

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA NO. 2709/MUM/2018 (A.Y: 2011-12)**

Shri Mangilal Ranka A/1301, Pratiksha Tower, R.S. Nimkar Marg, Mumbai – 400 008  <b>PAN: AACPR 1121 M</b>	v.	Income Tax Officer – 5(3)(1) Room No. 21, 3 <sup>rd</sup> Floor, B Wing, Mittal court, Nariman Point, Mumbai – 400 021
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Satish Modi**  
**Department by** : **Shri Nishant Samaiya**

**Date of Hearing** : **18.02.2019**  
**Date of Pronouncement** : **12.04.2019**

**ORDER**

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

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income–tax (Appeals)–10, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 02.01.2018 for the A.Y. 2011-12. Assessee challenged the order of the Ld.CIT(A) in disallowing the exemption u/s. 54 of the Act.

2. Briefly stated the facts are that, assessee an individual deriving income from salary filed return of income on 25.07.2011 declaring income

of Rs. 6,51,130/-. The assessment was completed u/s. 143(3) on 21.10.2013 determining the income @ Rs. 30,44,925/-. While computing the income of the assessee the Assessing Officer denied exemption claimed u/s. 54 of the Act in respect of the property purchased by the assessee and computed the long term capital gain accordingly. Assessee purchased Flat No. 1302 in 13<sup>th</sup> floor, "A" wing at Pratiksha Towers Cooperative Housing Society Ltd., vide agreement dated 28.07.1994 in the name of Sitadevi J Janka. Subsequently a deed of surrender and relinquishment was made in favour of the assessee on 11.02.1998. Thereafter a new residential flat was purchased on 24.12.2007 namely Flat No. 1902, 19<sup>th</sup> Floor, "A" wing at Orchid Enclave by selling the flat in Pratiksha Towers Cooperative Housing Society Ltd. The sale agreement was entered into on 22.12.2010. Assessee claimed exemption u/s. 54 of the Act on the capital gains derived on sale of the flat on the ground that since the assessee has taken possession of the flat at Orchid Enclave on 15.09.2011, the date of acquisition of the flat has to be considered from the date of the possession i.e. 15.09.2011 and the period of time limit for claiming exemption u/s. 54 should be considered accordingly. However, the Assessing Officer recorded the date of acquisition of capital asset from the date of purchase agreement being 24.12.2007 and denied the exemption claimed by the assessee.

3. Before the Ld. CIT(A), the assessee placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Smt Beena K. Jain [217 ITR 363] and also the decision of the Mumbai Bench in the case of Bastimal K. Jain v. ITO in ITA.No. 2896/Mum/2014 dated 08.06.2016 and also the decision in the case of Smt Ramita Mahendra Mehta v. ITO in ITA.No. 4535/Mum/2014 dated 13.09.2017 wherein it has been held that the date of final occupation of the property should be considered for the purpose of calculation of the period of eligibility for deduction u/s. 54 of the Act. Ld. CIT(A) though taken note of these decisions, he rejected the claim of the assessee observing that assessee has not provided any evidences to prove that he has taken possession of the flat on 15.09.2011 as mentioned in the letter by the builder. Ld. Counsel for the assessee submits that the builder has given a letter dated 15.09.2011 i.e. invitation for inspection and for taking possession of the said flat and this is an ample evidence to show that assessee has taken possession of the property, since assessee accepted the invitation and taken possession of the flat accordingly. It is further contended that the property is under construction, entire money was utilized for the property and therefore, there is no justification in denying the claim of the assessee. He strongly placed reliance on the decision of the Hon'ble Jurisdictional High Court and the Coordinate Benches referred to above.

4. Ld. Counsel for the assessee further submitted that if at all exemption is not allowable, the same is disallowable only in the third year, when the conditions for exemption are not fulfilled.

5. Ld. Counsel for the assessee also placed reliance on the following decisions in support of his contentions: -

(i) *DCIT v. Dr. Chalasani Mallikarjuna Rao in ITA.No. 206/Vizag/2013 dated 21.10.2016.*

(ii) *Mr. Mustansir I. Tehsildar v. ITO in ITA.No. 6108/Mum/2017 dated 18.12.2017.*

(iii) *Mr. Rajeev B. Shah v. ITO in ITA.No. 262/Mum/2015 dated 08.07.2016.*

(iv) *Shri Hasmukh N. Gala v. ITO in ITA.No. 75812/Mum/2013 dated 19.08.2015.*

6. Ld. DR vehemently supported the orders of the Authorities below and submitted that assessee has not produced any documents/evidences for taking possession of the property and therefore, the lower authorities are justified in denying the claim of the assessee for exemption u/s. 54 of the Act.

7. Heard the rival submissions, perused the orders of the Authorities below. Assessee produced a letter given by the developer contending that he has taken possession of the property on 15.09.2011. The Ld. CIT(A) also records a finding that a letter dated 15.09.2011 was issued by the developer "invitation for inspection" wherein it is stated that developer has completed the construction of the said flat and is in the process of

completing the necessary formalities to obtain occupation certification for the said flat and the same may take some time. It is the finding of the Ld. CIT(A) that in the said letter the developer, however invited the assessee to inspect and take possession of the said flat. The assessee contends that based on this letter assessee has taken possession of the property on 15.09.2011. It is also contended that the assessee utilized entire money for purchase of this property. The Ld.CIT(A) having observed that the builder has invited the assessee for taking possession of the property by the assessee, I do not see good reason to reject the claim of the assessee. The reason for denying the claim of the assessee by the Ld. CIT(A) is that, as per the purchase agreement assessee has to share the municipal taxes and water charges and since no evidences were produced by the assessee to suggest that these charges were shared by the assessee with developer the claim of assessee was denied. In my view the arrangement between the builder and assessee to pay or to share the municipal taxes and water charges cannot come in the way of the assessee claiming exemption when especially the developer invited the assessee to take possession by issue of letter dated 15.09.2011. The Revenue is also not disputing the veracity of the letter issued by the developer. In the circumstances, I am of the view that merely because the assessee has not produced the evidences for sharing the municipal taxes and water charges as mentioned in the purchase agreement the

claim of the assessee shall not be denied, ignoring the letter issued by the developer. The Hon'ble Jurisdictional High Court in the case of CIT v. Smt Beena K. Jain (supra) upheld the claim of the assessee when the assessee has paid full consideration on the flat becoming ready for occupation and obtained possession of the flat. Similarly, the Coordinate Bench in the case of Bastimal K. Jain v. ITO (supra) held that the date of final occupation of the property should be considered for calculation of the period of eligibility of exemption u/s. 54 of the Act. Respectfully following the said decisions, I allow the claim of the assessee for exemption u/s. 54 of the Act. Grounds raised by the assessee are allowed.

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

Order pronounced in the open court on the 12<sup>th</sup> April, 2019

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 12/04/2019  
Giridhar, Sr.PS

**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**