new asset purchased cannot be let out. Sine the new asset having been acquired within one year prior to the sale of the original asset, exemption u/s 54F is fully available to the assessee.

11. The Id Counsel further submitted that section 54F of the Act provides for deduction in respect of capital gain arising from the transfer of any long-term capital asset, other than the residential house, defined as the Original Asset in Sec. 54F(1), if the net consideration arising from such transfer is invested in the purchase or construction of a residential house defined as the New Asset in Sec. 54F(1). The Section 54F benefit can be availed of only by individuals and Hindu undivided families. The following conditions need to be satisfied for claiming deduction u/s 54F of the Act:

(a) The assessee must be individual or an HUF; (b) the capital gain shall arise from the transfer of any long-term capital asset, not being a residential house, defined as the original asset in section 54F(1) of the Act. Therefore, asset transferred can be any long-term capital asset like a plot of land, jewellery, commercial property share and securities etc. (c) The assessee must, within a period of one year before or two years after the date on which the transfer took place of the original asset, purchase a residential house, defined as new asset. (d) The assessee must not own more than one residential house other than the new asset on the date of transfer of the original asset (e) The assessee shall not purchase any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset or construct any residential house, other than the new asset, within a period of 3 Years after the date of transfer of the original asset.

Hence, on the date of sale of original asset, assessee having been held only one residential property and only one new asset as discussed above, therefore the assessee is eligible for exemption u/s 54F of the Act.

12. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that assessee sold the shares of M/s Benzo Chem Industries Private Ltd, on 23.03.2013, on which assessee had earned long term capital gain to the tune of Rs.3,20,40,285/-. On the date of sale of shares, the assessee was holding two residential house properties, one at Lavasa and the other at Mumbai which was acquired on 19.11.2012 (hereinafter called

the New Asset). Since property at Mumbai was acquired on 19.11.2012, which is within one year before the date of sale of shares of M/s Benzo Chem Industries Private Ltd, on 23.03.2013, therefore the assessee has satisfied the conditions laid down in proviso (a)(i) to sub-section (1) of section 54F of the Act, which is given below for ready reference:

*"Section 54F: Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.*

*(1) Subject to the provisions of sub-section (4), where in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereinafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereinafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;*

*(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

***Provided that nothing contained in this sub-section shall apply where—***

***(a) the assessee,—***

***(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or***

*(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*

*(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and*

*(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".*

Therefore, the assessee was owner of one residential house, which was at Lavasa and the other at Mumbai which was acquired on 19.11.2012 (hereinafter called the New Asset), hence beyond any doubt, the assessee has satisfied the conditions

laid down in proviso (a)(i) to sub-section (1) of section 54F of the Act, which is given above.

13. At this juncture, it is worthwhile to mention the Amendment of Finance Bill 2000 wherein Clause 25 of the Finance Bill, 2000 provides as follows:

*“Clause 25... It is proposed to amend the proviso to sub-section (1) so as to provide the said exemption will be available in a case where the assessee owns only one residential house, other than the new asset, on the date of transfer of the original asset and does not acquire within one year or constructs within three years any residential house other than new asset, the income from which is chargeable under the head “income from house property”.*

*This amendment will take effect from 1<sup>st</sup> April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.”*

Therefore, it is abundantly clear from Finance Bill, 2000 that exemption u/s 54F of the Act will be available in a case where the assessee owns only one residential house, other than the new asset, on the date of transfer of the original asset and does not acquire within one year or constructs within three years any residential house other than new asset, the income from which is chargeable under the head “income from house property. This amendment will take effect from 1<sup>st</sup> April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

14. We note that Id A.O was fully satisfied on the explanation of the assessee in regard to the long term capital gain earned from selling of shares of M/s Benzo Chem Industries Private Ltd, on which assessee had earned long term capital gain to the tune of Rs.3,20,40,285/-. But the Id A.O refused exemption u/s 54F of the Act, on the ground that since the new asset purchased had been let out by the assessee. We note that the assessee had purchased a residential flat within one year prior to impugned capital gain, apart from the house which he was already owning. The amendment to proviso to section 54F made by Finance Act, 2000 has made this exemption allowable in such cases. This was clarified by Circular No.794, dated 09/08/2000, which is the Explanatory Note to Finance Act, 2000, as noted in above para. Even if, the new asset purchased had been let out by the assessee, the assessee will be entitled to claim exemption U/s 54F of the Act.

Further our view is fortified by the decision of the Coordinate Bench, New Delhi in the case of Sh. Bharat Bhushan Panchal vs. ACIT in ITA No.4914 & 5326/Del/2012, order dated 30.03.2015, wherein it was held as follows:

*“16. From the above details it would be clear that at the time of purchasing the new residential house for a sum of Rs. 21,10,500/-. The assessee was having only one residential house which was earlier purchased on 10.05.2008. Therefore, the assessee was entitled for exemption u/s 54F of the Act in respect of this house also as per the provisions contained in proviso (a)(i) to sub-section (1) of section 54F of the Act. The sale consideration of Rs. 47,42,255/- relating to Plot No. 11A was utilized by the assessee for purchasing the new house for a sum of Rs. 21,10,500/-, therefore, the exemption u/s 54F was allowable for a sum of Rs. 20,79,938/- ( $21,10,500 \times 46,73,582 \div 47,42,255$ ) and taxable Long Term Capital Gains worked out to Rs. 26,62,317/- (Rs. 47,42,255/- - Rs. 20,79,938/-). We, therefore, considering the totality of the facts as discussed here in above are of the view that the ld. CIT(A) was not justified in directing the AO to sustain the addition on account of Long Term Capital Gains for a sum of Rs. 46,63,324/-. Accordingly, we delete the addition confirmed by the ld. CIT(A).”*

Facts of the assessee's case under consideration, is similar to the facts narrated in the decision of the of the Coordinate Bench, New Delhi in the case of Sh. Bharat Bhushan Panchal vs. ACIT in ITA No.4914 & 5326/Del/2012,(supra), therefore, the assessee is entitled to claim exemption under section 54F of the Act.

15. We note that assessee's balance sheet as on 31.03.2013 (vide paper book page No.25) wherein the assessee has shown house property as a part of his fixed assets and in the liability side of the balance sheet, the assessee has shown the housing loan received from State Bank of India. The assessee is not owner of more than two houses as on 31.03.2013 including the new house property purchased at Mumbai on 19.11.2012. Therefore, it is evidently clear that the assessee had purchased a residential flat within one year, prior to impugned capital gain on sale of shares, and therefore, the assessee is entitled for exemption u/s 54F of the Act in respect of this house also as per the provisions contained in proviso (a)(i) to sub-section (1) of section 54F of the Act. That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue is hereby upheld and the grounds raised by the Revenue is dismissed.

16. At the time of hearing, the learned counsel for the assessee informed the Bench that assessee does not want to press the cross objection and seeking permission to withdraw the Cross Objection. After hearing the ld DR for the

Revenue, the permission is granted and the Cross objection is dismissed as withdrawn.

17. In the result the Cross Objection, No.45/Kol/2018, of the assessee is dismissed as withdrawn.

18. In the result, the appeal filed by the Revenue is dismissed and Cross-Objection filed by the assessee is also dismissed.

Order pronounced in the open court on this 28/11/2018.

**Sd/-**  
**(A. T. Varkey)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:28/11/2018

RS, Sr. PS

**Sd/-**  
**(A. L. Saini)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Assessee- ACIT, Cir-32, Kolkata
2. प्रत्यर्थी / The Respondent- Mrs. Ishita Mohatta
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

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By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.