

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 76/MUM/2018 (A.Y: 2014-15)**

ITO – 22(2)(4) R.No. 310, Piramal Chambers, Lalbaug, Parel, Mumbai – 400 012	v.	Shri Neil B. Dodhia Chandan 5, 2 <sup>nd</sup> Floor, Railway Colony, IRLA Opp. Pappillon Restaurant, Vile Parle (W), Mumbai – 400 056  <b>PAN No: ALMPD 9909 N</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Snehal R. Shah**

**Department by : Shri Ravindra**

**Date of hearing : 02.04.2019**

**Date of pronouncement : 02.04.2019**

**ORDER**

**PER C.N. PRASAD (JM)**

This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-34, Mumbai in Appeal No. CIT(A)-34/ITO-22(2)(4)/IT-10311/2016-17 dated 27.10.2017 for the Assessment Year 2014-15.

2. The Revenue has raised the following grounds in its appeal: -

“1. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction of Rs. 81,52,000/- under section 54 without appreciating that the assessee had claimed such deduction neither in his original return nor by filing revised return within the period allowed u/s 139(5).

2. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction of Rs.81.52.000/- under section 54 without appreciating the ratio laid down by the Apex Court in the case of Goetze (India) Ltd vs C1T 284 1TR 323 (SC) that the AO had no lawful authority to entertain the claim u/s 54 in course of assessment proceedings when such claim was made by the assessee neither in the original return nor by filing revised return within the period allowed u/s 139(5).

3. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction of Rs.81,52,000/-under section 54 by relying on his observation that the claim of deduction was not disputed on merit by the AO without appreciating the decisive fact that the same was beyond the jurisdiction of the AO as he could not lawfully entertain the claim at the assessment stage in view of the judgment of the Apex Court in the case of Goetze (India) Ltd vs CIT 284 ITR 323 (SC).

4. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction of Rs.81.52.000/-under section 54 without himself examining the genuineness of the claim and by merely stating that the same was not disputed by the AO in his assessment order.

5. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction of Rs.81,52,000/- under section 54 by relying on the judgment of the Bombay High Court in the case of Pruthvi Brokers & Shareholders Pvt Ltd when the same was not relevant to the present case as it admittedly pertained to the appellate authority of the CIT(A).”

3. At the time of hearing, Authorized Representative of the assessee submitted that tax effect on the issue in the present appeal is below ₹ 20 Lacs and in view of the CBDT Circular No. 3/2018 dated 11/07/2018 in F.No.279/Misc.142/2007-ITJ (Pt), the appeal of the Revenue is not maintainable. Ld. Counsel referring to the Income Tax Computation Form submitted that the A.O computed the Long Term Capital Gains at ₹.81,52,000/- by disallowing the exemption claimed u/s. 54 of the Act and computed the tax liability along with education cess at ₹.16,93,441/- which is below ₹.20 Lakhs.

4. Departmental Representative also agreed with the above submission of the Authorized Representative of the assessee.

5. We have heard the rival submissions and perused the computation of tax. We find that the tax effect in this appeal is less than ₹.20 Lakhs and therefore the appeal of the Revenue is not maintainable on account of low tax effect in view of the above CBDT Circular. Hence appeal dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on the 02<sup>nd</sup> April, 2019.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 02/04/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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.

//True Copy//

BY ORDER,

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