

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6797/M/2017
Assessment Year: 2014-15**

ITO (International Taxation) – 3(1)(1), Room No.1628, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Sonya Ishwar Jethmal, C/o Cm Gabhawala, 42 Nanik Niwas, 30, Dr. D.D. Sathe Marg, Girgaum, Mumbai PAN: ADCPJ 8359A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Biren Gabhawala, A.R.
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 10.04.2019
Date of Pronouncement : 26.04.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 19.09.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The only issue raised by the Revenue is against the order of Ld. CIT(A) holding that investment in residential property in USA would be entitled to exemption under section 54 of the Act.

3. The facts in brief are that the AO during the course of assessment proceedings observed that assessee has sold a residential property at Rs.42,24,44,934/- during the year and

after claiming indexation cost of Rs.4,54,63,469/- a long term capital gain was computed at Rs.37,69,81,465/-. Out of the said long term capital gain assessee invested the capital gain in new house property abroad i.e. Manhattam USA to the tune of Rs.11,81,76,071/- and also invested Rs.50 lakhs in capital gain bonds which were eligible for deduction under section 54EC of the Act. The balance in capital gain of Rs.25,38,05,394/- was offered for taxation. According to the AO, the assessee has not invested the capital gain amount towards purchase of new assets within one year before the date of transfer or purchase or constructed the new asset within two years as per the scheme of the Act. The assessee has not deposited the capital gain in the specified account before the due date of filing the return. The AO also referred to the decision of ITAT Ahmedabad Bench in the case of Leena J. Shah vs. ACIT (2006) 6 SOT 721 (Ahd), wherein it was held that exemption is not available for a purchase of property abroad. Accordingly, a show cause notice was issued which was replied by the assessee and finally AO added the capital gain to the tune of Rs.11,81,76,071/- to the income of the assessee on the ground that the investment of capital gain in the property located abroad is not covered by the section 54 of the Act.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“3.4. Decision:

I have gone through the assessment order and submissions made before the assessing officer and also submissions made during the course of appellate proceedings. It is now upheld by various courts/Tribunals that investment made outside India and claimed u/s 54 of the I.T. Act was allowable before the amendment made by finance Act w.e.f. 02.04.2015. It was only now that the word 'In India'¹ has been inserted in sec 54(1). Since the appellant's case falls before the

amendment the appellant will get benefit of sec 54. The appellant has cited various case laws in support of his claim and the latest case law of Hon'ble ITAT Mumbai branch 'B' in case of ITO 3(1) Mumbai vs Nishant Jadhav (ITA No. 6883/Mum./2014) pronounced on 26.04.2017 upheld that the claim of exemption u/s 54 cannot be denied on the ground that the investment in the property was made outside India. Following the verdict of jurisdictional ITAT. I direct the AO to allow the exemption claimed by the appellant u/s 54.

Regarding second ground of appeal regarding initiation of penalty u/s 271(1)(C) of the Act the same stands dismissed at this forum.

4. In nutshell, assessee's appeal is **Partly Allowed.**"

5. The Ld. A.R. submitted before the Bench that the issue of investment of long term capital gain in asset abroad is duly covered by the decision of Hon'ble Gujarat High Court in the case of Leena Jugalkishor Shah vs. ACIT (2016) 72 taxman.com 185 (Gujarat) and also the decision of the co-ordinate benches of the Tribunal in the case of ITO International Taxation vs. Ashok Kailash Chandra Nigam in ITA No.8331/M/2011 A.Y. 2008-09 order dated 15.09.2016 and ITO vs. Nishant Lalit Jadhav ITA No.6883/M/2014 A.Y. 2011-12 order dated 26.04.2017. The Ld. A.R. submitted that since the issue of investment of long term capital gain resulting from transfer of residential house if invested on purchase of property (residential house abroad) even then the assessee is entitled for exemption under section 54 of the Act. The Ld. A.R. therefore prayed that following the ratio laid down by the Hon'ble Gujarat High Court and also the co-ordinate benches of the Tribunal, the appeal of the Revenue may kindly be dismissed.

6. The Ld. D.R., on the other hand, relied on the grounds of appeal and order of AO.

7. After hearing both the parties and perusing the material on record, we observe that the issue of investment of long term capital gain in the purchase of residential house abroad is now squarely covered by the various decisions as referred to by the Ld. A.R. The Hon'ble Gujarat High Court in the case of Leena J. Shah vs. ACIT (supra) has held that the capital gain resulting from sale of land in India if invested in residential house in USA the benefit of exemption of section 54F would be available as there was no condition in section 54F before amendment by Finance (No.2) Act, 2014 which came into effect w.e.f. 01.04.2015 and therefore the benefit of section 54F would be available to the assessee in assessment year. In the case of ITO vs. Nishant Lalit Jadhav (supra) it was held that amendment in section 54 of the Act by Finance Act, 2014 is applicable from assessment year 2015-16 and therefore any capital gain resulting from sale of residential house would be eligible for exemption under section 54 of the Act. The similar view has been taken by the co-ordinate bench of the Tribunal in the case of ITO International Taxation vs. Ashok Kailash Chandra Nigam (supra). Since the case of the assessee is squarely covered by the ratio laid down by the Hon'ble Gujarat High Court and two co-ordinate benches of the Tribunal (supra), we, therefore, respectfully following the same dismiss the appeal of the Revenue.

Order pronounced in the open court on 26.04.2019.

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 26.04.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.